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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 8239/2015 & CM APPL. 17287/2015 (*stay*)

HT MEDIA LIMITED

..... Petitioner

Through: Mr. Rajshekhar Rao, Adv. with
Ms. Meghna Mishra, Mr. Ankit
Rajganhia, Ms. Riya and Mr.
Raghav Kacker, Advs.

versus

GOVERNMENT OF NCT OF DELHI & ORS Respondents

Through: Mr. Sanjoy Ghose, ASC for
GNCTD
Mr. Ashwin Vaish and Mr.
Kunal Awana, Advs. for R-3

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T
20.08.2019

1. The petitioner in this writ petition, M/s. H. T. Media Ltd, claims to be aggrieved by an Order, dated 30th June, 2015, issued by the Deputy Labour Commissioner, New Delhi District, the size of the powers conferred, upon him, by Sections 10(1)(c) and 12(5) of the Industrial Disputes Act, 1947 (hereinafter referred to as “the ID Act”), referring the following dispute, to the Labour Court, for adjudication:

“Whether services of Sh. Purshottam Singh, s/o late Sh. Ram Baksh Singh have been terminated by the management illegally and/or unjustifiably, and if so, to what relief he is entitled and what directions are necessary in this respect.”

2. Purushotham Singh has been impleaded, by the petitioner, as Respondent No.3, in these proceedings.

3. The impugned Order, dated 30th June, 2015, states that it has been issued after consideration of the report, submitted by the Conciliation Officer, under Section 12(4) of the ID Act, on perusal whereof the Deputy Labour Commissioner expresses satisfaction that an industrial dispute exists, between Respondent No.3 and the petitioner, requiring adjudication by the Labour Court.

4. The proceedings before the Conciliation Officer, in turn, emanated from a complaint, dated 2nd June, 2015, submitted by Respondent No.3, against the petitioner and its Executive Director-Operations & Human Relations. Respondent No.3 stated, in the said complaint, that he had been working with the petitioner for 32 years, with sincerity and devotion, and had an unblemished service record, though he was “getting a very meagre salary of ₹ 35,124/-”, which was not commensurate with the work being done, by him, for the petitioner. The dispute, as pointed out in the said complaint, arose out of the recommendations of the Majithia Wage Board, constituted by the Government of India in 2007, for newspaper employees. The said Wage Board, it was pointed out, had recommended grant of 30% interim relief to newspaper employees, but this direction was not implemented by the petitioner. The complaint alleged that, in order to avoid implementing the recommendation/Award of the Wage Board, the petitioner was resorting to repeated changes of nomenclature, and

was earlier known as Hindustan Times. The complaint further pointed out that, on 31st December, 2012, the Wage Board submitted its recommendations to the Government of India, but, before the said recommendations could be notified, proprietors of newspapers, to which it applied, filed a writ petition, before the Supreme Court of India which, however, directed notification of the recommendations of the Wage Board, which, consequently, took place on 11th November, 2011. Finally, *vide* judgement dated 7th February, 2014, the Supreme Court dismissed the aforesaid writ petition, filed by newspaper establishments, challenging the award of the Wage Board. It may be noted that the said writ petition, numbered W.P. (C) 246/2011, was titled “**A. B. P. Pvt Ltd v. U.O.I.**”. Despite the aforesaid judgement of the Supreme Court, the complaint alleged, wages, in terms thereof, were not disbursed, by the petitioner, to its employees, resulting in Respondent No.3 filing Contempt Petition (C) No.102/2015 before the Supreme Court. Allegedly chagrined thereby, the petitioner started victimising Respondent No. 3, to a point where, on 21st March, 2015, Respondent No. 3 was prevented, by the security guard, from entering the office of the petitioner, who directed Respondent No. 3, on the intervention of the Police, to report, on the next day, at the Gurgaon office of the petitioner. On his reporting at the said Gurgaon office, on 24th March, 2015, Respondent No. 3 alleged that he was informed that, from the next day, he would be working at the said office. Despite his acceding to the said directive, and reporting, thereafter, on a daily basis, at the Gurgaon office of the petitioner, Respondent No.3 alleged that, without any justification whatsoever, the petitioner terminated his services on 29th May, 2015. In these circumstances, the

complaint prayed that the petitioner be directed to reinstate Respondent No. 3, with continuity of service and all consequential benefits. Compensation, for the alleged harassment caused to him, was also sought.

5. Needless to say, the petitioner paints a very different picture, of the entire affair.

6. The petitioner points out, in the writ petition, that the letter, dated 16th April, 1984, whereby the services of Respondent No. 3 were confirmed, specifically stated that his services would be determinable by one month's notice by either party. A reading of the said communication does, indeed, disclose that, while confirming Respondent No. 3 in his post (of Senior Clerk/Typist) w.e.f. 1st April, 1984, it was stipulated, *inter alia*, thus:

“One month's notice on either side shall be required for the termination of this arrangement. The Management can, however, dispense with your services any time by paying you one month's salary in lieu of notice.”

7. Admittedly, Respondent No. 3 was promoted as Senior Clerk/Typist *vide* order dated 14th December, 1990 and, subsequently, as Senior Executive w.e.f. 1st August, 2004, as Assistant Manager and, thereafter, as Deputy Manager w.e.f. 1st April, 2012.

8. Thereafter, asserts the petitioner, a decision was taken, by it, to transfer Respondent No. 3 to the Gurgaon establishment of the petitioner. It is alleged that, despite being directed to report at the said establishment on 23rd March, 2015, Respondent No. 3 failed to do so

and, instead, created a “ruckus”, outside the New Delhi office of the petitioner, resulting in the petitioner having, ultimately, to issue, to Respondent No. 3, a formal communication, dated 1st April, 2015, informing him that he would be operating out of the Gurgaon office, w.e.f. 21st March, 2015, initially for a period of 6 months, in order to strengthen the business of classifieds from Gurgaon. The said communication further stated that this duration could be extended, on a need-based basis. Disapprobation, regarding the manner in which Respondent No. 3 behaved, was also expressed, in the said communication.

9. Respondent No.3 replied, to the aforesaid communication, dated 1st April, 2015, *vide* letter dated 27th April, 2015, in which, while denying the allegation that he had misbehaved at the New Delhi office, Respondent No. 3 requested, on humanitarian grounds, that he be permitted to continue to work at the New Delhi office of the petitioner, especially as commuting to and from the Gurgaon office took him four hours every day, and he had only one year left for retirement.

10. The writ petition avers that, “on account of misconduct on part of Respondent No. 3 and his lack of interest at work in the Gurgaon establishment”, impediments, in the daily functioning of the classifieds business in the Gurgaon establishment, were created, resulting in the termination, by the petitioner, of the services of Respondent No.3, *vide* letter dated 29th May, 2015, by way of exercise of the power conferred by Clause 2 of the letter, dated 16th April, 1984

supra, whereby Respondent No. 3 was inducted in service. Respondent No. 3 was also paid a sum of ₹ 35,124/–, in lieu of one month's notice, and was directed to get in touch with the HR representative, at Gurgaon, for full and final settlement of his dues, whereafter, by way of such settlement, a further amount of ₹ 1,96,023/–, was paid to him.

11. Respondent No. 3 replied, to the aforesaid communication, dated 29th May, 2015, *vide* email of the same date. It was alleged, in the said communication, that the petitioner was inimically disposed towards Respondent No. 3, as he was pressing for increase of wages, in accordance with the award of the Majithia Wage Board, the non-implementation of which had constrained him to file Contempt Petition (C) No. 102/2015 before the Supreme Court. In the circumstances, the petitioner was requested to revoke the order, terminating the services of Respondent No. 3.

12. The petitioner responded, *vide* email dated 11th June, 2015, denying the allegation that the termination of Respondent No. 3 was, in any manner, connected with the issues highlighted by him in his e-mail dated 29th May, 2015 *supra*. The Contempt Petition, to which Respondent No. 3 alluded, in the said e-mail, it was pointed out, had been filed, not by Respondent No. 3, but by Niranjana Singh Shekhawat, whose grievances stood redressed. In any event, it was pointed out, no copy, of the said Contempt Petition had been received by the petitioner.

13. On 2nd June, 2015, Respondent No.3 preferred a complaint before the Deputy Labour Commissioner, New Delhi, the contents of which stand noted in para 4 *supra*. Consequent to issuance of summons, the Senior Manager of the petitioner appeared, on 17th June, 2015, before the Assistant Labour Commissioner/Conciliation Officer, who directed the petitioner to file its reply, to the claim of Respondent No.3, by 19th June, 2015. On the said date, an adjournment was sought, by the petitioner, whereupon the Assistant Labour Commissioner directed the petitioner to submit a completed proforma, containing 27 points, and relisted the matter for 22nd June, 2015. *Vide* email dated 22nd June, 2015, further time, to submit a detailed reply to the complaint of Respondent No. 3, was sought by the petitioner on the ground of a bereavement in the family of its Assistant Vice President. However, the maintainability of the complaint of Respondent No. 3, under the ID Act, was questioned, in the said email, on the ground that Respondent No. 3 was employed in a managerial/administrative capacity and was not, therefore, a “workman”, within the meaning of the expression as defined in clause (s) of Section 2 of the ID Act, which reads thus:

“(s) “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) *who is employed mainly in a managerial or administrative capacity*; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”

14. On 26th June, 2015, noting the fact that there was no representation on behalf of the petitioner, and that several opportunities, to respond to the complaint of Respondent No. 3 had been extended to the petitioner, who had neither chosen to do so nor to enter appearance either on 26th June, 2015, or on the previous date of hearing, the Assistant Labour Commissioner, in his capacity as Conciliation Officer, reserved the matter for submission of the report to the appropriate Government.

15. It is consequent to the submission of the said report, which, apparently, recorded the fact that attempted conciliation had failed, that the impugned order, dated 30th June, 2015, came to be issued by the GNCTD, referring the dispute to the Labour Court for adjudication. The petitioner also expresses a grievance that, despite

applying therefor, no copy, of the report of the Conciliation Officer, has been made available to it.

16. In these circumstances, the writ petition asserts that the Conciliation Officer had no authority to refer the complaint, of Respondent No. 3, for adjudication to the Labour Court, as he was employed, in the Gurgaon establishment of the petitioner as Deputy Manager, which fact was specifically acknowledged, by Respondent No. 3 himself, in his complaint dated 2nd June, 2015 *supra*. The reference was also questioned on the ground of territorial jurisdiction, Respondent No. 3 being employed in Gurgaon.

17. The writ petition, therefore, seeks issuance of an appropriate writ, order or direction, quashing and setting aside the Order, dated 30th June, 2015 *supra*, issued by the GNCTD, referring the aforesaid dispute, as ventilated by Respondent No.3, to the Labour Court for adjudication.

18. It may be noted that the proceedings, before the Labour Court, stands stayed, *vide* order dated 2nd September, 2015, passed by this Court in these proceedings, and the said order of stay continues to operate till date.

19. I have heard Mr. Rajshekhar Rao, learned counsel appearing for the petitioner, Mr. Sanjoy Ghose, learned ASC, appearing for Respondent No.1 and Mr. Ashwin Vaish, learned counsel appearing for Respondent No.3.

20. Mr. Rajshekhar Rao points out that, in his complaint dated 2nd June, 2015 *supra*, there was a studied silence, on the part of Respondent No. 3, regarding the nature of his duties, or the capacity in which he was employed, in the office of the petitioner, and that the Respondent No.3 had merely disclosed his salary as being a “meagre ₹ 35,124/- per month”. This submission, in my opinion, is without substance, as, though, in the body of his complaint, Respondent No.3 has not disclosed the post in which he was employed, he has, below the signature at the foot of the complaint, appended, in parentheses, his designation as “Dy Manager”. Indeed, the fact that Respondent No.3 appended the said designation by hand, indicates forthrightness, on his part, in disclosing the fact that he was employed by the petitioner as Deputy Manager, though, possibly by inadvertence, the body of his complaint did not say so.

21. Mr. Rajshekhar Rao further draws attention to the communication, dated 22nd July, 2004 *supra*, addressed by the petitioner to Respondent No. 3, in which it is stated that Respondent No. 3 had “been placed in Officers cadre”. Respondent No. 3, it is contended, was, therefore, no longer in the “workman’s cadre”, as would entitle him to maintain a dispute under the ID Act. This fact, and the communication dated 22nd July, 2004, it is sought to be pointed out, were not disclosed, in the complaint filed by Respondent No. 3.

22. Mr. Rajshekhar Rao also presses the issue of territorial jurisdiction, of the Assistant Labour Commissioner, New Delhi, to entertain the petitioner's complaint, or refer the matter to the GNCTD, for further reference to the Labour Court, on the ground that the Respondent No. 3 was employed with the Gurgaon office of the petitioner.

23. Mr. Rajshekhar Rao places reliance on the judgements of the Supreme Court in *Prabhakar v. Joint Director, Sericulture Department, (2015) 15 SCC 1* and *Secretary, Indian Tea Association v. Ajit Kumar Barat, (2000) 3 SCC 93*.

24. As against this, Mr. Sanjoy Ghose, learned Additional Standing Counsel appearing for the GNCTD, would seek to emphasize the limits of the jurisdiction of this Court, under Article 226 of the Constitution of India, while sitting in judicial review over an order, referring an industrial dispute for adjudication. Apropos the issue of territorial jurisdiction, Mr. Ghose seeks to point out that all the correspondence, in this matter, took place from Delhi, thereby clothing the Conciliation Officer (Respondent No. 2) with jurisdiction in the matter.

25. Having examined the facts on the record, in the light of the submissions advanced by learned Counsel at the bar, I am of the opinion that the impugned Order, dated 30th June, 2015, as issued by the Deputy Labour Commissioner, New Delhi, cannot be allowed to be acted upon.

26. Industrial law, in India, contemplates an attempt at rapprochement and reconciliation, before subjecting a perceived dispute to the rigours of adjudication. The judgement in *Prabhakar (supra)*, on which Mr. Rajshekhar Rao places reliance, also highlights the necessity of application of mind, even by the referring Government, to the aspect of whether there is actually, in existence, a “live industrial dispute”, amenable to adjudication under the provisions of the ID Act. In assessing this fact, the Government is also required to examine, *inter alia*, whether the complainant is a “workman”, within the meaning of the ID Act. The referring Government cannot act merely as a channel of communication, between the Conciliation Officer and the Labour Court, but has to judiciously – even if not judicially – apply its mind, before referring the purported dispute to adjudication.

27. Para 13 to 15, 17 to 19, and 25, of the judgement in *Prabhakar (supra)* are instructive, in this regard, and may be reproduced thus:

“13. The adequacy or the sufficiency of the material on which the opinion was formed is beyond the pale of judicial scrutiny. If the action of the Government in making the reference is impugned by a party, it would be open to such a party to show that what was referred was not an industrial dispute and that the Tribunal had no jurisdiction to make the award. But if the dispute was an industrial dispute, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before the Government on which it

could have come to an affirmative conclusion on those matters.

14. When the “appropriate Government” makes a reference of an industrial dispute for adjudication, it does not decide any question of fact or law. The only condition, which the exercise of that power should satisfy, is that there should be the existence or apprehension of an industrial dispute. When once the Government is satisfied about this question, it acquires jurisdiction to refer the dispute for adjudication. However, *the condition precedent to the formation of such opinion, that there should be an existing or apprehended “industrial dispute”, is imperative and the recitals of the existence or apprehension of the industrial dispute cannot preclude the Court to exercise its power of judicial review and to determine whether, in fact, there was any material before the “appropriate Government” and if there was; whether the Government applied its mind in coming to the conclusion that an industrial dispute was in existence or was apprehended and it was expedient to make the reference. Therefore, an order of reference is open to judicial review if it is shown that the appropriate Government had no material before it or it has not applied its mind to the material before it or has not taken into consideration certain vital facts which it ought to have taken into consideration.*

15. Likewise, *when the appropriate Government refuses to make reference, it is also amenable to judicial review if it is shown that the appropriate Government did not take into consideration the relevant material which could show existence or apprehension of industrial dispute or if it is shown that the reasons for refusing to make reference are irrelevant or not germane to the formation of opinion.*

17. From the aforesaid discussion, it clearly follows that *even when making a reference by the appropriate*

Government is an administrative act, before making such a reference it has to form an opinion as to whether any industrial dispute exists or is apprehended. While forming this opinion, the appropriate Government is supposed to take all relevant facts into consideration touching upon this aspect. If the power is not exercised properly, it is amenable to judicial review. Thus, where an industrial dispute exists or is apprehended, but the appropriate Government refuses to make reference, such a refusal can be challenged in the court of law. Conversely, which is equally true, if the reference is made even when no dispute exists or is apprehended, such a reference will also be subject to judicial review.

18. We may refer to the judgment in *Indian Tea Assn. v. Ajit Kumar Barat*, (2000) 3 SCC 93. In that case, the “appropriate Government” refused to make a reference on the ground that the employee concerned who had raised the dispute was not “workman” within the meaning of Section 2(s) of the Act. While doing so, the Government considered the salary and allowances drawn by the employee as well as the nature of work performed by him, including his power to sanction expenses incurred by his Office. The employee concerned (the respondent in the said case) filed a writ petition against the order of the appropriate Government refusing to make reference and the High Court in that writ petition directed the Government to make the reference as to whether he was a workman. The appeal filed by the appellant therein was also dismissed and in these circumstances the appellant preferred special leave petition and that is how the matter came up for consideration before this Court. Granting leave and ultimately allowing the appeal of the appellant, this Court set aside the judgment of the High Court and upheld the order of the Government refusing to make reference. Relying upon its earlier judgment in *State of Madras v. C.P. Sarathy*, AIR 1953 SC 53 : (1953) 4 SCR 334, *Prem Kakar v. State of Haryana*, (1976) 3 SCC 433, and *Sultan Singh v. State of Haryana*, (1996) 2 SCC 66, the Court observed that the order under

Section 10 of the Act was an administrative order and the Government was entitled to go into the question whether industrial dispute exists or is apprehended and it will be only subjective satisfaction on the basis of material on records and being an administrative order no *lis* is involved.

19. The position in law was summarised as under in *Ajit Kumar Barat* : (SCC pp. 96-97, para 7)

“(1) *The appropriate Government would not be justified in making a reference under Section 10 of the Act without satisfying itself on the facts and circumstances brought to its notice that an industrial dispute exists or is apprehended* and if such a reference is made it is desirable wherever possible, for the Government to indicate the nature of dispute in the order of reference.

(2) The order of the appropriate Government making a reference under Section 10 of the Act is an administrative order and not a judicial or quasi-judicial one and the court, therefore, cannot canvass the order of the reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial order.

(3) An order made by the appropriate Government under Section 10 of the Act being an administrative order no *lis* is involved, as such an order is made on the subjective satisfaction of the Government.

(4) If it appears from the reasons given that the appropriate Government took into account any consideration irrelevant or foreign material, the court may in a given case consider the case for a writ of mandamus.

(5) *It would, however, be open to a party to show that what was referred by the Government was not an industrial dispute within the meaning of the Act.”*

25. In *Nedungadi Bank Ltd. v. K.P. Madhavankutty*, (2000) 2 SCC 455 the Court cautioned that *power of reference should be exercised reasonably and in a rational manner and not in a mechanical fashion.”*

(Emphasis supplied)

28. The following findings, as returned by the Supreme Court in *Nedungadi Bank (supra)*, while dealing with an objection, on the part of the appellant before it, regarding the jurisdiction, of the High Court, to interfere with an order referring the dispute for adjudication by the Labour Court, or Industrial Tribunal, were specifically reproduced, in *Prabhakar (supra)*, and are of relevance in the present case as well:

“7. ...Whenever a workman raises some dispute it does not become an industrial dispute and *the appropriate Government cannot in a mechanical fashion make the reference of the alleged dispute terming it as an industrial dispute*. The Central Government lacked power to make reference both on the ground of delay in invoking the power under Section 10 of the Act and there being no industrial dispute existing or even apprehended. *The purpose of reference is to keep industrial peace in an establishment. The present reference is destructive to the industrial peace and defeats the very object and purpose of the Act*. The Bank was justified in thus moving the High Court seeking an order to quash the reference in question.

8. *It was submitted by the respondent that once a reference has been made under Section 10 of the Act a Labour Court has to decide the same and the High Court in writ jurisdiction cannot interfere in the proceedings of the Labour Court. That is not a correct proposition to state. An administrative order which does not take into consideration statutory requirements or travels outside that is certainly subject to judicial review, limited though it might be. The High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. In National Engg. Industries Ltd. v. State of Rajasthan, (2000) 1 SCC 371 this Court observed: (SCC p. 393, para 24)*

“24. It will be thus seen that the High Court has jurisdiction to entertain a writ petition when there is an allegation that there is no industrial dispute and none apprehended which could be the subject-matter of reference for adjudication to the Industrial Tribunal under Section 10 of the Act. Here it is a question of jurisdiction of the Industrial Tribunal, which could be examined by the High Court in its writ jurisdiction. *It is the existence of the Industrial Tribunal (sic dispute) which would clothe the appropriate Government with power to make the reference and the Industrial Tribunal to adjudicate it.* If there is no industrial dispute in existence or apprehended the appropriate Government lacks power to make any reference.””

29. The Labour Court and Industrial Tribunal are, under the ID Act, not conceived as fora before which any, and every, grievance, of any, and every, employee of an establishment can be brought for adjudication and redressal. Industrial adjudicatory fora, under the said statute, possesses jurisdiction only in respect of “industrial disputes”. “Industrial dispute” is defined, in clause (k) of Section 2 of the ID

Act, as meaning “any dispute or difference between employers and employers, or between employers and workmen, or between the 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”. The dispute has, therefore, necessarily to be between employer and employer, or between employer and workman, or between workman and workman. The definition of “workman”, as contained in clause (s) of Section 2, as already noted hereinabove, excludes, by statutory edict, persons employed “mainly in managerial or administrative capacity”. The grievance, of an employee, employed by the establishment mainly in managerial or administrative capacity cannot, therefore, constitute an “industrial dispute”, within the meaning of the ID Act and cannot, therefore, be referred, for adjudication, to the Labour Court or Industrial Tribunal, by the appropriate Government. Any such reference, if made, is perilously pregnable to challenge, and to consequent evisceration, under Article 226 of the Constitution of India.

30. Significantly, Section 10 of the ID Act was amended, *vide* Section 3 of the Industrial Disputes (Amendment) Act, 1952. Whereas sub- section (1), of the pre-amended Section 10, contemplated making of reference, by the appropriate Government, of an industrial dispute, to the Labour Court or Industrial Tribunal for adjudication “if any industrial dispute exists or is apprehended”, the amended sub- section (1) permits such reference only “where the appropriate Government *is of opinion that any industrial dispute exists or is apprehended*”. The significance, of this amendment, cannot be ignored. It is obvious that,

in so amending Section 10(1) of the ID Act, the legislature sought to drive home the fact that the exercise of referring a perceived industrial dispute to adjudication, by a Labour Court or Industrial Tribunal, was not meant to be a mechanical exercise, but necessarily had to be preceded by *formation of opinion*, by the appropriate Government, that an industrial dispute, referable to adjudication, existed.

31. An “opinion”, required, by statute, to be arrived at, by an authority, partakes of the character of *opinion juris*. Dealing with the concept of an “opinion”, in the context of Section 50 of the Indian Evidence Act, 1872, the Supreme Court ruled, in ***Dalgobinda Paricha v. Nimai Charan Mishra, AIR 1959 SC 914***, that the “opinion means something more than mere retailing of gossip or of hearsay; it means judgment or belief, that is, a belief or a conviction resulting from what one thinks on a particular question”. This definition, judicially fossilised, has been adopted, *inter alia*, by this Court in ***V. L. S. Finance Ltd v. C.I.T., (2000) 246 ITR 707*** and by the High Court of Orissa in ***Sauney Majhi v Debi Devi, AIR 1985 Ori 22 (DB)***. In ***R. v. Winder, (1900) 2 QB 666***, the Queen’s Bench held that “whether the statutory powers given, to order such costs as “in the opinion of” the court is proper, that means that the court must exercise its own opinion, and cannot make an order in blank and delegate to the taxing master to tax and then fill in the amount of costs allowed by him on taxation”. In ***Allcroft v. London (Bishop), (1891) AC 666***, Lord Bramwell declared that “if a man is to form an opinion and his opinion is to govern, he must form it himself on such reasons and grounds as seem good to him”.

32. The significance of the “opinion”, required to be formed, by the appropriate Government, before referring the dispute for adjudication to the Labour Court or Industrial Tribunal, under Section 10 of the ID Act, cannot, therefore, be over-emphasized.

33. Respondent No. 3 having been employed, by the petitioner, as Deputy Manager, the objection, of the petitioner, to the maintainability of the grievances ventilated by him, as an “industrial dispute”, amenable to adjudication under the ID Act, was required to be addressed, before referring the dispute to adjudication. Equally, the objection relating to territorial jurisdiction also merited consideration. The record does not disclose any such application of mind, either by Respondent No 2, in his capacity as Conciliation Officer, or by the GNCTD, to these aspects, before referring the perceived dispute to adjudication, *vide* the impugned Order dated 30th June, 2015. In case Respondent No. 3 was not a “workman”, within the meaning of the ID Act, or the reference was bad for want of territorial jurisdiction, the Labour Court or Industrial Tribunal, to which the dispute stands referred *vide* the impugned Order, would be *coram non judice*, and the entire exercise of adjudication, by such a forum, would be a nullity *ab initio*.

34. Needless to say, of course, once an industrial dispute, referable to adjudication by the Labour Court, or Industrial Tribunal, possessed of territorial jurisdiction in that regard, was found to exist, the appropriate Government could not enter into the merits of the

controversy between the parties, while deciding whether to refer, or not to refer, the dispute to adjudication [Refer *Sukhbir Singh v. U.O.I.*, 1994 LLR 375 (Del)] Its jurisdiction, therefore, is limited to deciding whether a referable industrial dispute exists or not; however, while doing so, the appropriate Government is required to judiciously apply its mind to the issue, and address all relevant factors, before making an order of reference.

35. The submission, of Mr. Ghose, regarding the circumspection, required to be observed, by a writ court, while dealing with the challenge to an order of reference cannot, therefore, in the circumstances of this case, be said to be justified.

36. Before proceeding further, however, it is necessary to advert to the judgement of the Supreme Court in *Sharad Kumar v. G.N.C.T.D.*, (2002) 4 SCC 490, on which pointed reliance was placed by Mr. Ghose, to canvass a stand that the State Government, while exercising its power to refer the dispute to adjudication, under Section 10-A of the ID Act, had no jurisdiction to examine the issue of whether the complainant was, or was not, a “workman”, within the meaning of the said Act. It is true that, in the said case, the Supreme Court held that, while deciding the question of whether to refer, or not to refer, the dispute for adjudication to the Labour Court or Industrial Tribunal, the State Government could not have refused to make any such reference on the basis of the designation held by the appellant, before it, in that case. A holistic reading of the judgement, however, reveals that the Supreme Court held thus, because of the specific designation, of the

appellant before it, which was “area sales executive”. The Supreme Court held that the State Government, while exercising jurisdiction under Section 10-A of the ID Act, could not refuse to refer the dispute to adjudication, by adopting a view that an “area sales executive” was necessarily employed in a managerial capacity. Para 31 of the report merits reproduction, in this context, thus:

“Testing the case in hand on the touchstone of the principles laid down in the decided cases, we have no hesitation to hold that the High Court was clearly in error in confirming the order of rejection of reference passed by the State Government merely taking note of the designation of the post held by the respondent i.e. Area Sales Executive. As noted earlier *determination of this question depends on the types of duties assigned to or discharged by the employee and not merely on the designation of the post held by him. We do not find that the State Government or even the High Court has made any attempt to go into the different types of duties discharged by the appellant with a view to ascertain whether he came within the meaning of Section 2(s) of the Act. The State Government, as noted earlier, merely considered the designation of the post held by him, which is extraneous to the matters relevant for the purpose.* From the appointment order dated 21-4-1983/22-4-1983 in which are enumerated certain duties which the appellant may be required to discharge it cannot be held therefrom that he did not come within the first portion of Section 2(s) of the Act. We are of the view that *determination of the question requires examination of factual matters for which materials including oral evidence will have to be considered. In such a matter the State Government could not arrogate on to itself the power to adjudicate on the question and hold that the respondent was not a workman within the meaning of Section 2(s) of the Act, thereby terminating the proceedings prematurely. Such a matter should be decided by the Industrial Tribunal or the Labour Court on the basis of the materials to be placed before it by the*

parties. Thus the rejection order passed by the State Government is clearly erroneous and the order passed by the High Court maintaining the same is unsustainable.”

37. Earlier, in the same decision, the Supreme Court opined that “disputed issues of fact”, could not be decided, by the referral Government, while referring the dispute to adjudication, under Section 10-A of the ID Act.

38. *Ajit Kumar Barat (supra)*, on the other hand, held, clearly and unambiguously, in paras 10 and 11 of the report, thus:

“10. Before making a reference under Section 10 of the Act, *the appropriate Government as to form an opinion whether an employee is a workman* and thereafter has to consider as to whether an industrial dispute exists or is apprehended.

11. In the present appeal we find that *the State Government rightly approached the question whether Respondent 1 was a workman*. Unless this condition is satisfied no reference can be made.”

(Emphasis supplied)

39. A harmonious reading of the pronouncements in *Sharad Kumar (supra)* and *Ajit Kumar Barat (supra)* – which, as already noted hereinabove, has been followed, later, in *Prabhakar (supra)* – indicates that, while the referring Government has, under Section 10-A, also to examine the issue of whether the complainant, before it, is, or is not, “workman”, within the meaning of the ID Act. If the referring Government finds that, in order to determine the said issue, disputed issues of fact would have to be examined and reconciled,

then, it would not demur from making the reference on that ground, but would leave the issue to be decided by the competent Labour Court or Industrial Tribunal. If, however, no such disputed issue of fact arises, and the question of whether the complainant is, or is not, a “workman”, is amenable to decision on the basis of the undisputed material available before it, the State Government is bound to form an opinion on the said issue, before deciding to refer the dispute to adjudication under Section 10-A.

40. I may also observe, in the above context, that the exercise of conciliation, as conceived and conceptualised in the ID Act, is not meant to be a mere formality. It is a harbinger to industrial peace and harmony, which, from time immemorial, has constituted the backbone of industrial relations, the world over. Section 12 of the ID Act, which deals with the duties of Conciliation Officers, requires the Conciliation Officer to “hold conciliation proceedings in the prescribed manner”. Sub-section (2), of the said Section, mandates that “the conciliation Officer shall, for the purpose of bringing about the settlement of the dispute, without delay, investigate the dispute and all matters affecting the merits and 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”. It is only “if no such settlement is arrived at”, that the Conciliation Officer is, by sub-section (4), empowered to send, to the appropriate Government, a full report, which is also required to “(set) forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about the 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”. Sub-section (5) casts an additional responsibility, on the appropriate Government, to satisfy itself, “on a consideration of the report referred to in sub-section (4)”, “that there is a case for reference to a Board, Labour Court, Tribunal...” whereupon it may make such reference. The conciliatory proceedings, prior to submission of the report, by the Conciliation Officer, to the appropriate Government, therefore, have their own sanctity and significance. Equally, the appropriate Government is required to satisfy itself, after a perusal of the report, that the dispute merits reference to adjudication, which would imply that the appropriate Government is required to be satisfied that the attempts of conciliation have actually failed, and that it is not possible for the dispute to be settled by conciliation.

41. I am constrained to observe that, in the present case, Respondent No. 2 has failed in discharging the duties, cast on him as the Conciliation Officer, with the seriousness and earnestness required in that regard. The entire exercise of conciliation was completed within a period of nine days of the petitioner entering appearance before Respondent No.2. The grounds, on which the petitioner had failed to appear, were not found to be false. The circumstances, and the manner in which Respondent No.2 proceeded in this case, as set out hereinabove, discloses undue haste, and indifference to the responsibility cast, on him, to attempt a reconciliation of the dispute between the parties before him.

42. I do not deem it appropriate to comment, further, on the attitude of Respondent No.2 in the matter, in view of the order which I propose to pass.

Conclusion

43. In view of the above discussion, I am of the opinion that the impugned Order, dated 30th June, 2015, issued by the Deputy Labour Commissioner cannot sustain in law. It is, therefore, quashed and set aside.

44. The Deputy Labour Commissioner is, accordingly, directed to reconsider the issue of whether the complaint, dated 2nd June, 2015 *supra*, as raised by Respondent No.3, gave rise to a referable industrial dispute. In doing so, he shall address the issue of whether the report of Respondent No. 2, as Conciliation Officer, deserves to be accepted, or not, i.e., whether there was a fair and adequate attempt at conciliation of the dispute, and failure of such attempt. The Deputy Labour Commissioner would also address the issue of whether Respondent No. 3 is a “workman”, within the meaning of the ID Act, and whether the Labour Court or Industrial Tribunal, in Delhi, would be possessed of the territorial jurisdiction to adjudicate on the dispute – assuming a referable industrial dispute exists, within the meaning of the ID Act. The jurisdiction of the appropriate Government, even under Section 10A(1) of the ID Act being, however, limited, the Deputy Labour Commissioner – or other officer competent to refer the dispute to adjudication – would limit his consideration to these aspects, and these aspects alone. It is clarified that the merits of the

dispute between the parties can form no part of the deliberations, by the competent referring authority, on the issue.

45. In exercising his jurisdiction, and in complying with the above directions, the competent authority would keep in mind the observations entered hereinabove, especially as regards the scope and ambit of his jurisdiction in the matter.

46. In the peculiar circumstances of this case, while I do not deem it appropriate to convert the exercise of consideration, by the Deputy Labour Commissioner, as directed in para 44 hereinabove, into a quasi-judicial exercise, the Deputy Labour Commissioner is directed to communicate a speaking order to both parties, on the above aspects of the matter, before finally referring, or not referring, the dispute, for adjudication by the Labour Court/Industrial Tribunal.

47. Needless to say, should either party continue to be aggrieved by the decision to refer, or not to refer, the dispute for adjudication, the right to challenge the said decision shall remain open.

48. The writ petition stands allowed in the above terms and to the above extent, with no order as to costs.

49. All pending applications stand disposed of accordingly.

C. HARI SHANKAR, J

AUGUST 20, 2019/HJ