

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

W.P.No. 15793 OF 2000

ORDER:

Indian Rayon and Industries Limited filed this Writ Petition under Article 226 of the Constitution of India to set aside G.O.Rt.No. 740 dated 07-04-2000 issued by the 1st respondent and quash the same by issuing a Writ of *certiorari*. The petitioner claimed further relief to declare G.O.Rt.No. 740 dated 07-04-2000 as illegal, invalid, inoperative and void *ab initio* by issuing a Writ of *mandamus* and issue a Writ of prohibition prohibiting the 2nd respondent from proceeding further in L.C.I.D.No. 52 of 2000. During pendency of the petition, the petition was amended deleting Indian Rayon and Industries Limited by substituting Aditya Birla Nuvo Limited by order dated 05-08-2015 *vide* W.P.M.P.No. 25271 of 2015.

The petitioner is a company incorporated under the Companies Act, 1956 (for short, 'the Act of 1956'), engaged in the business of manufacturing of seawater magnesia and set up a plant at Adityapatnam, Chippada Village, Bheemunipatnam Mandal, Visakhapatnam, in the month of February, 1998, for production of seawater magnesia by investing huge amount. Later, the factory operations became unviable as the petitioner company could not meet the unforeseen international competition in view of the foreign procedures of dumping the product at abysmally cheaper price than even the cost of production of the petitioner. Thus, the petitioner company was forced to suspend its operations, at its plant site, in the month of November, 1998. Even thereafter, though the unit continued to remain suspended, the petitioner had been paying wages to all the idling employees.

Due to the unviable condition and the financial hardship being faced by the petitioner company, it took a decision to relocate the employees though it would have been legally and actually justified in terminating their services. The totally unviable conditions compelled the petitioner company to suspend its operations permanently. Accordingly, the petitioner company

contacted its other divisions and other group companies such as Aditya Cement, Bhiwani Textiles, Bina Power Project, Birla Copper, Birla Super Bulk, Dharani Cement, Essel Mining, Grasim Cement, Grasim Chemical, Hindalco, Hi-tech Carbon, Jaya Shree Insulators, Jaya Shree Textiles, New Vikram Cement, Rajashree Cement, Tanfac, Vikram Ispat, etc., to provide employment to the idling employees of Birla Periclase and, thus, about 90 workers had been transferred to various other units and employed there itself. In the said process, few employees left services of the petitioner on their own and joined in various other companies. Some employees also left services of the company for pursuing higher education. While re-location of employees, (1) P.Seshagiri Rao, (2) K.K.Chakravarthy and (3) G.Narendra Varma, workmen at the petitioner's plant site, were transferred to Hi-tech Carbon, Renukoot, Sonbadra District, Uttar Pradesh, vide letter dated 13-07-1999. The above transfers have been given effect purely for the reason of closure of the unit and in accordance with clause 8 of their appointment letter which reads thus:

"You are liable to be transferred to any other Division or Establishment anywhere existing or which may come into existence in future, at the discretion of the Management."

In view of the above clause in the appointment letter, transfer of the above three employees to Hi-tech Carbon, Renukoot, Sonbadra District, Uttar Pradesh, is legal and valid. The above three employees were relieved from service on submitting their resignation to the petitioner company and reported to duty at Hi-tech Carbon, Renukoot.

After transfer of many employees to other units including the three employees referred above to Renukoot, the number of employees on the rolls of the petitioner company at Adityapatnam was reduced to 9. Even those 9 workers are presently helping the management to dismantle the plant and machinery which is proposed to be sold.

The 3rd respondent union is in existence almost from the inception of

the unit. During re-location exercise and pursuant to several employees choosing to resign to pursue their higher studies elsewhere, the then office bearers of the union left the union as well. Presently, there are only 9 workmen by name (1) M.Pankajam, (2) S.M.Chowdhury, (3) D.Satesh, (4) Alla Rama Rao, (5) U.S.Chowdary, (6) M.Jogibhatlu, (7) M.Someswara Rao, (8) Shailendra Kumar and (9) Ch.Venkata Rao but none of them are members of the 3rd respondent union. The then Honourary President Sri K.M.Patro left the union in the month of August, 1999. Sri B.Madhusudhan Rao, the then President of the union, left the service of the company in the month of June, 1999, to join in Tata Iron and Steel Company Limited (TISCO). The then General Secretary, Sri K.V.J.Raju, also left the company in or about June, 1999, to join in TISCO. The then Organizing Secretary, A.V.Ravi Varma, resigned to service in the company and presently working in Hi-tech Carbon, Renukoot, Uttar Pradesh. Similarly, the then Joint Secretaries of the union Sri K.Veeranna and Sri P.M.Muralidhar also resigned in September, 1999, to their services in the petitioner company. Even the then existing Treasurer, Sri K.Suri Babu, tendered his resignation from the primary membership of the union on 09-09-1999. Thus, leaving out, only P.Seshagiri Rao and K.K.Chakravarthy claiming to be the Vice Presidents of the union. After persuading the management to accept their resignations, the above three persons prevailed upon the petitioner company to restore their transfer orders as they were willing to proceed on transfer. Pursuant to it, they also collected transfer allowance and other consequential benefits. As stated above, P.Seshagiri Rao, K.K.Chakravarthy and G.Narendra Varma, who are directly responsible for reference of dispute by Government to the 2nd respondent, having received and settled their account and proceeded to Renukoot to report duty at Hi-tech Carbon, are not entitled to raise any dispute as they had been re-located on par with other employees. That apart, the said three persons worked for sometime after reporting duty at Hi-tech Carbon, Renukoot, but later abandoned their

employment and returned to Visakhapatnam for the reasons best known to them. On their return, they lodged a complaint to the Commissioner of Police, Visakhapatnam, making serious allegations against the petitioner that since the unit was temporarily closed down by the management, instead of paying retrenchment compensation as per the Industrial Disputes Act, 1947 (for short, 'the Act of 1947'), compelled them to resign, obtained letters of resignation, issued transfer orders transferring them to Hi-tech Carbon, Renukoot, Sonebadra District, Uttar Pradesh, and, accordingly, they reported to duty at Hi-tech Carbon, Renukoot, on 27-07-1999 and worked from 27-07-1999 to 02-08-1999. Thus, they are no more workers or employees in the petitioner company but they gave a report to Deputy Commissioner of Labour, Visakhapatnam, misusing the letterheads of defunct union alleging that they were forced to resign to their employment in the petitioner industry while making other allegations against the petitioner.

On receipt of notice from the Deputy Commissioner of Labour, Visakhapatnam, to hold a joint meeting enclosing the report dated 12-08-1999 submitted by the 3rd respondent, the petitioner addressed letter dated 18-08-1999 clearly stating that the unit itself was not functional since many years as all its office bearers such as President, General Secretary, Treasurer *etc.*, left the company and Sri P.Seshagiri Rao, who is claiming to be the President, also no longer an employee of the petitioner company at Adityapatnam while pointing out that said three workmen, though resigned to service in the petitioner company having reported to duty at Hi-tech Carbon, Renukoot, are not entitled to give report to Deputy Commissioner of Labour as they are no more workmen of the petitioner company. Since the union itself is not in existence and the workmen referred above are not the workmen of the petitioner company, they are not entitled to make any representation. Added to that, all the three workmen referred above absented themselves unauthorizedly in Hi-tech Carbon, Renukoot, they were removed from service after issuing charge sheet followed by

necessary enquiry and, therefore, no joint meeting needs be held. Later, the petitioner addressed letters to Deputy Commissioner of Labour, Visakhapatnam, bringing some more facts while contending that the Deputy Commissioner of Labour, Visakhapatnam, had no jurisdiction since no dispute arose within the limits of Deputy Commissioner of Labour, Visakhapatnam, and when the above three workmen are employees in Hi-tech Carbon, Renukoot, the Deputy Commissioner of Labour, Renukoot, alone is having jurisdiction.

After sometime, the conciliation proceedings were closed and the Deputy Commissioner of Labour, Visakhapatnam, sent his factual report (failure report) dated 12-11-1999 to the 1st respondent. Thus, the 1st respondent would have refused to refer the purported dispute for adjudication as there was no industrial dispute in the eye of law; at any rate, it had no jurisdiction as the three workmen referred above ceased to be the employees in the State of Andhra Pradesh; nor could it be said that any industrial dispute could have arisen substantially in the State of Andhra Pradesh and, accordingly, it being not the appropriate Government could refer the purported industrial dispute raised by the above three individuals camouflaged in the name of the non-existing union. After sometime, the petitioner was shocking to know about issue of notice by the 2nd respondent based on the reference made by the 1st respondent to the 2nd respondent *vide* G.O.Rt.No. 740 dated 07-04-2000 directing the 2nd respondent to decide ***"whether the action of the management of M/s. Birla Periclase, Adityapatnam, Visakhapatnam District, in transferrring Sri P.Seshagiri Rao, Sri K.K.Chakravarthy and Sri G.Narendra Varma, worken to M/s. Hi-tech Carbons, Renukoot, Uttar Pradesh, is justified, if not, to what relief the workmen are entitled."***

On receipt of notice from the 1st respondent, the 2nd respondent registered the same as L.C.I.D.No. 52 of 2000 and issued notice for

appearance of the parties. On entering appearance, a copy of the claim statement purportedly filed through the 3rd respondent union was furnished. On the face of the claim statement, the impugned G.O. is illegal, it is a product of total and abject non-application of mind and the same deserves to be declared as void. Apart from that, the address particulars disclosed in the claim statement itself show that the union is not in existence. Thus, there is no valid industrial dispute, the union was not in existence, the State of Andhra Pradesh-the 1st respondent lacks jurisdiction and there was no relationship of employer and employee between the workmen and the petitioner. At best, the dispute is of individual dispute and it is given the colour of collective industrial dispute which is impermissible in law.

Reference by the 1st respondent to the 2nd respondent is without application of mind as there is no valid industrial dispute in the eye of law. The claim of the union itself is based upon the alleged termination whereas the order of reference indicates it to be a case of transfer and the appropriate Government would be the State of Uttar Pradesh inasmuch as it is admitted by the said three persons that they did resign from the services of the petitioner company in the State of Andhra Pradesh, proceeded to Renukoot in the State of Uttar Pradesh, reported to duty there and, thus, they had ceased to be employees in the State of Andhra Pradesh. Thus, the reference is invalid and prayed to grant the aforesaid reliefs.

The respondents filed no counter.

During hearing, learned counsel for the Writ Petitioner mainly contended that the reference is invalid as the State of Andhra Pradesh lacks jurisdiction as the employees ceased to work in the industry of the petitioner at Andhra Pradesh. On this ground alone, the petition is liable to be dismissed. It is also further contended that the union, allegedly in existence espousing the cause of the employees, is not in existence and styling Seshagiri Rao as President of the union is not based on any material. Apart

from that, the employees, who approached the 2nd respondent by way of reference from Government, were not the workmen of the petitioner company as on the date of making representation to the Deputy Commissioner of Labour, Visakhapatnam. Thereby, the reference is invalid. Even to espouse cause of the workmen by the union, the union must consist not less than 10 workmen but no material is brought on record to establish *prima facie* about existence of the union. The reference under Section 4 of the Act of 1947 is only limited by Section 10 (4) of the Act of 1947 and only when there is dispute relating to the disputes mentioned in Schedules 2 and 3 read with Sections 7 and 7-A of the Act of 1947 be referred to Labour Court or Tribunal by Government but transfer of workmen is not covered by those two schedules. Thereby, the reference is not in accordance with law and the same is liable to be quashed. The workmen, who made a representation through the union to the Deputy Commissioner of Labour and in turn to Government, resigned from the service of the petitioner company and proceeded on transfer to the other unit of the petitioner company in terms of their appointments. Therefore, their transfer to the other unit of the petitioner company is at their own volition, they worked there for sometime and they were removed from employment due to their absence from duty after conducting necessary enquiry. In such case, the workmen were not the employees since resigned and settled their accounts of all benefits. Therefore, the reference is invalid; in the absence of any industrial dispute, question of inquiring into the reference by the respondents does not arise; and prayed to allow the Writ Petition. The dispute, at best, would fall within Sections 25-F and 25-FFA and Chapter VB including Section 25-N of the Act of 1947, it is totally outside the purview and, if entertained, would only tantamount to enlarge the scope of reference itself. Chapter VB of the Act of 1947 would get attracted only when 100 or more workmen are employed in establishment at the relevant point of time and 12 months upwards. The workers engaged in the petitioner company were only 90 in number. In such

case, the provisions of Chapter VB like Section 25-N or 25-M of the Act of 1947 would not attract even remotely. The reference is not regarding retrenchment or closure of the unit. In such case, the reference is not maintainable in accordance with law and liable to be set aside.

Learned counsel for the petitioner also filed written briefs running into 11 pages and those submissions will be considered at relevant point while deciding the petition.

The 3rd respondent filed written briefs contending that the petitioner company engaged more than 100 employees and winding up of the unit at Visakhapatnam amounts to layoff/closure. In such case, the petitioner has to follow Chapter VB of the Act of 1947, wherein permission from competent authority must be obtained. Since it is a laborious process, the petitioner had issued illegal transfer order to far of places and, thereby, indulged in unfair labour practice which is prohibited by Section 25-T of the Act of 1947. The minimum requirement to form a trade union is introduced by an amendment to Section 9-A of the Trade Unions Act, 1926 (for short, 'the Act of 1926'), with effect from 09-01-2002. Since the dispute relates to the period prior to the amendment, the minimum requirement of 7 workmen is not applicable. Hence, the contention of the petitioner company that there is no trade union legally is without any substance.

Learned counsel for the respondents further contended that resignation letters were obtained by the petitioner under coercion or threat and, when the Act provides for alternative employment, the workmen have to be transferred within the same town or village but not to far of places as done in this case to Renukoot, Uttar Pradesh. On account of such transfer, much prejudice was caused to the workmen. Therefore, the reference is valid since they were not paid retrenchment compensation by the petitioner industry. The written submissions and the legal position relied upon by learned counsel for the respondents will be referred at appropriate stage to decide the petition in accordance with law.

Considering rival contentions and perusing material available on record, the points that arise for consideration are as follows:

- "(1) *Whether the State of Andhra Pradesh has got jurisdiction to make reference to the Industrial Tribunal-cum-Labour Court, Visakhapatnam?*
- (2) *Whether the 3rd respondent-trade union is in existence, if so, whether it satisfies the minimum requirements of a trade union under the Act of 1926?*
- (3) *Whether there exists any industrial dispute as defined under Section 2 (k) of the Act of 1947, if so, whether it falls under Sections 7 and 7 (A) read with Schedules 2 and 3 of the Act of 1947?*
- (4) *Whether there is any valid industrial dispute between the 3rd respondent and the petitioner company to make reference, if not, whether it is liable to be set aside?*
- (5) *Whether the transferred three workmen were ceased to be the employees of the petitioner company by tendering resignation and accepted by the petitioner company at their volition, if not, whether their transfer from Adityapatnam to Renukoot, Uttar Pradesh, amounts to retrenchment or layoff?*
- (6) *Whether the workmen are entitled to any retrenchment compensation from the petitioner company?*
- (7) *Whether the reference is contrary to the provisions of the Acts of 1947 and 1926, if so, whether the reference is liable to be quashed by issuing a Writ of Certiorari?*
- (8) *Whether G.O.Rt.No. 740 dated 07-04-2000 be declared as illegal, invalid and inoperative under law and void ab initio by way of a Writ of Mandamus?*

(9) *Whether the 2nd respondent be restrained from proceeding with L.C.I.D.No. 52 of 2000 pursuant to G.O.Rt.No. 740 dated 07-04-2000 by issuing a Writ of Prohibition?*

In Re. Point No. 3:

The major contention of learned senior counsel for the petitioner is that there was no industrial dispute in existence as on the date of making representation to the Deputy Commissioner of Labour, Visakhapatnam, and, therefore, the reference itself is invalid whereas learned counsel for the respondents would contend that the dispute relates to retrenchment and payment of compensation and, therefore, there exists an industrial dispute amenable to reference by Government to Industrial Tribunal. In view of this controversy, it is appropriate to advert to various provisions and schedules under the Act of 1947 including the definition of industrial disputes besides the law declared by various Courts.

Unless an industrial dispute is in existence, the State has no power to refer the same to the 2nd respondent and the 2nd respondent has no jurisdiction to adjudicate the same. In such case, this Court, while exercising the power of judicial review, can quash such reference if it does not fall within the definition of industrial dispute under Section 2 (k) of the Act of 1947 and referable industrial dispute under Sections 7 and 7 (A) read with Schedules 2 and 3 of the Act of 1947. Before coming to the fact situation, it is condign to extract the definition of industrial dispute as defined under Section 2 (k) of the Act of 1947 for better appreciation.

"Industrial dispute means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

Similarly, Sections 7 and 7 (A) of the Act of 1947 deal with various kinds of disputes that can be referred for adjudication to Labour Court or

Industrial Tribunal which are specified in Schedules 2 and 3. A co-joint reading of Sections 2 (k), 7 and 7 (A) and Schedules 2 and 3 of the Act of 1947, an industrial dispute that covered by Schedules 2 and 3 alone be referred to Labour Court and Industrial Tribunal. In the present case, the reference made to the 2nd respondent is as follows:

"Whether the action of the management of M/s. Birla Periclase, Adityapatnam, Visakhapatnam District, in transferring Sri P.Seshagiri Rao, Sri K.K.Chakravarthy and Sri G.Narendra Varma, workmen to M/s. Hi-Tech Carbons, Renukoot, Uttar Pradesh is justified?"

The Government, exercising power conferred on it by Section 10 of the Act of 1947, based on factual report submitted by the Deputy Commissioner of Labour, Visakhapatnam, made such reference. It is evident from the reference extracted above that justification in transferring the three employees is required to be decided by the 2nd respondent but the question is whether the said dispute is an industrial dispute as defined under Section 2 (k) of the Act of 1947, if so, whether the same can be referable to the 2nd respondent under Sections 7 and 7 (A) read with Schedules 2 and 3 of the Act of 1947. As stated above, Sections 7 and 7 (A) deal with the matters to be referred to Labour Courts or Tribunals. The transfer of employees from Adityapatnam to Renukoot is justifiable is the question that referred to the 2nd respondent but such transfer of an employee is neither included in Schedule 2 nor in Schedule 3.

Learned counsel for the respondents demonstrated that the three employees are entitled for retrenchment compensation under Section 25 (f) of Chapter VB of the Act of 1947 as the petitioner industry was totally closed. If that is the case, the reference made to the 2nd respondent is inconsistent to the contention of learned counsel for the respondents since the referred dispute is not with regard to justification in non-payment of retrenchment compensation to the above three employees. The reference made to the 2nd respondent is not with regard to retrenchment of employees much less

covered by Section 7 (A) read with Schedule 3 and not even a dispute relating to closure of establishment. Therefore, the reference by Government to the 2nd respondent does not fall even under the clause "Retrenchment of workmen and closure of establishment" contained in Schedule 3 read with Section 7 (A) of the Act of 1947. Schedule 3 also contained a clause that any other matter that may be prescribed, it does not mean that all other matters relating to differences between employer and employee. Unless they are prescribed by the Act of 1947, justification in transferring the above employees cannot be referred to the 2nd respondent. Learned counsel for the respondents is unable to show that transfer of the above three workmen falls within any of the Schedules under Sections 7 and 7 (A) of the Act of 1947.

The undisputed reference by the 1st respondent in the present case is only with regard to transfer of employees from one unit to other unit based on terms and conditions of appointment. Undisputedly, 90 workmen were transferred to different units and none of them, except the above three employees, challenged their transfer. Statement showing the workmen joined outside the unit is filed along with the Writ Petition which discloses that out of 90 workmen, 53 workmen reported to duty in their transferred unit and 19 workmen discontinued their employment to prosecute their further studies. Thus, it is evident that the workmen referred above challenged their transfer from one unit to other and the dispute referred is not with regard to non-payment of retrenchment compensation or closure of industrial unit at Adityapatnam. Therefore, the dispute does not fall within the Schedules 2 and 3 read with Sections 7 and 7 (A) of the Act of 1947 to make reference under Section 10 (1) (d) of the Act of 1947.

The three workmen referred above offered resignation to their service as they are not interested to proceed on transfer to Renukoot, the same was accepted by the management of the petitioner company and settled their account for payment of dues but later they changed their mind and requested the management to withdrawn their resignation expressing their willingness

to proceed on transfer. Therefore, they were transferred at their volition to Hi-tech Carbon, Renukoot, Uttar Pradesh, proceeded to, reported to duty and worked there for sometime. Later, there were differences between the management of the Hi-tech Carbon and the three workmen and returned to Visakhapatnam abandoning their employment. Without making any demand or raising any dispute with the petitioner company, they filed a complaint to police, later made a representation to the Deputy Commissioner of Labour and such procedure is unknown to law as contended by learned counsel for the petitioner. Even in the complaint to Commissioner of Police, Visakhapatnam, the respondents admitted that the unit was temporarily closed down by the management of the petitioner company; instead of paying them retrenchment compensation as per the Act of 1947, compelled them to tender resignation; obtained resignation letter; issued order of transfer to Hi-tech Carbon, Renukoot, Uttar Pradesh; therefore, they proceeded to Renukoot having no other alternative; and reported to duty. It is, thus, an individual grievance that has sought to be projected but a representation was directly made to the Deputy Commissioner of Labour even without disclosing about the complaint to the Commissioner of Police, Visakhapatnam, or raising any dispute with the management. If, in deed, they had any such grievance, law requires them to raise a dispute with the employer first but it does not straight away permit them to approach conciliation machinery provided under the Act of 1947.

Time and again, the Supreme Court decided such questions and held that when no dispute is raised before management, making representation to conciliation authorities is only a demand and not a request to refer the matter to Labour Court or Industrial Tribunal exercising power under Section 10 of the Act of 1947. In ***Sindhu Resettlement Corporation Limited Vs. Industrial Tribunal of Gujarat and others***^[1], the Apex Court held that

"If no dispute at all was raised by the respondents with the management, any request sent by them to the Government would only be a demand by

them and not an industrial dispute between them and their employer. An industrial dispute, as defined, must be a dispute between employers and employers, employers and workmen, and workmen and workmen. A mere demand to a Government, without a dispute being raised by the workmen with their employer, cannot become an industrial dispute."

Similarly, in ***Tata Iron and Steel Company Limited Vs. State of Jharkhand and others***^[2], the Apex Court, placing reliance on ***Express Newspapers (P) Limited Vs. Workers***^[3], emphatically affirmed the principle laid down in ***Sindhu Resettlement Corporation Limited*** (1st *supra*) while disagreeing with ***Moolchand Kharati Ram Hospital and Ayurvedic Research Institute Vs. Labour Commissioner***^[4]. Thus, it is clear from the consistent principles laid down by the Apex Court that a dispute must be raised with management of an industry before making representation to conciliation authorities for making reference and such dispute cannot be characterized or described as an industrial dispute. In view of the parallel citations and perceptive pronouncements of the Apex Court, before making representation to conciliation authorities under the Act of 1947, a dispute must be raised with management to treat the same as an industrial dispute and to refer the dispute to the adjudicating authorities exercising power under Section 10 of the Act of 1947. In the absence of raising such dispute with management, the same cannot be termed as an industrial dispute. In the present case, undisputedly, no dispute was raised with the management of the petitioner company. Therefore, the representation made to the Deputy Commissioner of Labour, Visakhapatnam, is only in the nature of demand as held by the Apex Court and the same cannot be described or characterized as an industrial dispute as defined under Section 2 (k) of the Act of 1947. On this ground alone, the reference can be set aside by exercising power of judicial review under Article 226 of the Constitution of India.

When the reference is illegal or invalid, especially when no valid industrial dispute could said to have existed/apprehended, it can be

successfully challenged before High Court under Article 226 of the Constitution of India and Industrial Tribunal/Labour Court, being a creature of statute, does not possess any power to consider the validity of a reference as it cannot look into it in view of deriving power from the order of reference. Therefore, High Court, under Article 226 of the Constitution of India, has to examine and quash the order of reference if the petitioner company is able to establish that there is no valid industrial dispute in the eye of law as held by the Apex Court in ***National Engineering Industries Limited Vs. State of Rajasthan and others***^[5]. In ***Rajasthan State Road Transport Corporation and another Vs. Krishna Kant and others***^[6], a Full Bench of the Apex Court had an occasion to decide the scope of an industrial dispute and the same view was taken by the Apex Court in ***State of Punjab Vs. The Gandhara Transport Company (P) Limited and others***^[7]. In view of the law declared by the Apex Court, unless there exists an industrial dispute as defined under 2 (k) of the Act of 1947, reference by Government under Section 10 (1) (d) of the Act of 1947 to Labour Court or Industrial Tribunal is liable to be set aside.

Yet, the contention of learned senior counsel for the petitioner is that reference cannot be made beyond the scope of the provisions of the Act of 1947 and relied on Sections 7 and 7 (A) read with Schedules 2 and 3 of the Act of 1947 besides placing reliance on ***Nedungadi Bank Limited Vs. K.P.Madhavankutty and others***^[8], wherein the Apex Court held that if the dispute is beyond the scope of the demand made by employee outside the purview of Sections 7 and 7 (A) and Schedules 2 and 3 of the Act of 1947, High Court, by exercising power under Article 226 of the Constitution of India, can interfere since Labour Court – cum – Industrial Tribunal assumed jurisdiction wrongfully. In ***Abdul Latheef and another Vs. Coromandel Fertilizers Limited and others***^[9], a Division Bench of this Court, placing reliance on many of the judgments referred above, concluded that dispute of

two workers cannot be said to be an industrial dispute to refer the same to Labour Court – cum – Industrial Tribunal by invoking Section 10 (1) (d) of the Act of 1947 since the dispute is an individual dispute, more particularly when the trade union is not in existence as on the date of making reference.

Learned counsel for the respondents mainly contended that the act of the petitioner company transferring them to Hi-tech Carbon, Renukoot, closing the company at Adityapatnam is nothing but retrenchment of employees; without payment of retrenchment compensation, such transfer is invalid; and the dispute is only with regard to payment of retrenchment compensation. The word retrenchment is defined under Section 2 (oo) of the Act of 1947 as follows:

"Retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include –

- (a) voluntary retirement of the workmen; or*
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or*
- (bb) termination of the service of the workman as a result of the non-renewal of the contract of the employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or*
- (c) termination of the service of a workman on the ground of continued ill-health."*

If service of an employee or a workman is retrenched as defined under Section 2 (oo) of the Act of 1947, the remedies available to him are under Section 25 (F) of the Act of 1947. According to it, no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice (b) the workman has been paid, at the time of retrenchment, compensation which

shall be equivalent to fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette). From a bare reading of this provision, it is clear that an employee, who worked for more than one year, cannot be removed without notice in writing disclosing the reasons for retrenchment and payment of retrenchment compensation. Failure to tender retrenchment compensation along with the order of termination is violative of Section 25 (F) of the Act of 1947 and such retrenchment is not valid. In such case, Tribunal can order payment of retrenchment compensation but curiously the reference made in the present case extracted in the earlier para is only to decide the justification of transfer of three workmen from Adityapatnam to Renukoot. Thus, the scope of reference is not with regard to payment of retrenchment compensation of the three workmen. If the reference is with regard to retrenchment of workmen without payment of compensation, then it falls within Schedule 3 of the Act of 1947 but the reference is totally different from the one the workmen contended. Therefore, the reference made by Government does not fall either in Schedule 2 or Schedule 3 read with Sections 7 and 7 (A) of the Act of 1947. Apart from that, the dispute is not an industrial dispute as defined under Section 2 (k) of the Act of 1947 and it is only an individual dispute. In those circumstances, this Court can exercise extraordinary jurisdiction under Article 226 of the Constitution of India and quash the same since it conferred wrongful jurisdiction on the 2nd respondent beyond the scope of Sections 7 and 7 (A) of the Act of 1947 read with Schedules 2 and 3 of the Act of 1947. Accordingly, the point is answered in favour of the petitioner and against the respondents.

In view of my finding on point No. 3, I need not examine and record any finding on the other points. Hence, no finding is recorded.

In view of my finding on point No. 3, the reference under Section 10 (1)

(d) read with Section 12 of the Act of 1947 is beyond the scope of Schedules 2 and 3 read with Sections 7 and 7 (A) of the Act of 1947. Hence, the reference made by Government to the 2nd respondent is hereby declared as null and void since it is without jurisdiction, the same is liable to be set aside and is, accordingly, set aside.

In the result, the Writ Petition is allowed. Pending miscellaneous petitions, if any, in this Writ Petition shall stand closed in consequence. No order as to costs.

M.SATYANARAYANA

MURTHY, J.

Date: 01st April, 2016.

JSK

[1] AIR 1968 SC 529

[2] (2014) 1 SCC 536

[3] AIR 1963 SC 569

[4] (1998) 3 LLJ 1139 (Del)

[5] (2000) 1 SCC 371

[6] (1995) 5 SCC 75

[7] (1975) 4 SCC 838

[8] (2000) 2 SCC 455

[9] 2015 (5) ALT 90