MAHABIR JUTE MILLS LTD. GORAKHPUR

v.

SHIBBAN LAL SAXENA AND ORS.

July 30, 1975

[A. N. RAY C. J., K. K. MATHEW, V. R. KRISHNA IYER AND S. M. FAZAL ALI, JJ.]

U.P. Industrial Disputes Act, 1947—*Sec.* 3—*Whether Government while deciding whether a dispute should be referred for adjudication entitled to rely upon the secret report sent by the conciliation officer—Whether an admn. order of the Government should be a speaking order—Principles of natural justice—Whether court can direct Government how to exercise its discretion—Delay in disposal of labour matters.*

The appellant employs about 1000 workmen. In the year 1955 all the 1000 workmen were dismissed by the appellant after holding certain enquiries. Out of the 1000 workmen 200 workmen apologised and they were reinstated. The remaining 800 workmen were, however, not reinstated. The workmen Union invoked jurisdiction of the Regional Conciliation Officer under clause 4(1) of the Government Notification dated 14-7-1954 passed under sec. 3 of the U.P. Industrial Disputes Act, 1947. A Conciliation Board consisting of the Additional Regional Conciliation Officer as the Chairman and one representative each of the Management and Labour as members was constituted. Before the Conciliation Board, no settlement could be arrived at. The members of the Conciliation Board sent their reports to the Labour Commissioner which were placed before the Government. The Additional Rgional Conciliation Officer who was the Chairman of the Board sent a secret report to the Labour Commissioner recommending that the allegations made by the workers against the management were baseless and should not be entertained. The Government by its order dated 28-2-1956 refused to make a reference to the Industrial Tribunal on the ground that it was not expedient to do so. The workmen filed a Writ Petition in 1958 for quashing the order of the Government dated 28-2-1956 and for directing a fresh reference. The learned Single Judge allowed the Writ Petition in October, 1963. The Appellate Bench of the High Court dismissed the appeal of the management in 1972. The Writ Petition was pending in the High Court for 14 years. The learned Single Judge set aside the order of the Government on the following grounds :

(1) The Government relied on the secret report sent by the Additional Regional Conciliation Officer.

(2) The order of the Government was not a speaking order.

The Division Bench held that the order need not be a speaking order. Rules of natural justice would apply to administrative proceedings. It is not necessary that the administrative orders should be speaking orders unless the Statute specifically enjoins such a requirement. It is desirable that such orders should contain reasons when they decide matters affecting the rights of parties. The Division Bench set aside the order of the Government refusing to make a reference on the following grounds :

(1) The Government took into consideration the Secret report which had seriously prejudiced and coloured its decision.

(2) The Additional Regional Conciliation Officer should have shown the secret report to other members of the Conciliation Board in accordance with the principles of natural justice.

A (3) The Government order was passed purely on the secret report sent by the Additional Regional Conciliation Officer as also the report of the Labour Commissioner.

Pursuant to the judgment of the High Court, the State Government made a reference in the year 1973.

Allowing the appeal by certificate,

B HELD : (1) The administrative decisions are not generally required to be accompanied by statement of reasons. In a diverse Society such as ours, the Government has to work through several administrative agencies which have got a very wide sphere and if every administrative order is required to give reasons it will bring the Governmental machinery to a stand-still. [172F-G]

2. There is no reliable material on record to show that the Government order was passed mainly on the secret report of the Additional Regional Conciliation Officer or of the Labour Commissioner. In the counter affidavit filed on behalf C of Government it was specifically stated that in the opinion of the Government it was not expedient to refer the dispute to the adjudication after the matter was fully considered by the Government. Under section 4K of the U.P. Industrial Disputes Act, the Government has wide discretion to act under certain circumstances. If the Government on the basis of the material before it comes to the conclusion that no real dispute existed and it was not expedient to make a reference one can hardly find fault with the order of the Government. There was no reason for excluding the secret report submitted by the Additional Re- D gional Conciliation Officer at all. [173E-H; 174E-G]

3. Before the Additional Regional Conciliation Officer made his report all the rules of natural justice were fully complied with. The parties were given hearing, their points of view were fully considered and, in fact, the representatives of the management and that of the labour were the members of the Board. There is no provision for submitting the report by Chairman and members of the Board to each other. The principles of natural justice are very essential but they have got their own limits and cannot be stretched too far. *A. K. Kraipak's* case dis- E tinguished. In the present case, all the indicia of the principles of natural justice were present. [176B-E; 177A, D]

4. Even if the High Court thought that the impugned order of the Government suffered from any legal infirmity all that it could have done was to ask the Government to reconsider it but it had no jurisdiction to direct the Government how to act and how to exercise its statutory discretion which was conferred on the Government by section 4K of the U.P. Industrial Disputes Act. There was absolutely no warrant for the High Court in prohibiting the Government from F considering the secret report of the Additional Regional Conciliation Officer or that of the Labour Commissioner. [178B-D]

5. The order of the High Court is not legally sustainable and must be quashed. [178D]

6. The reference made by the Government in the year 1973 was not in exercise of its independent decision but was mainly because of the directions given in G the High Court judgment. If the order of the High Court is quashed it will undoubtedly materially affect the decision of the Government in making a reference to the Industrial Tribunal. Had the Government made a reference uninfluenced by the High Court's direction the situation would have been different. Any subsequent proceedings which come into existence as a result of the High Court order would fall to the ground as a logical corollary of the setting aside of the High Court judgment. [179A-B]

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[1. We would like to make it clear that the Government has ample discretion to make a reference to the Industrial Tribunal under sec. 4K of the U.P. Industrial Disputes Act if it so thinks fit. Even if a reference was refused by

the Government that will not debar the Government from making a reference at a later time if it is satisfied that under the changed circumstances the reference is necessary. [179D-F] A

2. The Court is constrained to observe that labour matters should have been given top urgency and should not have been allowed to prolong for such a long period in the High Court, otherwise, inordinate delay results in a situation causing embarrassment both to the court and to the parties. It is very necessary that such matters should be disposed of by the High Court within a year of the presentation of the petition. [172A-C] B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 781 of 1973.

From the judgment and order dated the May 8, 1972 of the Allahabad High Court in Special Appeal No. 914/1963.

S. V. Gupte, A. K. Sen, E. C. Agarwala and *Promod Swarup,* for the appellant. C

K. R. Chowdhuri and *S. L. Sethia,* for respondents 1 and 2.

G. N. Dikshit and *O. P. Rana,* for respondents 3 and 4.

The Judgment of the Court was delivered by

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FAZAL ALI, J. This is an appeal by the management of M/s Mahabir Jute Mills situated at Gorakhpur by a certificate granted by the High Court of Allahabad under Art. 133 of the Constitution of India. M/s Mahabir Jute Mills Ltd. was formed some time in the year 1946 and soon thereafter when Shibban Lal Saxena one of the respondents was elected as President of the Labour Union of the Mill disputes arose between the workers and the Company as a result of which Shibban Lal Saxena sent notice to the management on December 31, 1946 threatening a general strike. Thereafter several disputes arose between the parties which were some times settled, sometimes re-opened and in this appeal we are not concerned with those matters. In the previous disputes the order of the management retrenching some workers was upheld by the Regional Conciliation Officer and against that Shibban Lal Saxena served a notice of strike listing 18 demands and calling upon the management to reinstate the retrenched workers and pay them bonus. This notice was given on March 31, 1954. On April 16, 1954 a total strike was launched and Shibban Lal Saxena left for China. During his absence it appears that the management arrived at some sort of settlement with the working President of the Union and the dispute for the time being was resolved on July 11, 1954. Shibbanlal Saxena, however, returned from China and with his re-entry into the Union matters assumed serious proportions and the disputes reached a high pitch. Mr. Saxena is alleged to have excited the workers and wanted to re-open the agreement reached between the management and the working President of the Union on July 11, 1954. He also started an agitation and the workers responded to the go-slow call given by Mr. Saxena as a result of which the production of the Company came down from 500 cuts to 300 cuts resulting in huge losses to the Company as alleged by the management. It is further alleged that Mr. Saxena had delivered a number of inflamatory speeches as a result of which the management charge-sheeted two workers for wilful jamming E F G H

A of bobbins in the Spinning Section as a result of which the spinning work came to a stop. On January 4, 1955 the management held an inquiry against the two workers and three other workers who appeared to be in sympathy with them were also charge-sheeted for their stay-in-strike. This strike continued right upto January 13, 1955 in spite of the efforts of the management to arrive at a settlement. This was followed by a charge-sheet which was served by the management on various workers B on February 5, 1955. Mr. Saxena protested to the management saying that the charge-sheets were absolutely baseless. A notice was put on the main gate of the Mill on February 22, 1955 informing that an inquiry would be held on February 25, 1955 and after inquiry which the respondents described as a mere farce a large number of workers were served dismissal notices. It appears that out of 1000 workers all of them had been dismissed from service but 200 workers who apologised C were reinstated and taken back. In view of these developments the Union invoked jurisdiction of the Regional Conciliation Officer under clause 4(1) of the Government Notification dated July 14, 1954 passed under s. 3 of the U.P. Industrial Disputes Act, 1947. A Conciliation Board consisting of the Additional Regional Conciliation Officer as the Chairman and Shibban Lal Saxena and Shri Arora representing the labour and the management respectively as members was constituted. D The Conciliation Board heard the case but unfortunately no settlement could be arrived at. Consequently the reports of the members of the Board forwarded to the Labour Commissioner were placed before the Government. Mr. P. C. Kulshreshtha the Additional Regional Conciliation Officer and Chairman of the Board sent a secret report to the Labour Commissioner recommending that the allegations made by the workers against the management were baseless and should not be enter- E tained. After considering the reports, the Government of U.P. by its order dated February 28, 1956 refused to make a reference to the Industrial Tribunal on the ground it was not expedient to do so. There was some controversy before the Single Judge of the High Court on the question as to when the order of the Government was received by the workers and the High Court accepted the plea of the workers that there was sufficient delay in communicating the order of the Government to F the workers as a result of which a writ petition was filed before the High Court after a year and a half. But the High Court found that the petitioners were not guilty of latches. This matter is a closed issue and need not detain us.

A writ petition was eventually filed on May 15, 1958 for quashing G the order of the Government dated February 28, 1956 and for directing a fresh reference. The writ petition was allowed by the order of the Single Judge dated October 7, 1963. Thereafter the management went up in special appeal to the Division Bench of the Allahabad High Court which decided the appeal on May 8, 1972 and quashed the order of the Government and directed it to reconsider the same in the light of the observations made by the High Court. It would thus appear that H this writ petition was pending in the High Court for as many as fourteen years with the result that a strange situation has developed to-day. By the time the appeal has been heard by this Court more than seventeen years have elapsed when the impugned order of the Government

was passd and almost twenty years after the management had dismissed 800 workers. It is said that the management after dismissal of the old workers had appointed new workers who had by now put in about twenty years of service. We are constrained to observe that labour matters should have been given top urgency and should not have been allowed to be prolonged for such a long period in the High Court, otherwise the inordinate delay results in a situation causing embarrassment both to the Court and to the parties. It is, therefore, very necessary and in the fitness of things that such matters should be given top priority and should be disposed of by the High Court within a year of the presentation of the petition.

The learned Single Judge while allowing the petition set aside the order of the Government and directed the Government to make a reference to the Industrial Tribunal after ignoring the secret report sent by the Additional Regional Conciliation Officer. Another reason which the Single Judge gave was that as the order of the Government did not state any reasons and was not a speaking order it was legally invalid and was fit to be quashed. The Division Bench of the High Court in appeal has not accepted, and in our opinion, rightly this part of the order of the High Court which was set aside. The Division Bench has held that as the order of the Government was purely an administrative order, unless there was any provision which required the Government to give reasons for the order, the same could not be vitiated for the absence of the reasons. The High Court observed thus :

> "The function of the Government is administrative. In law administrative decisions are not generally required to be accompanied by a statement of reasons. There is nothing in the Industrial Disputes Act or the notification aforesaid requiring the State Government to state its reasons in support of its conclusion. There was nothing particular in the present case impelling the issuance of such a direction to the State Government."

We find ourselves in complete agreement with the view taken by the High Court on this point. In a diverse society such as our's the Government has to work through several administrative agencies which have got a very wide sphere and if every administrative order is required to give reasons it will bring the governmental machinery to a stand-still. It is well-settled that while the rules of natural justice would apply to administrative proceedings, it is not necessary that the administrative orders should be speaking orders unless the statute specifically enjoins such a requirement. But we think it desirable that such orders should contain reasons when they decide matters affecting the rights of parties. The Division Bench of the High Court however has set aside the order of the Government refusing to make a reference to the Industrial Tribunal and directed it to reconsider the matter on the following three grounds :

> (1) That the Government took into consideration the secret report which had seriously prejudiced and coloured its decision;

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(2) that in accordance with the principles of natural justice the Regional Conciliation Officer should have shown the secret report to the other members of the Conciliation Board so that they may have an opportunity to rebut the same; and

(3) that the Government order was based purely on the
B secret report sent by the Additional Regional Conciliation Officer as also the report of the Labour Commissioner.

In the aforesaid order of the Division Bench of the High Court certain mandatory directions have been given to the Government to ignore the secret report as also the report of the Labour Commissioner and to consider the reports of the other members of the Conciliation Board,
C namely, Shibban Lal Saxena and Mr. Arora. The Division Bench of the High Court has, however, granted the certificate of fitness by its order dated April 9, 1973.

Coming to the first ground which weighed with the High Court in setting aside the order of the Government refusing to make a reference to the Industrial Tribunal it seems to us that the High Court has pro-
D ceeded on a complete misconception of the real position and on a premise which is wrong on a point of fact. Having perused the materials placed before us, we find that there is no reliable material on the record at all to show that the Government order referred to above was based mainly on the secret report of the Additional Regional Conciliation Officer or of the Labour Commissioner. The order does not say so : it only recites that the reference to the Industrial Tribunal was
E refused because the Government did not think it expedient to make a reference. The High Court, however, completely overlooked the specific averment made in the counter-affidavit filed by the Government before the High Court which is at p.32 of Volume II of the Paper Book. In paragraph-29 of this counter-affidavit; while rebutting the allegations made by the petitioner it was stated thus :

F "That with respect to the contents of para 38 of the said Affidavit it is stated that the opinion of the Government that it was not expedient to refer the dispute to adjudication was formed after the matter was fully considered by the State Government. The report of the Labour Commissioner submitted through his letter No. 7241/I-CR-CB-5(147)/1955, dated 22nd October, 1955, was also before the Department
G concerned. A true copy of the said letter of the Labour Commissioner is annexure III to this affidavit.

"The Government took the decision after considering the said report and other surrounding circumstances. It is denied that there was any discrimination against the petitioner Union. Each case was duly considered on its merits and only those cases were dropped which in the opinion of the Government
H were not fit for reference."

This averment which has not been proved to be false manifestly shows that the Government before making the impugned order had considered

all the aspects including the report of the Chairman and the members of the Conciliation Board, the Labour Commissioner and other surrounding circumstances. In these circumstances the finding of the Division Bench of the High Court that the order of the Government was based merely on the secret report of the Chairman or that of the Labour Commissioner is not sustainable. We fail to understand on what basis the High Court has presumed that the Government acted solely on the secret report of the Regional Conciliation Officer.

Under s. 4-K of the U.P. Industrial Disputes Act the statute confers the power on the Government to refer any industrial dispute if it is of the opinion that such a dispute exists or that any matter is connected with, or relevant to, the dispute. The Section runs as follows :

> "Where the State Government is of opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing refer the dispute or any matter appearing to be connected with, or relevant to, the dispute to a Labour Court if the matter of industrial dispute is one of those contained in the First Schedule or to a Tribunal if the matter of dispute is one contained in the First Schedule or the Second Schedule for adjudication :
>
> Provided that where the dispute relates to any matter specified in the Second Schedule and is not likely to affect more than one hundred workmen, the State Government may, if it so thinks fit, make the reference to a Labour Court."

This section, therefore, gives a wide discretion to the State Government to act under certain circumstances. If the Government on the basis of the materials before it, comes to the conclusion that no real dispute existed and it was not expedient to make a reference one can hardly find fault with the order of the Government passed under s. 4 K of the U.P. Industrial Disputes Act. There can be no doubt that while the secret report of the Additional Regional Conciliation Officer and the report of the Labour Commissioner, like other circumstances, had to be considered by the Government in making its overall assessment of the situation, there was no reason for excluding the secret report submitted by the Additional Regional Conciliation Officer at all. In these circumstances the first ground on which the Division Bench has set aside the Government order in refusing to refer the matter to the Industrial Tribunal is not legally sound and cannot be sustained.

As regards the second ground, the main contention of Mr. Gupte learned counsel for the appellant has been that the High Court was in error in applying the principles of natural justice to a matter like this, and submitted that the cases relied upon by the Single Judge of the High Court regarding the application of the principles of natural justice to administrative proceedings cannot be invoked in the facts and circumstances of this case. To begin with we have to examine the ambit and scope of the Conciliation Board and the procedure adopted by it by virtue of the provisions contained in the

notification issued by the Government under s. 3 of the U.P. Industrial Disputes Act. The relevant portion of the notification runs thus :

"5. Functions of Boards and submission of Memorandum or Report.

(1) Upon reference of a dispute to the Conciliation Board under clause 4 it shall be its duty to endeavour to bring about a settlement of the dispute, and for this purpose the Board shall, in such manner as it thinks fit, and without delay, investigate the dispute and all matters affecting the merits and just settlement thereof, and may do all such things as it thinks fit for the purpose of inducing the parties to come to an amicable settlement.

(2) In any case where the Conciliation Board is successful in bringing about an amicable settlement between the parties it shall prepare a memorandum stating the terms of settlement arrived at and the Chairman shall send copies thereof to the State Government, the Labour Commissioner, U.P and the parties concerned.

(3) Where no amicable settlement can be reached on one or more than one issue, the Chairman shall, within seven days (excluding holidays but not annual vacations observed by courts subordinate to the High Court) of the close of the proceedings, send to the State Government and the Labour Commissioner, a full report setting forth the steps taken by the Board for ascertaining the facts and circumstances relating to the dispute and for bringing about an amicable settlement thereof.

(4) The memorandum under sub-clause (2) or the report under sub-clause (3) shall be submitted by the Chairman within thirty days (excluding holidays but not annual vacations observed by courts subordinate to the High Court) of the date on which the reference was made to the Board.

Provided that the State Government may extend the said period from time to time.

(5) The memorandum under sub-clause (2) or the report under sub-clause (3) shall be signed by the Chairman and such members as may be present :

Provided that the memorandum under sub-clause (2) shall also be signed by the parties to the dispute;

Provided that nothing in this clause shall be deemed to prevent any member of the Board from submitting a dissenting report."

A perusal of this notification would clearly show that the jurisdiction of the Conciliation Board is very limited. The procedure prescribed for the Board does not involve any adjudicatory process but is purely of an exploratory nature and what the Board has to do is to make an effort to bring about an amicable settlement between the management and the workers, and if it fails to do so it has to send a detailed report to the Government. That is the limited area within which the Board has to function. Nevertheless it is not disputed in this case that the Conciliation Board had held a full investigation in the matter, heard the parties and framed as many as 33 issues after going into the matter and then the Chairman and the members sent their reports. Thus before making the reports, all the rules of natural justice were fully complied with : the parties were given hearing, their points of view were fully considered and in fact the representatives of the management and that of the labour were the members of the Board. There is no provision in the notification or in the U.P. Industrial Disputes Act which enjoins that the report submitted by the Chairman or any other members should be shown to one another. This also does not appear to be necessary. The High Court seems to think that because the Chairman did not show his secret report to the other members of the Board, this has resulted in the violation of the principles of natural justice. We are, however, unable to agree with this line of reasoning. The principles of natural justice are no doubt very essential but they have got their own limits and cannot be stretched too far.

We would now like to deal with some of the cases which have been referred to in the judgment of the High Court and which are also relied upon by Mr. Chowdhri, counsel for the respondents. In the first place reliance was placed on *A. K. Kraipak and Ors. etc.* v. *Union of India and Ors.*(1) where this Court observed as follows :

> "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....if the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries."

This Court, however, took care to point out as follows :

> "What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that

(1) [1970] 1 S.C.R. 457.

A some principles of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

The facts in *Kraipak's case* (supra) are quite different from the facts in the present case. In *Kraipak's case* the main grievance of the petitioner was that in the Selection Board which was constituted for recommending the promotion of the State Officers to the Indian B Forest Service Cadre the Chief Conservator of Forests was also a member of the Board, although he himself was also a candidate for promotion to the Indian Forest Service Cadre. Thus what happened was that the Chief Conservator of Forests acted as a Judge in his own cause. This was undoubtedly a gross violation of the principles of natural justice, because the very person who stood as C a candidate also sat in the Selection Board which had to decide his own future as that of his rivals. Such is, however, not the case here. The Conciliation Board had completed its proceedings and the stage at which, according to the High Court, the rules of natural justice had to be applied was the stage of submitting the report. Full hearing was given to the parties concerned. Thus all the *indicia* of the principles of natural justice were present on the facts of the D present case. In these circumstances we are satisfied that at *Kraipak's case* could not be called into aid in support of the reasons given by the High Court. The procedure adopted in *Kraipak's case* was obviously so abhorrent to the notions of justice and fair-play that rules of natural justice were at once attracted.

Reliance was also placed on *Union of India* v. *Col. J. N. Sinha and Anr.*(1) where also it was pointed out by this Court :

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> "Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power."

F In the present case we have already pointed out that neither clause (5) of the notification referred to above, nor s. 3 of the U.P. Industrial Disputes Act contained any provision which required that the members of the Conciliation Board were to show their reports to one another. All that was required was that they should send their reports to the Government through the Labour Commissioner. This G was undoubtedly done. We are, therefore, unable to see any infraction of the rules of natural justice in the present case.

Reliance was laso placed on the decision of this Court in *State of Orissa* v. *Dr. (Miss) Binapani Dei and Ors.*(2). This case also does not appear to be of any assistance to the respondents because in that case the entire procedure of inquiry held was in violation of the rules of natural justice. That, however, is not the position H here.

(1) [1971] 1 S. C. R. 791.

(2) [1967] 2 S. C. R. 625.

It was then contended by Mr. Gupte that after quashing the order of the Government refusing to make a reference and asking it to reconsider the same it was not open to the High Court to have given peremptory directions so as to circumscribe the statutory jurisdiction of the Government under s. 4-K of the U.P. Industrial Disputes Act. In our opinion this contention is well-founded and must prevail. Even if the High Court thought that the impugned order of the Government suffered from any legal infirmity all that it could have done was to have asked the Government to reconsider it but it had no jurisdiction to direct the Government how to act and how to exercise its statutory discretion which was conferred on it by s. 4-K of the U.P. Industrial Disputes Act. There was absolutely no warrant for the High Court in prohibiting the Government from considering the secret report of the Additional Regional Conciliation Officer or that of the Labour Commissioner. The Government was fully entitled to consider the matter in all its comprehensive aspects and the secret report of the Chairman of the Conciliation Board or that of the Labour Commissioner were undoubtedly relevant materials which the Government could have considered. The High Court could not debar the Government from considering those matters nor could it compel the Government to exercise its discretion in a particular manner. In these circumstances we are satisfied that the order of the High Court is not legally sustainable and must be quashed.

The other point which arises for consideration is as to the relief which could be granted to the appellant. Mr. Gupte, counsel for the appellant, submitted that after the judgment of the High Court the Government had passed another order dated February 6, 1973, by which it has in consonance with the directions given by the High Court made a reference to the Industrial Tribunal. It was submitted that it was not at all proper for the Government to have revived a dead issue after more than twenty years and further as the order of the Government was based on the order of the High Court, if the order of the High Court was quashed the order of the Government making a reference to the Industrial Tribunal would fall automatically. We find ourselves in agreement with the learned counsel for the appellant. There can be no doubt that the order of the Government dated February 6, 1973 is undoubtedly based on the order passed by the Division Bench of the High Court. This is proved by a letter written by Mr. Vishnu Prakash Up Sachiv (Deputy Secretary), U.P. Government, to the Manager of the appellant Mills. The relevant portion of the letter after being translated in English runs thus :

> "I am directed to say that their Lordships of the High Court in their Judgment in Special Appeal No. 1963/915 State *Vs.* Shri Shiban Lal Saxena (M/s. Mahabir Jute Mills Sahjanwa) have ordered that the Government after taking the dissenting reports from both the parties should consider on the question whether the aforesaid dispute should be referred for adjudication.
>
> Therefore you are requested that within 10 days from the date of the receipt of this letter to send your dissenting re-

A port and whether further you want to say on your behalf to the Government.

A perusal of this letter clearly shows that the Government did not exercise its independent decision under s. 4-K of the U.P. Industrial Disputes Act but was guided mainly by the judgment of the High Court B and the directions given in Special Appeal filed in the High Court. If the order of the High Court is quashed, then it will undoubtedly materially affect the decision of the Government in making a reference to the Industrial Tribunal. Had the Government made the reference uninfluenced by the High Court's directions the legal situation would have been different.

C The learned counsel for the respondents submitted that no prayer was made by the appellant for quashing the order of the Government for making a reference to the Industrial Tribunal. It was, however, not necessary for the appellant to make such a prayer because if the High Court's order is quashed, then any subsequent proceeding which comes into existence as a result of the High Court's order would fall to the ground as a logical corollary of our finding. The learned counsel D for the respondents after due consideration submitted that he would have no objection if the Government order for making a reference is quashed provided the Government's discretion to make a fresh reference to the Industrial Tribunal on the dispute is not fettered. We would, however, like to make it clear that the Government has ample discretion to make a reference to the Industrial Tribunal under s. 4-K of the U.P. Industrial Disputes Act if it so thinks fit. This Court in E *Western India Match Company Ltd.* v. *Western India Match Co. Workers Union and Others*(1) clearly held that even if a reference was refused by the Government that will not debar the Government from making a reference at a later time if it is satisfied that in the changed circumstances a reference is necessary.

For the reasons given above, we allow the appeal, quash the order F of the High Court dated April 9, 1973 and as a consequence of this we also set aside the order of the Government dated February 6, 1973 for making a reference to the Industrial Tribunal. In the peculiar circumstances of this case, however, we make no order as to costs throughout.

P.H.P. *Appeal allowed.*

(1) [1970] 3 S.C.R. 370.