

07.04.2026
Item No.3
Court No. 30
Piya

WPA 5621 of 2026

Eastern Coalfields Ltd.

-vs-

Union of India & Ors.

Mr. Manik Das

... for the Petitioner

Mr. Pinaki Bhattacharya

Mr. Asit Kumar De

..... for the Respondent Nos. 1,2,& 3

Mr. Asif Ikbal Baidya

.... For the Private Respondent

1. The writ application has been preferred praying for direction upon the respondent authorities to cancel and/or withdraw the impugned Reference made by the respondent no.1 vide order no. I(54)/2024/E dated 10-09-2025 or in the alternative to set aside or quash the impugned Reference made by the respondent no.1 vide order no. I(54)/2024/E dated 10-09-2025.
2. Learned counsel for the petitioner submits that the Reference is bad in law as the same has not been done by invoking Section 10 of the Industrial Disputes Act.

3. Relying upon the judgment of the Supreme Court in the case of ***State of Bombay Vs. K. P. Krishnan and Ors., 1960 SCC OnLine SC 99, (Paragraphs 9, 10, 11, 12 and 15)***, learned counsel for the petitioner submits that the said order of Reference is required to be cancelled and set aside.

4. **The petitioners further case is that:-**

On or about 16-07-2024, the respondent No. 4 raised a purported industrial dispute before the respondent No. 3, inter alia, claiming regularization of several contractual security guards in the petitioner company pursuant where to a conciliation proceeding was initiated by the respondent No. 3.

The conciliation having been failed and no settlement being arrived at, the respondent No. 3 sent its report to the respondent No. 1, being the appropriate government, under section 12 (4) of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act"), inter alia, observing that the case in hand is not a fit case for reference to the Central Government Industrial Tribunal.

However, the respondent No. 1, being the Ministry of Labour, Government of India, by the order No. I(54)/2024/E dated 10-

09-2025 referred the purported dispute for adjudication by the Central Government Industrial Tribunal cum Labour Court, Asansol (hereinafter referred to as the "CGIT"), under section 12 (5) read with section 10 (2A) of the Industrial Disputes Act, 1947 for adjudicating the following issue:

"Whether the action of the Management of M/s ECL in denying regularization of contractual security personnels of M/s ECL is just and legal? If not, to what relief the concerned security personnels are entitled to?"

The CGIT, upon receiving the reference as aforesaid, registered the same as Reference Case No. 60 of 2025.

- 5.** It is the case of the petitioner that no reference to a Tribunal or a board or a Labour Court for adjudication of a dispute can be made without invoking section 10 (1) of the Act.
- 6.** It is further stated that the impugned Reference has been made under section 12 (5) read with section 10 (2A) of the Act, which do not empower the respondent No. 1 to refer a dispute to a Tribunal for adjudication without invoking section 10 (1) of the Act.
- 7.** It is also stated that even if the appropriate government, the respondent No. 1 herein, may

be acting under section 12 (5) of the Act, the reference must ultimately be made under section 10 of the Act and not otherwise.

8. The petitioner further submits that section 10 (1) of the Act is an enabling provision for making any reference under the Act and any Reference without invoking section 10 (1) of the Act is bad and void ab initio.

9. The petitioner herein has relied upon paragraph 9, 10, 11, 12 and 15 of **State of Bombay vs K.P.Krishnan & Ors., (Supra)**

wherein the Supreme Court held as follows:-

“9. It is true that s. 12(5) provides that the appropriate Government may make such reference and in that sense it may be permissible to say that a power to make reference is conferred on the appropriate Government by s. 12(5). The High Court was apparently inclined to take the view that in cases falling under s. 12(5) reference can be made only under s. 12(5) independently of s. 10 (1). In our opinion that is not the effect of the provisions of s. 12(5). If it is held that in cases falling under s. 12(5) reference can and should be made only under s. 12(5) it would lead to very anomalous consequences. Section 10(3) empowers the appropriate Government by an order to prohibit the continuance of any strike or lock-out in connection with an industrial dispute which may be in existence on the date of the reference, but this power is confined only to cases where industrial disputes are referred under s. 10(1). It would thus be clear that if a reference is made only under s. 12(5) independently of s. 10(1) the appropriate Government may have no power to prohibit the continuance of a strike in connection with a dispute referred by it to the tribunal for adjudication; and that obviously could not be the intention of the Legislature. It is

significant that ss. 23 and 24 prohibit the commencement of strikes and lock-outs during the pendency of proceedings therein specified, and so even in the case of a reference made under s. 12(5) it would not be open to the employer to declare a lock-out or for the workmen to go on strike after such a reference is made; but if a strike has commenced or lock-out has been declared before such a reference is made, there would be no power in the appropriate Government to prohibit the continuance of such a strike or such a lock-out. Section 24(2) makes it clear that the continuance of a lock-out or strike is deemed to be illegal only if an order prohibiting it is passed under s. 10(3). Thus the power to maintain industrial peace during adjudication proceedings which is so essential and which in fact can be said to be the basis of adjudication proceedings is exercisable only if a reference is made under s. 10(1). What is true about this power is equally true about the power conferred on the appropriate Government by s. 10(4), (5), (6) and (7). In other words, the material provisions contained in sub-ss. (3) to (7) of S. 10(1) which are an integral part of the scheme of reference prescribed by Chapter III of the Act clearly indicate that even if the appropriate Government may be acting under s. 12(5) the reference must ultimately be made under s. 10 (1). Incidentally it is not without significance that even in the petition made by the respondents in the present proceedings they have asked for a writ of mandamus calling upon the appellant to make a reference under ss. 10(1) and 12(5).

10. Besides, even as a matter of construction, when s. 12(5) provides that the appropriate Government may make such reference it does not mean that this provision is intended to confer a power to make reference as such. That power has already been conferred by s. 10(1); indeed s. 12(5) occurs in a Chapter dealing with the procedure, powers and duties of the authorities under the Act; and it would be legitimate to hold that s. 12(5) which undoubtedly confers power on the appropriate Government to act in the manner specified by it, the power to make a

reference which it will exercise if it comes to the conclusion that a case for reference has been made must be found in s. 10(1). In other words, when s. 12(5) says that the Government may make such reference it really means it may make such reference under s. 10(1). Therefore it would not be reasonable to hold that s. 12(5) by itself and independently of s. 10(1) confers power on the appropriate Government to make a reference.

11. *The next point to consider is whether, while the appropriate Government acts under s. 12(5), it is bound to base its decision only and solely on a consideration of the report made by the conciliation officer under s. 12(4). The tenor of the High Court's judgment may seem to suggest that the only material on which the conclusion of the appropriate Government under s. 12 (5) should be based is the said report. There is no doubt that having regard to the background furnished by the earlier provisions of s. 12 the appropriate Government would naturally consider the report very carefully and treat it as furnishing the relevant material which would enable it to decide whether a case for reference has been made or not; but the words of s. 12(5) do not suggest that the report is the only material on which Government must base its conclusion. It would be open to the Government to consider other relevant facts which may come to its knowledge or which may be brought to its notice, and it is in the light of all these relevant facts that it has to come to its decision whether a reference should be made or not. The problem which the Government has to consider while acting under s. 12(5)(a) is whether there is a case for reference. This expression means that Government must first consider whether a prima facie case for reference has been made on the merits. If the Government comes to the conclusion that a prima facie case for reference has been made then it would be open to the Government also to consider whether there are any other relevant or material facts which would justify its refusal to make a reference. The question as to whether a case for reference has been made out can be answered in the*

light of all the relevant circumstances which would have a bearing on the merits of the case as well as on the incidental question as to whether a reference should nevertheless be made or not. A discretion to consider all relevant facts which is conferred on the Government by s. 10(1) could be exercised by the Government even in dealing with cases under s. 12(5) provided of course the said discretion is exercised bona fide, its final decision is based on a consideration of relevant facts and circumstances, and the second part of s. 12(5) is complied with.

12. *We have already noticed that s. 12 deals with the conciliation proceedings in regard to all industrial disputes, whether they relate to a public utility service or not. Section 12(1) imposes an obligation on the conciliation officer to hold conciliation proceedings in regard to an industrial dispute in respect of public utility service provided a notice under s. 22 has been given. If in such a dispute the efforts at conciliation fail and a failure report is submitted under s. 12(4) Government may have to act under s. 12(5) and decide whether there is a case for reference. Now, in dealing with such a question relating to a public utility service considerations prescribed by the second proviso to s. 10(1) may be relevant, and Government may be justified in refusing to make a reference if it is satisfied that the notice given is frivolous or vexatious or that reference would be inexpedient. Just as discretion conferred on the Government under s. 10(1) can be exercised by it in dealing with industrial disputes in regard to non-public utility services even when Government is acting under s. 12(5), so too the provisions of the second proviso can be pressed into service by the Government when it deals with an industrial dispute in regard to a public utility service under s. 12(5).*

15. *On the other hand, if the power to make reference is ultimately to be found in s. 10(1) it would not be easy to read the relevant portion of s. 12(5) as imposing an obligation on the Government to make a reference. Section 12(5) when read with s. 10 (1) would mean, according to the*

appellant, that, even after considering the question, the Government may refuse to make a reference in a proper case provided of course it records and communicates its reasons for its final decision. In this connection the appellant strongly relies on the relevant provisions of s. 13. This section deals with the duties of Boards and is similar to s. 12 which deals with conciliation officers. A dispute can be referred to a Board in the first instance under s. 10(1) or under s. 12(5) itself. Like the conciliation officer the Board also endeavours to bring about a settlement of the dispute. Its powers are wider than those of a conciliator but its function is substantially the same; and so if the efforts made by the Board to settle the dispute fail it has to make a report under s. 13(3). Section 13(4) provides that if on receipt of the report made by the Board in respect of a dispute relating to a public utility service the appropriate Government does not make a reference to a Labour Court, Tribunal or National Tribunal under s. 10, it shall record and communicate to the parties concerned its reasons therefor. The provisions of s. 13 considered as a whole clearly indicate that the power to make a reference in regard to disputes referred to the Board are undoubtedly to be found in s. 10(1). Indeed in regard to disputes relating to non-public utility services there is no express provision made authorising the Government to make a reference, and even s. 13(4) deals with a case where no reference is made in regard to a dispute relating to a public utility service which means that if a reference is intended to be made it would be under the second proviso to s. 10(1). Incidentally this fortifies the conclusion that whenever reference is made the power to make it is to be found under s. 10(1). Now, in regard to cases falling under s. 13(4) since the reference has to be made under s. 10 that can be no doubt that the considerations relevant under the second proviso to s. 10(1) would be relevant and Government may well justify their refusal to make a reference on one or the other of the grounds specified in the said proviso. Besides, in regard to disputes other than those falling under s. 13(4) if a reference has to be made, it would clearly be under s.

10(1). This position is implicit in the scheme of s. 13. The result, therefore, would be that in regard to a dispute like the present it would be open to Government to refer the said dispute under s. 12(5) to a Board, and if the Board fails to bring about a settlement between the parties Government would be entitled either to refer or to refuse to refer the said dispute for industrial adjudication under s. 10(1). There can be no doubt that if a reference has to be made in regard to a dispute referred to a Board under s. 13 s. 10(1) would apply, and there would be no question of importing any compulsion or obligation on the Government to make a reference. Now, if that be the true position under the relevant provisions of s. 13 it would be difficult to accept the argument that a prior stage when Government is acting under s. 12(5) it is obligatory on it to make a reference as contended by the respondent.”

10. The sole contention of the petitioner herein

is that the reference is bad as the same has been made by invoking Section 12(5) read with Section 2A of Section 10 of the Industrial Disputes Act. It is the contention of the petitioner that reference in the present case could have been only made under Section 10(1) of the Industrial Disputes Act and as it has been made under the provision as stated the same is bad in law and is liable to be quashed and set aside.

11. Considering, the argument made by the parties herein and the judgment relied upon by the petitioner in *K.P.Krishnan & Ors.,(Supra)*, the following observations of the

Supreme Court in the said judgment are relevant in the present case.

“.....A discretion to consider all relevant facts which is conferred on the Government by s. 10(1) could be exercised by the Government even in dealing with cases under s. 12(5) provided of course the said discretion is exercised bona fide, its final decision is based on a consideration of relevant facts and circumstances, and the second part of s. 12(5) is complied with.....

.....Section 12(1) imposes an obligation on the conciliation officer to hold conciliation proceedings in regard to an industrial dispute in respect of public utility service provided a notice under s. 22 has been given. If in such a dispute the efforts at conciliation fail and a failure report is submitted under s. 12(4) Government may have to act under s. 12(5) and decide whether there is a case for reference. Now, in dealing with such a question relating to a public utility service considerations prescribed by the second proviso to s. 10(1) may be relevant, and Government may be justified in refusing to make a reference if it is satisfied that the notice given is frivolous or vexatious or that reference would be inexpedient. Just as discretion conferred on the Government under s. 10(1) can be exercised by it in dealing with industrial disputes in regard to non-public utility services even when Government is acting under s. 12(5), so too the provisions of the second proviso can be pressed into service by the Government when it deals with an industrial dispute in regard to a public utility service under s. 12(5)......”

- 12.** Section 12(5) of the Industrial Disputes Act, lays down as follows:-

“Section 12(5). If, on a consideration of the report referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, [Labour Court, Tribunal or National Tribunal], it may make such reference. Where the appropriate Government **does not make such a reference it shall record and communicate to the parties concerned its reasons therefor.**”

13. The said provision clearly lays down that on receiving a report submitted by the conciliation officer, if the appropriate government is satisfied to make a reference, the same shall be done.
14. **It is only when the appropriate government does not make such a reference it shall record and communicate to the parties concerned its reason therefore.**
15. So, it is only when a reference is not made **that reasons are to be recorded** and when a reference is being made under Section 12(5) of the Industrial Disputes Act, prima facie satisfaction of the appropriate government is sufficient.
16. Section 10(1) of the Industrial Disputes Act relates to reference of disputes by the appropriate government, **when it is of the opinion that an Industrial Disputes exists.**

17. Whereas Section 12(5) requires that a conciliation report is necessary for the appropriate government to consider such report and then decide as to whether to make a reference or not.
18. In the present case admittedly there is a report submitted by the conciliation officer who was of the opinion that it is not fit case for reference. But the appropriate government in its wisdom was of the opinion that the reference was to be made and the same is pending adjudication before the tribunal.
19. Considering, the said facts, this Court finds no irregularity in the reference dated 10.09.2025, the same being in accordance with law.
20. **The writ petition is accordingly dismissed.**
21. The learned Tribunal to proceed expeditiously with the reference case.

(Shampa Dutt (Paul), J.)