Reference of Industrial Dispute and Natural Justice

C. Robin*

Industrial adjudication involves a 'diversity of inter-relations' between two competing interests. The claims of the employer based on the freedom of contract have to be adjusted with the claims of industrial employees for social justice.¹ Governmental intervention in the form of compulsory adjudication was therefore the logical outcome of it in India. The function of the Government in this process covers a wide compass, considering the constitutional, political and socio-economic aspects of the matter. In particular the role of the Government under Section 10(1) of the Industrial Disputes Act, 1947 ² assumes vital importance in as much as the statutory function of deciding whether to refer or not to refer a dispute for adjudication is vested solely on the Government.

Section 10(1)³ of the Act, empowers the appropriate

* B.Sc. (Madurai), LL.M. (Cochin); Junior Professor, Madras Law College, Madras-600104.

² Hereinafter referred to as the 'Act.'
³ S. 10(1) runs as follows:—

(1) Where the appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing,—

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or

f. n. contd.
Government to refer an industrial dispute to a Board of Conciliation, or to a Court of enquiry or for adjudication to a Labour Court, Industrial Tribunal or to a National Tribunal. Section 10, read with Section 12(5) of the Act, confers a very wide discretion on the appropriate government either to refer or to refuse to refer an industrial dispute. Under Section 1(5) the Government has to consider whether there is a case for reference and if so it may make the reference by exercising its power under Section 10(1) of the Act. If there is no case, the Government may refuse to make the reference. In case of refusal, the Government must record and communicate to the parties concerned its reasons for the refusal to make the reference.

It is now well settled that the appropriate Government while making an order of reference under Section 10(1) of the Act, would be performing an administrative act based upon its own opinion with respect to the existence or apprehension of an industrial dispute. But that does not mean that the Government can exercise the power arbitrarily or capriciously. It is equally

(c) refer the dispute or any matter appearing to be connected with, or relevant to the disputes, if it relates to any matter specified, in the second Schedule to a Labour Court for adjudication, or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the second Schedule or the Third Schedule, to a Tribunal for adjudication.

4. Section 2(a)

5. Section 12 - Duties of Conciliation Officers:

***

(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.

well settled⁷ that an order of reference may be amenable to judicial review if it is made *malafide* or the appropriate Government had no material before it, or did not apply its mind to the material before it, or taken into account some irrelevant or extraneous considerations or has not taken into consideration certain vital facts which it ought to have taken into consideration.

An important question, which has cropped up in the course of the exercise of the power by the Government is that whether the appropriate Government, having once declined for reference, can reconsider its earlier decision and make a reference. The consensus of judicial opinion is that a prior refusal of the Government to refer a particular dispute, cannot affect the jurisdiction of the Government to exercise the power on any subsequent occasion.⁸ This view has been affirmed by the Supreme Court also.⁹

Even though it has been held that the Government having once declined to refer a dispute for adjudication can re-exercise the power on a subsequent occasion, a plea for observance of the principle of *audi alteram partem* in such circumstances, has been repeatedly raised before the Courts. The line of case law

---


in this area reveals that the emphatic plea for observance of the principle has been raised at two situations.

The first situation\(^9\) where the plea of notice and hearing has been raised was when the Government *suo moto* reconsidered its earlier order of refusal to refer. This plea was repelled by the judiciary, labelling the role of the Government as a purely administrative function.\(^10\) But the Supreme Court\(^11\) has formulated a framework within which this more or less unfettered power could be used; Government can reconsider its decision either because new facts have come to light or because it had misunderstood the existing facts or for any other relevant reasons. It can make the reference only if it is an industrial dispute and either existed or is apprehended and the reference it makes must be with regard to that and no other industrial dispute.

Much water has flown under the bridge since the Supreme Court gave these guidelines. In recent times the net of administrative law has been spread wide enough to catch within its fold what was once considered non-justiciable.\(^12\) There has been a significant change in the attitude of Courts towards the applicability of principles of natural justice while an administrative functionary exercises its jurisdiction conferred by a statute. But this sweeping change had no impact on the judicial thought while it considered a situation like the one which we have now at hand. The disappointing aspect is that recently in *Avon Services (Production) Agencies v. Industrial Tribunal*\(^13\) the Supreme Court has gone a step further and observed\(^14\) that it was not

---

9. As illustrated by the facts of the following cases:
10. See infra, n. 11, 19.
11. *Western India Match Co. Ltd. v. Western India Match Co. Workers Union* 1970(2) L.L.J. 256.
absolutely necessary that there ought to be fresh materials before the Government for reconsideration of its earlier decisions. This will lead to an anomalous position where the subsequent order of the Government referring the dispute for adjudication will not be open to judicial scrutiny and the Government will always be able to disarm the court by taking refuge in silence. Therefore, this aspect requires reconsideration.

Juristic and judicial opinions converge to the point that the exercise of the power by the Government under such circumstances warrant a notice and hearing. If at all this procedure is to be dispensed with in the interest of administrative efficiency, it is advisable that the Government, having once declined to make a reference, while subsequently makes an order, must state the reasons for reconsideration of its earlier order, as reasoned decisions, a concomitant of the principles of natural justice is not alien to administrative decision making in India. At least that fairness must be extended in such situations. Moreover the scope for judicial scrutiny of the reasoned order is more. The ruling of the Supreme Court in *Hachtief Gammon v. State of Orissa* fortifies this proposition. The Court observed:

"The Courts have power to see that the executive act lawfully. It is no answer to the exercise of that power to say that the Executive acted *bonafide* nor that they have bestowed painstaking consideration. They cannot avoid scrutiny by Courts by failing to give reasons. If they give reasons and they are not good reasons, the Courts can direct them to reconsider the matter in the light of relevant matters, though the propriety, adequacy, or satisfactory character of those reasons may not be open to judicial scrutiny."  


17. 1975(2) L.L.J. 418.

18. *Id.,* at p. 428.
Thus reasoned orders in these circumstances might conceivably induce fairness while the Government exercise the power under Section 10(1) of the Act. If the Government goes out of bounds, the blow will fall and the order will be quashed.

The second situation where the plea for observance of the *audi alteram partem rule* has been raised was when the Government decide, at the instigation of the workmen or a Union, to refer the dispute which it has on an earlier occasion declined to refer. Recently a considerable amount of decisional grist has cropped up among various High Courts on this question. The conflicting decisions of the High Courts have an unsettling effect on an area whose ambit and periphery are well determined. The Supreme Court is yet to pronounce on this point.

As early as in 1956, the Madras High Court considered the question in *Radhakrishna Mills (Pollachi) Ltd. v. State of Madras*. In this case, the management terminated the services of an employee and the Union espoused the cause. The Government declined to refer the dispute for adjudication. After a month the Communist Legislative Party at Madras made a representation, on behalf of the Union, to the Government for reconsideration of the decision. Subsequently the Government referred the matter for adjudication. The impugned order was challenged on the ground that the exercise of the jurisdiction was vitiated by failure to give notice to the employer before the second order was passed. Rejecting this contention the court held that the issue of the second order itself was an administrative act and did not amount to a judicial or quasi-judicial determination of the rights of any of the parties. Therefore the failure to give notice to the management did not vitiate the exercise of the statutory power vested in the Government by Section 10(1)(c) of the Act. A Division Bench of the Rajasthan High Court in *Good Year (India) Ltd v. Industrial Tribunal* took the same view on a more or less similar fact situation.

20. 1968(2) L.L.J. 682.
21. The facts of the case show that the petitioner company terminated f. n. contd.
The Delhi High Court in *Khadi Gramodyog Bhavan v. Delhi Administration*,\(^{22}\) in the light of slightly different facts,\(^{23}\) held that where the Government refuses to refer the dispute, it is open to it to revise and such a revision can be made without notice to the parties. The intendment of the Court, apparent from the decision is that the power to decide whether to refer a dispute under Section 10(1) of the Act is purely an administrative act and therefore the principles of natural justice is not to be followed in such circumstances. Perhaps, it is felt, this view was discernible as the decisions were rendered before the decision in *A. K. Kraipak v. Union of India*.\(^{24}\) For *Kraipak* marks the water shed, if we may say so, in the application of natural justice to administrative proceedings.\(^{25}\) The proposition laid down by the above cases failed to impress the Madras High Court. In *Abdul Salam and Co. v. State of Tamil Nadu*,\(^{26}\) the Court took a different view. Rama-prasada Rao, J., observed:

"Though the jurisdiction exercised by the appropriate Govt., while making a reference under Section 10(1)(c) of the I.D. Act, 1947, is administrative in nature, yet, while it makes a reference, it cannot be said that the order, act or thing done by the Government is a pure and simple administrative act without having any impact upon the rights of the parties. ... If the Govt., having refused to

---

22. 1968(1) L.D.J. 79.
23. Here the Govt. once refused to refer the dispute. But later, on the recommendation of the Labour Commissioner, revised its previous order and referred the dispute for adjudication.
refer an alleged industrial dispute for adjudication subsequently re-exercises its power and refers the dispute for adjudication solely on the further representation made by the workmen, without giving the employer an opportunity to rebut the content and scope of such representation, the subsequent order, being violative of the well known rule of fair hearing, would be unjust.”

While arriving at this view the Court mainly relied upon the decision in A. K. Kraipak v. Union of India Where the Supreme Court has held that ‘The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated....... In a welfare state like India which is regulated and controlled by the rule of law it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its vitality if the instrumentalities of the state are not charged with the duty of discharging their functions in a fair and just manner, what was considered as an administrative power some years back is now being considered as a quasi-judicial power. The Court further clarified the position that though the ultimate decision springs from administrative action and is based on subjective satisfaction of the authority, yet if such an indoor investigation, forms part and parcel of process, which may terminate in any orders adverse to the interest of the persons claiming to be heard before the authorities, then the concerned authority would be under an obligation to comply with the rules of natural justice which includes the rule of fair hearing. This decision of the Court was in direct conflict with the decision of the same High Court in Radhakrishna Mills case.

A Division Bench of the Court took the task of resolving the riddle in Trichy Steel Rolling Mills Ltd. v. Gnanasambam. While leaving open the wider question whether the

27. Id., at p. 184.
29. Id., at p. 154.
principles of natural justice would apply to every administrative order, Veeraswami C.J. held, on the facts,\(^2\) that the Government's second order of reference made without giving notice to the employer was invalid. Recently these two decisions were affirmed by a Full Bench of the High Court in *Muthukrishnan v. New Horizon Sugar Mills*.\(^3\) Earlier a Division Bench of the Karnataka High Court in *Indian Telephone Industries v. State of Karnataka*\(^4\) and a Single Judge of the Calcutta High Court in *American Express International Banking Corporation v. Union of India*\(^5\) followed the view taken by the Madras High Court in *Abdul Salam and Co. case* and *Trichy Steel Rolling Mills Case*.

But a Single Judge of the Karnataka High Court in *Kirloskar Electric Co. v. Workmen*\(^6\) and a Division Bench of the Andhra High Court in *Srikrishna Jute Mills v. Govt. of A.P.*\(^7\) took the earlier view taken by the High Courts of Delhi\(^8\) and Rajasthan.\(^9\) Recently a Division Bench of the Kerala High Court in *Abdu Rahiman Haji v. Abdu Rahiman*\(^10\) approved this view.

Thus two arguments are deducible from the decisions of the High Courts. One line of argument\(^11\) is that the issue of the
second order referring the dispute for adjudication itself was an administrative act and therefore the failure to give notice to the management did not vitiate the exercise of the power under Section 10(1) of the Act. Whereas the other argument is that the power exercised in these circumstances cannot be said to be a pure and simple administrative act because it affects the rights of the parties and therefore if it violates the audi alteram partem rule it would be unjust. It is submitted that the former view is inconsistent with the current thinking on the subject as it has been held by the Supreme Court that natural Justice is now a brooding omni-presence although varying in its play. It has many colours and shades, many forms and shapes and save where valid law excludes, it applies where people are affected by acts of authority.

In the past, the principle of audi alteram partem have been invoked only before a judicial or a quasi-judicial functionary. There has been a lurking dislike to invoke the same before an administrative authority. To-day, in India as well as in England, the advances made by Natural Justice, by march of times exceed all frontiers. For the dichotomy between administrative and judicial function viz-a-viz the doctrine of natural justice is presumably absent after Kraipak in India and Schmidt in England. In the circumstances, the later view, i.e., the Government before deciding to make a reference on the basis of the representation filed by one of the parties was bound to provide an opportunity of hearing to the other party, holds good.

A pertinent point on which emphasis was made while rejecting the plea for observance of the audi alteram partem rule was that since Section 10(1) or 12(5) of the Act did not provide either expressly or by necessary implication that the principles


43a Id., at p. 870.
of natural justice should be followed by the Government, it is not necessary to follow it. But this reasoning loses its vitality in the context of the facets of pragmatic realism set out by the ratios from rulings of the Supreme Court. In A. K. Kripak v. Union of India, Hegde, J., with telling terseness set out the principle thus:

"The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it."

Justice K. K. Mathew, in Indira Nehru Gandhi v. Raj Narain, vivified the proposition thus:

"The observance of the principle of natural justice was called for whenever it was necessary to arrive at a just decision on the facts and circumstances of the case. Even if a power given to a body without specifying that the rules of natural justice should be observed in exercising it, the nature of the power would call for its observance."

The moral as pondered by the above decisions illuminates the point that even though it is not expressly provided by the provisions of the Act, the nature of the power vis-a-vis the particular circumstances of the case compel the authority to follow the principle of audi alteram partem in such cases. So much so this proposition, appears to be equally invocable even in cases with facts as illustrated earlier where an administrative decision is taken by a functionary like the Government under Section 10(1) of the Act. Failure to adhere to such principles would make the decision a nullity, as it has been said that the philo-

46. Id., at p. 156.
48. Id., at p. 2378.
Sophy behind natural justice is, in one sense, participatory justice in the process of democratic rule of law.49

Another aspect on which the High Courts of Andhra Pradesh 50 and Kerala 51 laid an accent is that if the government chose to reconsider its earlier decision, it was not necessary to give notice to the employer of the proposed action because no civil rights of any parties are being adjudicated upon. While doing so, the courts did not attempt to analyse the amplitude of the term “Civil rights” as they were carried away by the wrong premises set out by the decision of the Karnataka High Court in Kirloskar Electric Co. v. Workmen.52 This reasoning of the Courts, it is felt is not correct in view of the recent decisions 53 of the Supreme Court.

In England as early as in 1915, it was laid down 54 as a proposition that if the order of an administrative authority is one which affects the rights and property of an individual, he is entitled to have the matter determined in a judicial spirit in accordance with the principles of substantial justice. This proposition was adopted with approval in Rex v. Electricity Commissioner.55 Later in India also it came to be a generally accepted proposition that where an authority has to affect the rights of individuals it has a duty to proceed judicially.56 The Supreme Court has added gloss to this general proposition in State of Orissa v. Dr. Binapani Dei. 57 Shah, J. observed:

52. 1974 (2) L.L.J. 537.
55. [1924] 1 K.B. 171, 198 Banks, L.J. Stated “On principle and authority it is in my opinion open to this court to hold; that powers so far-reaching, affecting as they do individuals as well as property, are powers to be exercised judicially and not ministerially.”
"The law that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunal and bodies of persons invested with authority to adjudicate upon matters involving "Civil Consequences." 58

The law is now taken to be well settled that even in an administrative proceedings which involves civil consequences, the doctrine of natural justice is applicable. 59

Now the problem is to assess the semantic sweep of the terms "civil rights" and "Civil consequences," and to find out whether it is susceptible of covering a situation which we have now at hand. "Civil rights," generally speaking may be viewed as attempts to give meaning to the ideal of equality. 60 They are rights appertaining to a person by virtue of his citizenship in a state or community and capable of being enforced or redressed in a civil action. 61 This includes the rights of property, marriage, protection by the laws, freedom of contract, trial by jury etc. 62 The term "Civil consequences" not only cover infraction of property or personal rights but also of civil liberties, material deprivations and non-pecuniary damages. 63 In sum, everything that affects a citizen in his civil life inflicts a "Civil consequence." 64 That being so, it is hardly open to doubt that the expression "Civil consequences" thus takes within its sweep such cases, as the one which we have now at hand.

Here is a situations where the Government first refused to refer the matter for adjudication. Later, on the basis of the representation made either by the workman or the Union to

58. Id., at p. 1271.
60. Encyclopedia Britanica Vol. 5, 842.
62. Ibid.
64. Ibid.
the Government, the Government reconsiders its earlier order and decides to refer the matter without giving the employer an opportunity of hearing. Therefore if the Government exercise their power under these circumstances and decides to make a reference, then it has a definite impact upon the rights of the management.

Firstly, the Government’s refusal to refer the dispute in the first instance might give rise to a ‘legitimate’ expectation on the part of the employer that the same dispute would not be the subject matter of adjudication again. Therefore the employer’s legitimate expectation to act and hold to the earlier order of the Government has been affected by the second order; secondly, by reason of the reference, the petitioner is exposed to defend the proceedings before the Labour Court and other courts which necessarily involves time and money.

Moreover once a reference is made Section 33 would come into operation and the relative situation creates various inroads into the normal powers vested in the management. S. 33 places


66. S. 33 reads as follows:

33. Conditions of service, etc. to remain unchanged under certain circumstances during pendency of proceedings:-

(1) During the pendency of any conciliation proceeding before a Conciliation Officer of a Board or of any proceeding before (an arbitrator or) a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall—

(a) in regard to any matter connected with the dispute to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commence ment of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punishment, whether by dismissal or otherwise any workman concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to workman concerned in such dispute (or, where there are no such standing orders, in accordance

f. n. contd.
restrictions on the employer from changing the conditions of service etc., of the workman under certain circumstances. Any contravention of the provisions of the section can be the subject matter of a complaint in writing before an industrial adjudicator under S. 33A of the Act.

If the dispute relates to the dismissal or discharge of some

with the terms of the contract, whether express or implied, between him and the workman), —

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punishment, whether by dismissal or otherwise, that workman;

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

(3) Notwithstanding anything contained in sub-section (2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute—

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; or

(b) by discharging or punishing, whether by dismissal or otherwise, such protected workman,

Save with the express permission in writing of the authority before which the proceeding is pending.

67. S. 33A. Special provisions for adjudication as to whether conditions of service, etc. changed during pendency of proceedings:— Where an employer contravenes the provisions of Section 33 during the pendency of proceedings before a (Labour Court, Tribunal or National Tribunal), any employee aggrieved by such contravention, may make a complaint in writing, in the prescribed manner to such (Labour Court, Tribunal or National Tribunal) and on receipt of such complaint that (Labour Court, Tribunal or National Tribunal) shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit its award to the appropriate Government and the provisions of this Act shall apply accordingly.

68. In almost all cases the dispute related to discharge or dismissal of workmen.
workmen and the employer acting on the basis of the Government's refusal to refer the dispute may make fresh appointments in the vacancies caused due to the dismissal or discharge. If the Government takes a somersault after a lapse of many years and refers the dispute for adjudication and in case the adjudication results in the re-instatement of the dismissed or discharged workmen, the employer may be forced either to keep the surplus labour or to retrench them according to elaborate procedure contained in the provisions relating to retrenchment. This is likely to have an unsettling effect on the employer's financial arrangement and cause dislocation of industry. In these circumstances, it is hardly open to doubt that an order of reference made by the Government on the basis of the representation of the Union after having once rejected to make a reference will have "Civil Consequences" on the employer. Therefore, it is proper and fair that the Government before doing so, must give notice to the management so that it must have its say to the contrary on the matter.

Another important aspect left unnoticed by the High Courts is the 'diamorphism of powers' of the Government under S. 12(5) of the Act viz., the power to make reference and the power to refuse to make a reference. Under S. 12(5) the Government has to consider whether a prima facie case has been made out for reference and if so, whether it is expedient to refer the matter for adjudication. If it is so the Government may make the reference by exercising its power under S. 10(1) of the Act. If it is not so the Government may refuse to make the reference. When the government refuses to refer the matter sub-section 5 of Section 12 requires the Government to record and communicate to the parties concerned, its reasons for the refusal to make the reference. It is now well established that the Government while giving reasons for refusal to refer, there must be material to show that they have considered all the relevant

69. Ss. 25(F) and 25(N) of the Act
70. Supra, n. 5.
facts; otherwise the order will not be sustainable in law and therefore, liable to be quashed in a Writ proceedings. A vital aspect embedded in this position of law is that the Government once refused to refer a matter and gave its reasons for non reference based on relevant facts, subsequently chooses to refer on the basis of a memorandum submitted by the workmen or a Union, necessarily the second order must be based on certain new facts made out in the memorandum. Therefore in the interest of justice and fair play the other party must certainly be provided with an opportunity to repudiate the new contention raised in the memorandum. If this fairness was not extended, then the manner of exercise of power by the Government appears to be one impregnated with the principle of *audi alteram partem*:

Perhaps, it may be argued that this fear is unwarranted as the parties will be provided an opportunity to question the validity of the reference on this ground before the Labour Court or the Industrial Tribunal. But this is inconsistent with the object and purpose of the Act as it might pave the way for indefiniteness in the adjudicatory process and induce litigative mentality on the parties. Therefore it is preferable to efface the fog at the starting point itself, and leave the matter to the adjudicatory authority so that it can proceed on definite lines to resolve the dispute.

In fact, a case with similar facts came up for consideration before the Supreme Court in *Western India Match Co. Ltd. v. Western India Match Co. Workers Union*. The Court in this case held that the government’s power to refer the matter cannot be said to have been exhausted when it has declined to make a reference at an earlier stage. But it did not consider the question whether government acting on the basis of the representation

---

72. In this case the appropriate government declined to refer the dispute. A Writ Petition filed against the order of the government was dismissed. However on further representation by the Union, the government, referred the same dispute for adjudication after a lapse of six years. This order of the government was assailed (among other grounds) as violative of the principles of *audi alteram partem*.

73. 1970 (2) L.L.J. 256.
made by one party must give an opportunity to the other party to rebut the content and scope of such representation. So much so the question remains unanswered.

CONCLUSION

The trend of decisions exempted in the cases referred\textsuperscript{74} to earlier, reveals the fact that when the problem is posed to some High Courts, they took a dogmatic approach by holding that the principles of natural justice is not applicable to 'purely administrative functions' ignoring the facts of the case at hand. But this rigid view no longer holds the field.\textsuperscript{75} Natural justice, it has been said is pragmatically flexible and is amenable to capsulation under compulsive circumstances.\textsuperscript{76} Therefore, it is submitted, the courts must shed the doctrinaire approach and be tempered to adopt a realistic view as new problems call for new solution.

Here, even though the subject matter initially springs from administrative action, yet the means adopted or the manner of exercise of the power is likely to affect rights of parties and involve civil consequences as well. Therefore it would be ideal to suggest that when the government decides to refer a dispute on the basis of the representation filed by workmen or union, which once it has refused to refer, it must give the employer an opportunity of hearing. If the management did not have the opportunity to refute the content and scope of such representation then the manner of exercise of the power by the government appears to be unjust.

There may be various possibilities of the government being pressurised into making the reference subsequent to the previous refusal, for instance the change of the officer responsible for making the reference, connection of trade union with the ruling party at the relevant time, change of government from one ruling

\textsuperscript{74} Supra.

\textsuperscript{75} Maneka Gandhi v. Union of India, A.I.R. 1978 S.C. 597, 690 per Kailasam, J.

\textsuperscript{76} Mohinder Singh Gill v. The Chief Election Commissioner, A.I.R. 1978 S.C. 851, at 875 per Krishna Iyer, J.
party to another, malafides and so on. In a country where political affiliation of trade unions and splinter unionism are prevalent, it might be possible that the government may allow itself be stampeded in reviewing its earlier decision. The National Commission on Labour in India also has expressed its concern on this stultifying aspect.

The subsequent decisions of the government to make a reference after prior refusal may cause inconvenience to the employer as discussed earlier. Our Supreme Court has already expressed its concern about this aspect. It would be detrimental to the objects of the Act if disputes raised by certain employees are allowed to linger on continuously and indefinitely in a fluid and indecisive state. There were instances where the govern-


78. This could be clearly illustrated from the facts of the following cases: In *Srikrishna Jute Mills v. Govt. of A.P.*, (1977)2 L.L.J. 363, after having declined to make the reference, the government subsequently referred the same for adjudication, due to the political pressure exerted on the government by an M.L.A. In *Indian Telephone Industries Ltd. v. State of Karnataka*, (1978) 2 L.L.J. 544, the government reviewed its earlier order of refusal to refer and chose to refer the dispute for adjudication at the behest of the Chief Minister of the State. In *Abdul Rehiman Haji v. Abdu Rehiman*, 1980 Lab. I.C. 910, the government having once declined to refer, chose to refer the dispute at the intervention of the Labour Minister of the State.

79. The Commission observed:

"Though we are not convinced that collective bargaining is antithetical to consumer interests even in a democratic system, pressure on the government to intervene or not to intervene in a dispute may be powerful. It may hardly be able to resist such pressures...." *Report of the National Commission on Labour in India*, (1969), p. 327. For an elaborate discussion of the subject see pp. 325-327.

80. In *Western India Match Co. v. Western India Match Co. Workers Union*, (1970) 2 L.L.J. 256, Shelat, J. opined:

"It is true that where a government reconsider its previous decision and decides to make the reference, such a decision might cause inconvenience to the employer because the employer in the meantime might have acted on the belief that there would be no proceedings by way of adjudication of the dispute between him and the workmen." *id.*, at p. 264.
ment has referred the disputes after a very long time. This will have an unsettling effect on the organisational set up of a particular industry. Moreover, if old and stale disputes are referred then it will cause a litigative mentality on the parties and give only a pious hope in the adjudicatory process. Ultimately the purpose and policy of the legislation will be defeated.

It is, therefore desirable that the government must desist from referring stale disputes after the lapse of several years. It is best to say that fixing a limitation on the exercise of the power when the government reviews its earlier order is essential so as to end the unlimited vagaries of the government. It is also desirable that when the government re-exercises its power and decides to refer the dispute for adjudication, it must state reasons in the order of reference, showing that new facts had come to light or there was misunderstanding as to the existing facts or there was any other relevant consideration. The National Commission on Labour in India suggested that the best way to meet this delicate problem is to evolve a regulatory procedure in which the State can be seen in the public eye to absolve itself of possible charges of political intervention.

It is the duty of the legislature to give effect to this signal calling for authoritative resolution of his confused position. But if the course of legislative action is traced one could hardly find any remnants of legislative attempt on this matter. The Industrial Relations Bill 1978 also failed to clarify this aspect. It is manifest that the legislative chambers have no time to care

81. In Western India Match Co. Ltd. v. Western India Match Co. Workers Union, (1970), 2 L.L.J. 285, the facts show that the government chose to refer the dispute after a lapse of six years from its order of refusal to refer. In Shanti Theaters (P) Ltd. v. State of Tamil Nadu, (1979) 55 F.J.R. 389 where having thrice refused to refer the dispute for adjudication the government made the reference 10 years after its first order to refusal.


83. Section 104 of the Industrial Relations Bill 1978 deals with the power of the government to refer a dispute for adjudication. It contains the same provisions as that of section 10(1) and section 12(5) of the Industrial Disputes Act, 1947.
for these minions as they are too pre-occupied with other pressing business. Therefore it becomes the responsibility of the judiciary to give guidance by deriving a working criteria so as to avoid litigation in this area.

But past experience has proved the contrary. Instead of contriving a way out, the High Courts have contributed much for the confusion by rendering contradictory rulings. In addition the decision in \textit{Avon Services (Production) Agencies v. Industrial Tribunal}^{84} has let loose the minimum restrictions placed on the government by the decision in \textit{Western India Match Co. Ltd. v. Western India Match Co. Worker's Union}.\textsuperscript{85} The former decision of the Supreme Court was misquoted and misapplied by the High Court without paying heed to the facts of the case at hand.\textsuperscript{86} Therefore, it is suggested that the Supreme Court in a future case must illumine the twilight area of law and provide a speedy finality to the confusion so that the industrial community may be helped to carry on smoothly.

---

\textsuperscript{84} (1979) 1 L.L.J. 1.

\textsuperscript{85} (1970) 2 L.L.J. 256.

\textsuperscript{86} For instance see the decision of the Kerala High Court in \textit{Abdu Rehiman Haji v. Abdu Rahiman}, 1980 Lab. I.C. 910.