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Industrial Dispute and Discretionary Power of Government

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Abstract

The Industrial Disputes Act 1947, extends to whole of India. This is a comprehensive Act and it covers almost every kind of organized activities undertaken with the co-operation of the employees. The Act is not applicable to a closed industry, if a dispute arises after an industry has been closed and if the closure is real and bona fide. Section 2(s) of the Act covers every person (including an apprentice) who is employed in an industry to do any skilled, unskilled, manual, technical, clerical, operational or supervisory work either for hire or for reward. It excludes persons employed in defence i.e. Navy, Army, Air Force and also Police and those who are employed specifically in administrative or managerial or supervisory capacity and are drawing wages more than Rs.6,500/-[1]. The disputes are divided into two categories and the authority to deal with industrial disputes is specified in Section 2(a) (i) which is vested in the Central Government, as Central Government is an appropriate or competent authority in relation to such disputes. Another authority to deal with such disputes is specified in Section 2(a) (ii) which is vested in the State Government, as such State Government is an appropriate or competent authority relation to such disputes. Section 2(j) of the Act states that industry includes any trade, business, calling of employees or any calling, undertaking, manufacture, service, handicraft, industrial occupation, employment or a vocation of a workman.

An industrial dispute comes into existence when a demand is raised by the workmen and the same is refused by the employer. Such demands may be pertaining to any matter connected with the employment or with non-employment or with the conditions of labour etc. As such, if any industrial dispute is raised, it is referred to an appropriate government and if the appropriate government is of opinion that there exists an industrial dispute or there is an

[1] Kanchan Modak, India: "Workman" Under Industrial Disputes Act, 1947, http://www.mondaq.com/india/x/434328/employee+rights+labour+relations/Workman+Under+Industrial+Disputes+Act+1947, Oct. 14, 20115 [Jul. 23, 2018].

apprehension of an industrial dispute, then the appropriate government at any time refer the dispute for adjudication[2].

Key Words: dispute, industry, industrial dispute, workman, appropriate government.

Introduction:

Whenever an industrial dispute arises, the parties to the dispute first apply (either separately or jointly) to the appropriate Government for a reference of the dispute for adjudication. As per Section 10 of the Act, the Government has a discretion either to refer or not to refer the dispute for adjudication to a Labour Court, Industrial Tribunal or a National Tribunal. The decision is taken by the Government after receiving the report from the Conciliation Officer or on its own motion. Thus, the Government can use its power of making a reference on consideration of the failure report that is received from the Conciliation Officer. It is to be noted that there is no time limit prescribed under the Act for referring any dispute for adjudication. It is competent for the Government to refer any dispute for adjudication at any time. 'At any time' has to be construed as within a reasonable time. It was held in the case of *Lalit Kumar v. Union of India & Ors.*[3], that a legal remedy cannot be kept alive for unreasonable period. Even if the Statute does not provide any limitation, still the Government is justified in declining to refer an industrial dispute for adjudication for the reason that the dispute was raised after the lapse of twenty years without any justification for such long delay. In this case, it was held that the reasons recorded by the Government for not making a reference for adjudication cannot be said to be unjust or unreasonable.

Discretionary Power of Government:

The Government, in any case is competent to make a reference of an industrial dispute for adjudication when the Government had earlier refused to refer the same for adjudication. It was held in the case of *Avon Services (Production Agencies) Pvt. Ltd. v. Industrial Tribunal, Haryana*[4] it was held that a refusal of the Government to make a reference of an industrial dispute does not amount to an exercise of power under section 10 (1) of the said Act. Therefore,

[2] Advocate Khoj, http://www.advocatekhoj.com/library/bareacts/industrial/10.php?Title=Industrial%20Disputes%20Act,%201947&STitle=Reference%20of%20disputes%20to%20Boards,%20courts%20or%20Tribunals [Jul. 23, 2018].
[3] 2008 I CLR 240 (Raj. H.C.)
[4] 1979 I L.L.J. 1

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even if the Government on an earlier occasion refused to refer an industrial dispute for adjudication, it is still competent to make a reference for adjudication.

A reference of an industrial dispute under section 2-A cannot be abated in the event of death of the workman to a dispute during the pendency of the proceedings. It was held in the case of Rameshwar Manjhi (Deceased) through his son *Lakhiram Manjhi v. Management of Sangramgarh Colliery & Ors.*[5] that the death of the workman during the pendency of the proceedings under no circumstances can deprive the heirs or the legal representatives of a deceased workman of their right to continue the proceedings in the event of his or her death and thereby claim the benefits as successors to the deceased workman.

Generally, no reference can be questioned on the ground of delay alone, regarding illegal dismissal of a workman as the purpose, object and the noble aim of the Act is to resolve and reduce the differences between the employers and the employees. It was held in the case of *Ajaib Singh v. Sirhind Co-op. Marketing-cum-Processing Service Society Ltd. & Anr.*[6] that even if the delay in a case is shown to be existing, the Labour Court which is dealing with the case can appropriately mould the relief. In case the Government decides not to make a reference of a dispute for adjudication, then in that case, the Government is bound to record reasons for not referring the dispute for adjudication and also communicate the same to the parties involved in the dispute. Such situation arises, when the Government is of the opinion that the claim is frivolous or perverse, the claim is put forth for extraneous reasons or irrelevant reasons and the claim is trivial or if the Government is of the opinion that its impact can be adverse on the relations between the employer and the employees. Another reason for not referring the dispute is on the ground that the person raising the dispute is not a '*workman*'. It was held in the case of *N.D.D.B. Employees' Union v. State of Gujarat*[7], that if the person is not a workman, then the Government is not entitled to make reference.

On the other hand, in the case of *Sekhar Rudra v. Oil India Ltd. 2003*[8], it was observed that the Government had refused to make reference on the ground that a dispute relating to transfer of a workman was managerial prerogative and there was no allegation of discrimination or

[5] 1994 I CLR 9
[6] 1999 I CLR 1068 (S.C.)
[7] 1991 (1) CLR 410
[8] (4) L.L.N.689 (Gau. H.C.)

victimisation. On the other hand, it is necessary to note that the Government cannot decline reference on the grounds that the differences between the employer and the employees can be sorted out under the Model Standing Orders. It was held in the case of *Pradip Dey v. State of W.B. & Ors.*[9], that reference cannot be declined merely on the ground that the dispute can be sorted out under the Model Standing Orders as it would amount to refusal to exercise jurisdiction.

Similarly, the Government cannot refuse to make reference by just taking note of the designation of the post held by a person to the dispute. It was decided in the case of *Sharad Kumar v. Govt. of NCT of Delhi & Ors*.[10], that the Government under no circumstances can refuse to make reference merely taking note of the designation as such matters should be decided by the Labour Court or Industrial Tribunal. It would be decided on the basis of the materials placed before such Labour Court or Industrial Tribunal by the parties to the dispute.

The Government can also not cancel an order of reference made by it earlier. This was held in the case of *Indian Rayon and Industries Ltd. v. State of Gujarat & Ors*.[11], that there are no express provisions made under the Act that gives power or authority to the Government to cancel its earlier order of reference.

As per section 10 (1), there are two contingencies in which the Government must refer an industrial dispute for adjudication:

1. If the dispute relates to a Public Utility Service, then in that case it is necessary that the Government must refer the dispute for adjudication. So, if a notice of strike has been given under section 22 of the Act in any Public Utility Service, then it is necessary for the Government to refer the said dispute for adjudication.
2. If the parties to the dispute, either jointly or separately apply to the Government for making reference of their industrial dispute, then the Government must refer their dispute for adjudication.[12]

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[9] 2002 II CLR 17
[10] 2002 II CLR 235 (S. C.)
[11] 2003 III C.L.R. 217 (Guj. H.C.)
[12] S. L. Dwivedi. S. R. Samant's Employer's Guide To Labour Laws. Labour Law Agency, Mumbai, 2015, 138.

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Under no circumstances a Tribunal can decide any matter, which is not referred to it by the Government. As such, a Tribunal has to confine its adjudication only and only to the matters which are specified in the order of reference. A Tribunal has no jurisdiction to decide any matter on its own, which is not referred to it. The decision of the Government to refer a dispute for adjudication or to refuse a dispute for adjudication cannot be challenged in a Court of law as it is an administrative act of the Government.

In case the Government refuses to refer an industrial dispute for adjudication, then on the behest of one of the parties a fresh reference can be made. It was held in the case of *Central Bank of India v. O. P. Single & Ors.*[13], that if a reference is refused by the Government, then thereafter at the behest of one of the parties a fresh reference can be made. It is necessary for the Government to give a notice to the party which is affected, of the fresh reference being made.

As per section 10 (A), when the parties to the industrial dispute voluntarily refer any apprehended or existing industrial dispute between them for Arbitration (i.e. to any person of their choice), then it is known as *'Voluntary Arbitration'*. Under such circumstances, like a Labour Court or a Tribunal, the Arbitrator so appointed by the parties to an industrial dispute has to investigate the said dispute and submit his award to the Government[14].

Now the question arises, will the order of an Industrial Tribunal disposing of a reference of an industrial dispute relating to general demands as 'not pressed' at the request of the union which had earlier espoused the cause of the work me concerned, but subsequently lost its membership in the establishment of the said employer, amount to an 'Award'? As per section 2 (b) of the Act, an 'Award' means an interim or a final determination of an industrial dispute as specified in the order of reference or a question associated with industrial dispute specified in the order of reference. It is necessary that before the decision of a Tribunal can be regarded as an 'Award', Industrial dispute has to be determined and determination involves an act of adjudication. Which means an act or decision on the basis of merits. Under such circumstances, the order of the Tribunal here does not constitute an 'Award'. Therefore, it is open to the Tribunal to restore

[13] 2003 III CLR 686 (Del. H. C.)
[14] S. L. Dwivedi. S. R. Samant's Employer's Guide To Labour Laws. Labour Law Agency, Mumbai, 2015, 136.
[14] 2003 III CLR 686 (Del. H. C.)

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the reference if another union comes forward to espouse the cause of the affected workmen and if it requests the Tribunal to do so[15].

Conclusion:

There are authorities under the Act which are entrusted with duties to resolve the dispute between the parties such as Conciliation Officers, Labour Courts, Industrial Tribunals and National Industrial Tribunals. It is necessary to understand the difference between Industrial Tribunals and the Civil Courts. As per Section 11 (1), the Civil Courts have power basically to enforce existing contracts. On the other hand, the Industrial Tribunals have power to modify the existing contracts or if necessary to impose new contracts. The best part of Labour Courts, Industrial Tribunals and National Tribunals is that they have the discretion to follow any procedure they may deem fit, subject to the rules made under the Act. Another important factor to be noted here is that the provisions of the Evidence Act, in their strict sense, aren't applicable to the proceedings before such Courts and Tribunals.

[15] S. L. Dwivedi. S. R. Samant's Employer's Guide To Labour Laws. Labour Law Agency, Mumbai, 2015, 137.
[15] 2003 III CLR 686 (Del. H. C.)