

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

RESERVED ON: 12.07.2022
DELIVERED ON: 28.07.2022

CORAM:

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE BIVAS PATTANAYAK

FMA 284 OF 2020

WITH

IA NO. CAN 2 OF 2019 (OLD NO. CAN 8942 OF 2019)

M/S. ALEMBIC LIMITED

VERSUS

STATE OF WEST BENGAL & OTHERS.

IN

WPA 597 OF 2019

M/S. ALEMBIC LIMITED

VERSUS

STATE OF WEST BENGAL & OTHERS.

Appearance:-

Mr. Partha Sarathi Sengupta, Senior Advocate

Mr. Soumya Majumder, Senior Advocate

Mr. Sumanta Biswas, Adv.

Mr. Bikash Shaw, Adv.

.....For the Appellant

Mr. Bikash Ranjan Bhattacharyya, learned Senior Advocate
Mr. Suvodip Bhattacharjee, Adv.
Mr. Balaram Patra, Adv.

.....For the Respondent No. 5

JUDGMENT

(Judgment of the Court was delivered by T.S.SIVAGNANAM, J.)

1. This intra Court appeal filed by M/s. Alembic Limited (hereinafter referred to as the management) is directed against the order dated 26.06.2019 in WP No. 597 (W) of 2019. The said writ petition was filed assailing the correctness of Order No. 158 dated 31.05.2018 passed by the Third Industrial Tribunal. The facts leading to the order impugned in the writ petition can be culled out as here under:
2. The Fourth Respondent herein, Federation of Medical and Sales Representatives Association of India (FMRAI) having its registered office at Mumbai and operational office at Kolkata filed a petition dated 08.06.2006 before the Labour Commissioner, Government of West Bengal alleging unilateral action of the management in alteration of service conditions of sales promotion employees in violation of Section 9A of the Industrial Disputes Act 1947 (the Act for brevity). It was stated that the management transferred the services of all sales promotion employees all over the country from various subsidiary companies to the management company as the principal employee, with effect from 11.06.2004. Consequent to this transfer, the management unilaterally curtailed the existing service conditions of sales promotion employees that was enjoyed by them prior to the transfer that too without any advance intimation to the workmen as required under law. The areas in which the service conditions were altered

were stated to be (a) reduction of retirement age from 60 years to 58 years; (b) downward revision of variable dearness allowance; (c) denial of leave facilities. The federation stated that as a mark of protest, the sales promotion employees accepted the appointment letters from the management without prejudice to their rights and contentions while affixing their signatures in the appointment letters. Further it was stated that a demand letter was sent to the management for restoration of existing benefits for which there was no response. It was alleged that the management did not issue any notice under Section 9A of the Act before altering the service conditions particularly with regard to the age of retirement from 60 years to 58 years and proceeded to implement the illegally altered service conditions. The intervention of the Labour Commissioner was sought for by initiating conciliation proceedings for amicable solution. The conciliation proceedings ended in failure. Consequently, the matter was placed before the Government. By order dated 24.01.2007, the Government was satisfied that an industrial dispute exists between the management and their workmen represented by the federation and it is expedient that the said dispute should be referred to an industrial tribunal constituted under Section 74 of the Act. Therefore, in exercise of the power conferred by Section 10 of the Act, the Government referred the dispute to the third industrial tribunal for adjudication. The issues which were referred for adjudication are (i) whether the change of service conditions of sales promotion employees by the management who joined their companies from *M/s. Purak Vinimay Limited* is justified? (ii) what relief if any, are they entitled to? The federation filed their claim statement before

the industrial tribunal and the management their written statement. Oral and documentary evidences were placed and proved before the industrial tribunal by both parties.

3. The management raised a preliminary point as to the maintainability of the reference as to whether the West Bengal Government is the appropriate Government to refer the dispute in question. The tribunal took up the preliminary point for consideration and by order dated 31.05.2018 held that the Government of West Bengal is the appropriate Government and it is fully competent to make the reference and accordingly decided the issue against the management. The said order was put to challenge by the management in the writ petition. The learned Single Bench upon considering the rival submissions pointed out that there is no whisper regarding the workers who are working under the management are residing within the territory of West Bengal and the reference has been made in respect of all workers working in different states under the management. Therefore, a direction was issued to the respondent federation to submit the representation mentioning the names of the employees either-in-Service or retired who were / are engaged under the management within the State of West Bengal and such representation to be submitted to the Principal Secretary, Department of Labour, Government of West Bengal and the said authority on receipt of such representation was directed to publish a corrigendum to the order of reference within a time frame. Aggrieved by such order, the management is before us by way of this appeal.

4. Mr. Partha Sarathi Sengupta, learned Senior Advocate and Mr. Soumya Majumder, learned Senior Advocate appearing along with him submitted

that the crucial question would be as to whether the learned Writ Court was right in directing a corrigendum to be issued. To explain the meaning of the word “erratum” / “corrigendum”, reliance was placed on the decision of the Hon’ble Supreme Court in **State of Andhra Pradesh Versus A.P. State Wakf Board and others** ¹ and submitted that an “erratum” can be issued when there is a mistake in printing or writing and a corrigendum is for correcting arithmetical error. Therefore, it is submitted that the learned Writ Court ought not to have directed issuance of corrigendum and the Government would have no jurisdiction to issue the same as the power of the Government under Section 10 of the Act comes to an end as soon as the reference is made. Further it is submitted that admittedly no typographical mistake or omission has been pointed out to justify the issuance of a “corrigendum”. It is further submitted that the order passed by the learned Writ Court directing issuance of a corrigendum has the effect of altering the order of reference which cannot be done under law. Further it is submitted that the federation is a national federation consisting of members who are employees of the management, working throughout India and they seek for certain service benefits not only in respect of serving employees but erstwhile employees as well. Further it was submitted that in the representation given by the federation, it is mentioned as if the three companies had merged with the management which is factually incorrect and the three companies are independent companies. In this regard, the learned Senior Counsel elaborately referred to the reply sent by the management to the Labour Commissioner, the objections which are raised

¹ (2022) SCC Online SC 159

by them more particularly, the jurisdictional issue which was pointed out in their letter dated 22.03.2007. The learned Senior Counsel has drawn our attention to a sample letter of appointment and submitted that in Clause 18 of the letter of appointment, it is stated that in case of any dispute arising out of employment, the Courts, tribunals and / or authorities at Baroda only shall have exclusive jurisdiction to entertain, try and decide such disputes and hence the representation made by the federation to the Government of West Bengal is not maintainable. Further it is submitted that the letters of appointment were issued during 2004-2005 and all employees had accepted the same without any demur and the dispute was belatedly raised in May 2006. Further it is submitted that there were 3 categories of employees namely the fresh appointees by the management, those who are absorbed and those who were on probation. It is submitted that though such grounds were raised by the management, the order of reference dated 24.01.2007 does not consider any of the objections and mechanically the Government referred the matter to the tribunal for adjudication. The written statement filed by the federation was referred to point out that there was gross discrepancy in the number of employees whose cause was being canvassed by the federation. Initially it was stated that there were 72 employees who were affected on account of change of service condition. Subsequently during the examination in chief of PW-1 Shri Sanjoy Sen, it was stated as 55 employees and after order passed in the writ petition names of 21 persons have been given of which 17 are stated to be serving employees and other are retired and the 17 are in the State of West Bengal. Commenting upon the order passed by the tribunal, it was submitted that

the tribunal opined that part of the cause of action arose within the territory of the State of West Bengal and in this regard, referred to the decision reported in **2007 2 LLJ 837**. The tribunal failed to note that in the letters of appointment issued to the employees, a specific clause namely Clause No.18 which stipulates the jurisdiction to be at Baroda which was not the fact in the case relied on by the tribunal. The tribunal had also relied upon the decision of the Hon'ble Supreme Court in the case of **Eastern Coal Fields Limited** ² however the said decision cannot be applied to the facts of the case as it was passed in a matter arising out of an order passed in the writ petition filed under Article 226 of the Constitution of India.

5. Further it is submitted that the federation or any of the employees had never challenged Clause 18 of the letter of the appointment and the Tribunal also failed to give any finding on the effect of Clause 18 which was specifically canvassed by the management. To explain as to what is an arithmetical mistake and what is a clerical mistake, reliance was placed on the decision of the Hon'ble Supreme Court in **Vipinchandra Vadilal Bavishi Versus State of Gujarat** ³ . By relying upon the said decision it was submitted that an arithmetical mistake is a mistake in calculation while a clerical mistake is a mistake of writing and typing error occurring due to accidental slip or omission or error due to careless mistake or omission. Admittedly, the corrigendum directed to be issued by the learned Writ Court does not seek to correct any clerical or arithmetical mistake but alters the order of reference which is without jurisdiction. To explain the concept of

² (2008) 3 SCC 456

³ (2016) 4 SCC 531

jurisdiction of Courts in cases where it is stated that two Courts have jurisdiction reliance was placed on the decision of the Hon'ble Supreme Court in ***Hakam Singh Versus M/s. Gammon (India) Ltd.***⁴ , ***Shree Subhlaxmi Fabrics (P) Ltd. Versus Chandra Mal Baradia***⁵ and ***Balaji Coke Industry Pvt. Ltd. Versus Ma Bhagwati Coke Gujarat Pvt. Ltd.***⁶ It is further submitted that the workmen had accepted the letters of appointment without any demur and belatedly raised the dispute which they are not entitled to do so since it amounts to acceptance of the terms and conditions as mentioned in the letter of appointment. To explain the law of acquiescence, waiver and estoppel, reliance was placed on the decision of the Hon'ble Supreme Court in ***Haryana State Cooperative Land Development Bank Versus Neelam***⁷. Learned Senior Counsel referred to the decision of the Hon'ble Supreme Court in ***Workmen and Others Versus Hindustan Lever Ltd.***⁸ and submitted that in the said case also there was a specific condition conferring the jurisdiction to the Tribunal at Bombay and the decision can be applied with full force to the case on hand. The learned Senior Counsel has also elaborately taken us through the entire order passed by the Tribunal and submitted that the Tribunal did not decide the key issues particularly with regard to its jurisdiction in a proper manner and did not deal with the effect of Clause 18 of the letter of appointment and the order of reference itself was a non-speaking order and if it is held so, the basis of the reference goes and consequently the order passed by the

⁴ (1981) 1 SCC 286

⁵ (2005) 10 SCC 704

⁶ (2009) 9 SCC 403

⁷ (2005) 5 SCC 91

⁸ 1984 1 SCC 728

Tribunal also requires to be set aside. On the above grounds, the learned Senior Counsel seeks for allowing the appeal.

6. Mr. Bikash Ranjan Bhattacharya, learned Senior Counsel appearing on behalf of the federation firstly referred to Section 10 of the Act and submitted that the foundation is where the dispute exists or is apprehended. Referring to the order of reference it was submitted that the dispute is in respect of change of service condition, it does not relate to the number of persons and even assuming some of the employees elsewhere accepted the change will not alter the dispute. It is submitted that the moot question would be whether the corrigendum directed to be issued to restrict the reference to such of those employees who are in the State of West Bengal alters the foundation of the dispute. It is submitted that the corrigendum does not change the basic dispute which is subject matter of reference namely, change of service condition. In this regard, the learned Senior Counsel referred to the corrigendum dated 27.09.2019 by which the sentence “as per list enclosed and an attested list enclosed below” was inserted after issue No. 1 in the order of reference. Thus, it is submitted that the corrigendum does not in any manner alter the nature and character of dispute. The learned Senior Counsel referred to the evidence of Sri T.C. Khot, the witness examined on behalf of the management and in his cross-examination he has stated that it is a fact that all the sales promotion employees were engaged to promote the pharmaceutical product of the companies in all States including West Bengal; the sales promotion employees are called as medical representatives, there is no zonal office in Calcutta, but there is one office at 225 C, AJC Bose Road, Aelpe Court,

Calcutta 26 and there are Area Manager and above the Area Manager there is a Regional Manager and above the Regional Manager there is a Zonal Manager. The Area Managers and many Regional Managers are posted in West Bengal. The tour charts of medical representatives are approved by the Area Managers and Regional Managers and both Area Manager and Regional Manager are also approving the daily expenses for the medical representatives and they are also applying for their leave before those two authorities. Further, the said witness had accepted that the management did not challenge the order of reference passed by the Government of West Bengal before any higher forum. It is submitted that in the light of the candid admission made by the management witness, it is clear that the dispute exists within the State of West Bengal and the appropriate Government is the Government of West Bengal. Further, with regard to the jurisdictional aspect, it is submitted that the decisions relied on by Shri Sengupta are all decisions in the commercial law field applying the common law principle and the same principle cannot be applied to an industrial adjudication. Further, it is submitted that the management having not challenged the order of reference cannot contest the corrigendum. Further it is submitted that the learned Single Judge has noted the submission of the management before it contending that if the reference is allowed to proceed, then the reference should be restricted in respect of the employees of the State of West Bengal. This is what was done by the learned Writ Court and therefore, the management cannot be aggrieved by such order. Further, it is pointed out that the employees who were issued the letters of appointment, have received them by specifically mentioning that it is without prejudice to

their rights. Therefore, there is no acquiescence or waiver on the part of the employees. Reliance was placed on the decision in ***Dunlop Rubber Company (India) Ltd. Verses Its Workmen***⁹ and it is submitted that the test is as to where the dispute is felt in the case on hand. The dispute is felt in the State of West Bengal and the appropriate Government is the Government of West Bengal. By placing reliance at the decision of the Hon'ble Supreme Court in ***V.G. Jagdishan Versus Indofos Industries Ltd.***¹⁰ it is submitted that the head office of the management will not determine the jurisdiction with regard to where the industrial dispute can be raised. It is reiterated that the dispute which pertains to alteration of service conditions, remains as such and has not been altered by issuance of the corrigendum and therefore, there is no error in the order passed by the learned Writ Court.

7. Mr. Sengupta learned Senior Counsel in reply would submit that the decisions relied on by Mr. Bhattacharya are all distinguishable on facts as in those decisions there was no clause fixing the jurisdiction as to where the dispute can be raised as mentioned in Clause 18 of the letters of appointment issued by the management to the employees. Further it is submitted that in ***Dunlop Rubber Company (India) Ltd.*** the Hon'ble Supreme Court has observed that in the case of an all-India concern, it would be advisable to have uniform conditions of service throughout India and if uniform conditions prevail in such concern they should not be lightly changed. This finding rendered by the Hon'ble Supreme Court will enure in

⁹ 1959 II L.L.J. 826

¹⁰ 2022 SCC Online SC 466

favour of the appellant management. It is reiterated that in the case of ***Hindustan Lever Ltd.*** which is a case which arose under the Industrial Disputes Act there was a clause pertaining to the jurisdiction that the matters can be referred to a Tribunal at Bombay and this condition was held to be binding. By placing reliance on the decision in ***Haryana State Cooperative Ltd. Development Bank Versus Neelam*** ¹¹ it is submitted that the object of the Industrial Disputes Act may be to impart social justice to the workmen but the same by itself would not mean that irrespective of his conduct workmen would automatically be entitled to relief as the procedural laws like estoppel, waiver and acquiescence are equally applicable to industrial proceedings. Further, it is pointed out that one of the employees who has received the letter of appointment has done so without raising any objection. Therefore, the order passed in the writ petition would call for interference.

8. We have elaborately heard Mr. Partha Sarathi Sengupta, learned Senior Advocate along with Mr. Soumya Majumder, Mr. Sumanta Biswas, and Mr. Bikash Shaw for the appellant and Mr. Bikash Ranjan Bhattacharyya, learned Senior Advocate assisted by Mr. Suvodip Bhattacharjee and Mr. Balaram Patra for the respondent no. 5.
9. The issue involved in the instant case revolves around the interpretation of Section 10 of the Act. To put it more clearly, we are required to decide as to whether the learned Single Bench was right in directing the Government of West Bengal to issue a corrigendum to the order of reference based on the representation given by the respondent

¹¹ (2005) 5 SCC 91

Union thereby restricting the reference to such of those employees concerned with the dispute who are working within the State of West Bengal.

10. Section 10 of the Act deals with reference of disputes to Boards, Courts or Tribunals. In making a reference under Section 10(1) of the Act, the appropriate Government is performing an administrative act by forming an opinion as to the factual existence of an industrial dispute which is a preliminary step. Therefore, such action which the Government performs under Section 10(1) is not a judicial act or a quasi-judicial act. The satisfaction of the existence of an industrial dispute or the satisfaction that an industrial dispute is apprehended which is a condition precedent to the order of reference. The adequacy or the sufficiency of the material on which the opinion was formed is not open to judicial scrutiny. However, if the action of the Government in making the reference is impugned by a party, it would be open to such party to show that what was referred, was not a factual dispute and the Tribunal had no jurisdiction to make the award but if the dispute was an industrial dispute, its factual existence and expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon and it would not be appropriate for the Court to hold that the reference was 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 of those matters ***[Avon Services (Production Agencies) Pvt. Ltd. Versus IT ¹²]***.

11. In ***Shambu Nath Goyal Versus Bank of Baroda ¹³*** it was held that the question whether an industrial dispute existed on the date of reference is the question of fact to be determined by the Tribunal on the material placed before it. Further, there are long line of decisions which hold that it would be upon to the party impugning the reference that there was no material before the Government and it would be open to the Tribunal to examine the question but that does not mean that it can sit in appeal over the decision of the Government and come to a conclusion that there was no material before the Government. Bearing above legal principles in mind, we have examined the order of reference passed by the Government. Prior to the order of reference, the appellant management had an opportunity to put forth their contentions as could be seen from the letters addressed to the department wherein the appellant management had pointed out that the employees had accepted the offer of appointment unconditionally and therefore, cannot now question the same alleging unilateral alteration of service conditions. Further, the management also raised the issue regarding jurisdiction by stating that the Courts, Tribunals and/or authorities at Baroda only shall have jurisdiction. It is the argument of Shri Sengupta that the order of reference does not even mention about the stand taken by the management, it is a non-speaking order and outcome of non-application of mind. As noted above, the Government while exercising power under Section

¹² (1979) 1 LLJ 1, 4 (SC)

¹³ (1978) 2 SCC 353

10(1) of the Act does not exercise a judicial or a quasi-judicial power, but does so in the administrative realm. In such circumstances, one cannot expect an order of reference to be something akin to a judgment or an order passed by the Court or Tribunal. The submission made by the workmen through their Union, the stand taken by the management and the failure report submitted by the Deputy Commissioner of Labour were all materials which were on record before the Government and the Government having been satisfied that there exists a dispute have made the order of reference. Therefore, we find that there is no error in the order of reference dated 24.01.2007 for the Tribunal to interfere or for that matter warranting interference under Article 226 of the Constitution of India.

12. The argument of Shri Sengupta is that the appellant management has an all India presence and uniform service conditions are being enforced for all the employees throughout the country and the nature of dispute raised by the respondent Union has a pan India effect and, therefore, the Government of West Bengal is not the appropriate Government to make the order of reference. This contention was canvassed before the Tribunal as well. The Tribunal has held against the management largely on the ground that part of the cause of action has arisen within the State of West Bengal. Secondly, the respondent Union has restricted their claim only in respect of the employees who are working within the State of West Bengal and thirdly, has referred to the evidence of the management witnesses to show that there is a fully functional establishment of the appellant management in the State of West Bengal. Firstly, we take up for consideration the factual position. The employees on behalf of whom the dispute has been raised, were not

initially employed by the appellant management. They had joined the services of *M/s. Purak Vinimay Ltd.* It appears that the said company was engaged in the marketing of the pharmaceutical products produced by the appellant management. Pursuant to some corporate decision such arrangement appears to have been withdrawn and decision was taken to absorb the employees in the said *Purak Vinimay Ltd.* and two other companies as employees of the appellant management. Pursuant to such decision, the letters of appointment have been issued to the employees on whose behalf the dispute has been raised. Barring one the other employees have received the letter of appointment by stating that it is without prejudice to their rights. Even assuming that a few of the employees had unconditionally accepted the letter of appointment, it cannot be treated to be an estoppel for them to raise a plea that their earlier service conditions should not be altered. However, this is for the Tribunal to adjudicate while considering the same on merits. Mr. P.C. Khot was examined as management business OPW1 who had stated that there is an office of the appellant management in Calcutta and the employees are called as Medical Representatives and above them there is an Area Manager and above the Area Manager there is a Regional Manager and above the Regional Manager there is a Zonal Manager. The Area Managers are posted in West Bengal, many Regional Managers are also posted in West Bengal, the tour charts of medical representatives are approved by the Area Managers and Regional Managers and both the Managers are also approving the daily expenses for their medical representatives and they also apply for leave before the two authorities. Taking note of this evidence, the Tribunal held that the evidence

of OPW1 in his chief examination that the entire control is in Gujarat was held to be not tenable. We find that the conclusion arrived at by the Tribunal to be just and proper and there is nothing perverse for us to take a different stand. The respondent Union raised a plea that the letters of appointment were unilaterally drafted by the management and the employees or the Union had no say before finalising the terms and conditions. OPW1 in his cross-examination has candidly admitted that all terms and conditions of the employees are framed by the company only. Further, in the cross-examination of OPW1 it was brought out that at least in 9 such letters of appointment the signature of the sales promotion employee is not found and therefore, cannot be stated to have accepted the terms and conditions. Further, the Tribunal noted that the management did not obtain any letter from the employees to prove that they have accepted the terms and conditions and all other letters of appointment the employees have clearly stated that they have accepted the letter of appointment without prejudice. Furthermore, the Tribunal on considering the evidence of OPW2 has held that the proposed terms and conditions of the appointment was not drawn before the actual letters of appointment were issued. Thus, the facts brought out by the Tribunal clearly shows that the dispute raised by the respondent Union concerns the employees of the appellant who are working in the State of West Bengal and whose work is being controlled by an office of appellant management in Kolkata. Therefore, the Government of West Bengal is the appropriate Government to refer the dispute. At this juncture, we note the factual finding recorded by the Tribunal stating that the respondent Union has reiterated that it has confined its claim relating to the

workmen working in the State of West Bengal. Thus, having held that the Government of West Bengal to be the appropriate Government, the order of reference cannot be held to be without jurisdiction.

13. The second issue which was emphasized by Mr. Sengupta is with regard to issuance of a corrigendum whether it is permissible under law or otherwise. Decisions in the case of **State of A.P. Versus A.P. State Wakf Board, Vipinchandra Vadilal Bavishi** were referred to explain the meaning of the word “erratum”. As held in the said decision “erratum” can be issued when there is a mistake in printing or writing and a corrigendum is for correcting arithmetical errors. It was further held that an arithmetical mistake is a mistake in calculation while a clerical mistake is a mistake of writing and typing error occurring due to accidental slip or omission or error due to careless mistake or omission. It is a submission of Mr. Sengupta that the corrigendum directed to be issued by the learned Writ Court does not seek to correct any clerical or arithmetical mistake but alters the order of reference and hence without jurisdiction. We have to test the correctness of the said submission.

14. As of now, the well settled legal principle is that the Appropriate Government acting under Section 10 of the Act has power to add or amplify the matter already referred for adjudication. However, it will have no power to supersede or cancel the old reference in such a way as to affect the withdrawal of the reference validly referred. It has been held that the Government has the power to rectify or correct the previous order of reference but under the guise of amending or correcting the previous order of reference, the order of amendment or the corrigendum tantamounting to

supersession of the previous order or reference cannot be validly made because such an order would be ultra vires the power of the Government. Further it is equally well settled that there is no bar to amend the pending reference by subsequent notification which is in the nature of addition to or amplification of the issue already referred to adjudication and this cannot be inconsistent with any of the provisions of the Act. Thus, what is required to be seen is when a corrigendum or an amendment is made by the State Government as to whether the amendment amounts to reversal or cancellation or withdrawal or supersession of the reference already made or of any of the issues contained in the earlier reference. The issue which was referred for adjudication by the Government is whether the change of service conditions of sales promotion employees by the management of *M/s Alembic Limited* who joined their company from *M/s. Purak Vinimay Limited* is justified. The corrigendum has enclosed the list giving names of the 21 employees which is to be read immediately after paragraph 1 of the issue referred by order dated 24.01.2007. Thus, the dispute which has been referred remain intact, unaltered, unamended and has not been superseded. The corrigendum has only appended the list which has to be read after issue no. 1. Therefore, we fully agree with the submission of Mr. Bhattacharyya that the corrigendum does not in any manner alter the nature and character of the dispute. In other words, the foundation of the dispute remains unaltered and that is the issue which will be adjudicated by the tribunal. To put it more clearly, the dispute does not relate to the number of persons but the dispute is with regard to whether change of service conditions of sales promotion employees who joined the appellant management from *M/s.*

Purak Vinimay Limited was justified. The appellant management cannot be heard to say that the character of the dispute stood altered based on the corrigendum. Therefore, we are unable to convince ourselves to accept the submission made on behalf of the appellant management.

15. Mr. Sengupta made elaborate submissions on the jurisdictional aspect while referring to clause 18 of the letter of appointment and that the dispute is not maintainable in the State of West Bengal as the employees have agreed with the terms and conditions of the appointment restricting the jurisdiction to Baroda. We have referred to the finding recorded by the tribunal as regards the manner in which the terms and conditions of the letter of appointment was drafted and from the evidence of OPW1, it was established that the terms and conditions were drawn exclusively by appellant management and the employees whose services were drawn from the other company were not provided with any draft before it was offered to them for acceptance. Furthermore, it has been brought on record by way of documentary evidence that substantial number of employees have received letter of appointment without prejudice. A few of them may have accepted it by affixing their signatures that by itself cannot be held to be estoppel for the respondent union to seek for a reference to the tribunal to adjudicate the issue as to whether the change of service conditions was justified or not. In such circumstances, clause 18 of the letter of appointment cannot be put against the employees/union so as to prevent them from raising the dispute in West Bengal. Under normal circumstances, the jurisdictional clause is incorporated in commercial contracts when goods are sold and delivered. Even assuming, there was such a condition, the evidence on the side of the

management clearly shows that a full-fledged establishment of the appellant functions in the State of West Bengal. Though there may not be a zonal office, there is a Regional Manager and the Area Manager, the duty chart is prepared by them and they exercise administrative control over the employees working in West Bengal. All these aspects are sufficient to hold that the respondent union was justified in raising this dispute in the State of West Bengal, where dispute is felt. More importantly, alteration of the service condition is the plea raised by union and such a plea will be felt by the employees where they function, which undoubtedly is within the State of West Bengal.

16. Above all, the matter pertains to an industrial adjudication and considering the object of the Industrial Dispute Act, the employees who are engaged to work within the State of West Bengal by the appellant management shall be entitled to raise the dispute in the state and the Government of West Bengal shall be the Appropriate Government for the purposes of Section 10 of the Act. On facts, we have held that the employees are not estopped by their conduct. Consequently, the decision in **Haryana State Cooperative Land Development Bank** cannot be relied on behalf of the management as it would have no application to the facts of the case on hand. Reliance was placed on **Balaji Coke Industry Private Limited**, **Shree Subhlaxmi Fabrics (Private) Limited** and **M/s. Gammon (India) Limited** for the proposition that if the parties to the contract agree to which the jurisdiction in one of the courts to try the dispute that may arise, the agreement would be valid. Firstly, the said decision pertains to civil action and in the contract in clause 11 there was a arbitration agreement and

while interpreting the said provision, the decision was rendered. We are examining the case of industrial adjudication and the factual matrix has been brought out by us in the preceding paragraph which will go to show that the decision arising out of commercial jurisprudence or common law principles cannot be strictly applied to the case of industrial adjudication qua the power of the Appropriate Government to refer the dispute under Section 10 of the Act.

17. In ***Bikash Bhushan Ghosh and Others Versus Novaratis India Limited and Others***¹⁴ the State of West Bengal referred the correctness of the termination of three employees of the respondent therein to the industrial tribunal for adjudication. Before the tribunal, it was contended that Government of West Bengal had no jurisdiction to make the reference. The tribunal held the reference to be maintainable. Thereafter an award was passed setting aside the order of termination. Ultimately, the matter travelled up to the Hon'ble Supreme Court. The Court while considering that part of the cause of action arose within the State of West Bengal and what would be the position if in a given case, two states may have requisite jurisdiction in terms of Section 10(1), held as follows:-

Judged in that context also, a part of cause of action arose in Calcutta in respect whereof, the State of West Bengal was the appropriate Government, It may be that in a given case, two States may have the requisite jurisdiction in terms of clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act. Assuming that other State Governments had also jurisdiction, it would not mean that although a part of cause of action arose

¹⁴ (2007) 2 LLJ 837 (SC)

within the territory of the State of West Bengal, it would have no jurisdiction to make the reference.

18. The above decision would enure in favour of the respondent union. In ***Umasankar Chatterjee Versus Union of India and Others***¹⁵, the division Bench of this Court held that infringement of rights gives rise to the cause of action and consequently the right to sue. In the said case, an order of removal was subject matter of challenge and it was held that the order of removal became effective only when it was served on the appellant therein in Kolkata and therefore cause of action accrues and the right to sue or accrues in Kolkata. In ***V.G. Jagdishan Versus Indofos Industries Limited***¹⁶, it was held that its situs of industrial dispute between workmen and employer will confirm territorial jurisdiction of the Court and location of head office / registered office only may not be sufficient for concluding the territorial jurisdiction of the labour court / industrial tribunal. In this regard, reliance was placed on the decision of the Hon'ble Supreme Court in ***Eastern Coal Field Limited and Others Versus Kalyan Banerjee***¹⁷. The decision in ***Dunlop Rubber Company (India) Limited Versus Its Workmen and Others***¹⁸ was pressed into service by Mr Bhattacharyya and Mr. Sen Gupta also referred to one of the paragraphs of the said decision wherein the Hon'ble Supreme Court made an observation that in the case of an All-India concern, it would be advisable to have uniform condition of services throughout India. The appellant therein *M/s Dunlop India* was an all India

¹⁵ 1982 LAB. I.C. 1361

¹⁶ (2015) LLR 1015 (Del)

¹⁷ (2008) 3 SCC 456

¹⁸ (1952) 2 LLJ 826

concern but the major part of its business was concentrated in Kolkata. The number of non-clerical staff outside Kolkata were less in number compared to the non-clerical staff in Kolkata. The company has a gratuity scheme which applied to both clerical and non-clerical staff. The clerical and non-clerical staff in Bombay raised the dispute with regard to the scale fixed by the scheme in force was low and should be raised and they claimed that the retirement age of the clerical staff should be raised from 55 years to 60 years. The argument of the appellant therein was that the appellant being an all India concern should not make changes particularly at the instance of a small minority of workmen as that would lead to industrial unrest elsewhere and apart from that there should be uniform service condition throughout the country. While considering the said contention, the Hon'ble Supreme Court observed that there is no doubt that in the case of all India concern it would be advisable to have uniform conditions of service throughout India and if uniform conditions prevail in any such concern they should not be lightly changed.

19. The next part of the judgment would be very relevant for the case on hand which reads as follows:

At the same time it cannot be forgotten that industrial adjudication is based, in this country at least, on what is known as industry-cum region basis and cases may arise where it may be necessary in following this principle to make changes even where the conditions of services of an all-India concern are uniform. Besides, however desirable uniformity may be in the case of all-India concern, the tribunal cannot abstain from seeing that fair conditions of service prevail in

the industry with which it is concerned. If therefore any scheme, which may be uniformly in force throughout India in the case of an all-India concern, appears to be unfair and not in accord with the prevailing conditions in such matters, it would be the duty of the tribunal to make changes in the scheme to make it fair and bring it into line with the prevailing conditions in such matters, particularly in the region in which the tribunal is functioning irrespective of the fact that the demand is made by only a small minority of the workmen employed in one place out of the many where the all-India concern carries on business.

20. The above decision is a straight answer to the case of the management on their plea that they are an all India concern.
21. For all the above reasons, we have no hesitation to hold that the order passed by the industrial tribunal was just and proper, taking note of the correct factual and legal position with no perversity in approach. Consequently, the learned Writ Court was fully justified in not interfering with the order. To make things clearer, the learned Writ Court had directed a corrigendum to be issued by the Government of West Bengal adding a list as annexure to the order of reference already made and in no uncertain terms, we have held that the corrigendum does not in any manner alter the dispute which has already been referred. That apart the dispute having been felt within the jurisdiction of the State of West Bengal, the Appropriate Government is the Government of West Bengal. In the result, the appeal fails and the same is dismissed.

22. The learned industrial tribunal is directed to fix a date within which the parties shall file their written statement, if not already filed, and thereafter take up the matter for adjudication and conclude the proceedings as expeditiously as possible preferably within a period of 4 months from the date on which the pleadings are completed. The parties are directed to cooperate for the expeditious disposal of the matter before the industrial tribunal.

(T.S. SIVAGNANAM, J.)

I agree.

(BIVAS PATTANAYAK, J.)

(P.A.-PRAMITA/SACHIN)