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On a consideration of the facts and circumstances of this case, I would agree with the observation of Harbans Singh, J., in the order of reference that the plea of Bishan Dass, appellant, to the effect that it was as a consequence of the order of reversion that his name was removed from the promotion list 'D' is correct and that this appeal must be decided on that basis.

In view of what has been stated above, Regular Second Appeal No. 341 of 1962 must succeed and is accordingly accepted. The judgment and decree of the first appellate Court is set aside and for the same is substituted the judgment and decree of the trial Court with costs throughout.

Duaj, J.

INDER DEV DUA, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before I. D. Dua and R. S. Narula, J.J.

MESSRS DALMIA DADRI CEMENT LTD.,—*Petitioner*

versus

PUNJAB STATE AND OTHERS,—*Respondents*

Civil writ No. 2578 of 1964

1965

May 24th.

Industrial Disputes Act (XIV of 1947)—S. 10—Notification making a reference to Industrial Tribunal—Whether can be amended by adding more names of workmen—General Clauses Act (I of 1898)—S. 21.—Whether applicable—Second notification not expressed to be issued in the name of Governor—Whether valid.

Held, that it will depend on the nature of the amendment to decide as to whether it should be allowed or not and the power of amendment etc., given by section 21 of the General Clauses Act cannot be so used as to nullify or render ineffective the other provisions of the Industrial Disputes Act, 1947. The provisions of section 21 of the General Clauses Act contain only a rule of construction and it is neither possible nor proper to lay down definitely the circumstances in which it is open to the State Government to amend or not to amend any clerical or other errors in the original notification issued under section 10(1) of the Act.

Held, that the impugned notification in this case must be struck down for three reasons. Firstly, this is not an independent notification under section 16(1) of the Act. Reading the two notifications, it is obvious that the original notification did not need any amendment and could stand by itself. By the second notification, a dispute between two different parties is sought to be included in the existing reference. Even if the provisions of section 21 of the General Clauses Act could be invoked by the State Government, the defence under that provision is not available to the respondent in this case, because the impugned notification has not been issued 'in the like manner' and 'subject to the like sanction and conditions' as the original notification. The impugned notification does not show that the conditions precedent for the exercise of jurisdiction by the appropriate Government under section 10(1) of the Act have been satisfied in this case. Secondly, the State Government is not leaving the conduct of the original reference to the Industrial Tribunal but is seeking to interfere in it by the impugned notification by which an order in the nature of one envisaged by Order 1, rule 10, Code of Civil Procedure, is being passed by the Government in respect of proceedings pending before the Tribunal. This cannot be allowed to be done. The third reason why the notification is liable to be struck down is that it is neither expressed to be in the name of the Governor nor purports to have been signed by the order of the Governor and in spite of an opportunity having been available to the State, no affidavit has been filed to say that it was, in fact, the opinion of the Governor that this additional dispute should also be referred to the Labour Tribunal. Normally, the first objection could, in certain circumstances, be treated as an objection of form and not of substance but where the statute prescribes certain conditions for the exercise of a power and those are not satisfied, the question relates to the inherent power of the authority exercising it and ceases to be a matter of mere form.

Case referred by the Hon'ble Mr. Justice Inder Dev Dua on 23rd February, 1965 to a larger Bench for decision of an important question of law involved in the case and the case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice, I. D. Dua and the Hon'ble Mr. Justice R. S. Narula on 24th May, 1965.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of mandamus, certiorari, *or any other appropriate writ, order or direction be issued quashing the references made to the Industrial Tribunal dated 26th June, 1964 and 10th August, 1964 and to the Labour Court dated 28th October, 1964.*

ANAND PARKASH AND S. K. JAIN, ADVOCATES, for the Petitioner.

A. M. SURI, FOR THE ADVOCATE-GENERAL, AND ANAND SARUP, ADVOCATE. for the Respondents.

ORDER

Narula, J. NARULA, J.—The facts necessary for deciding this writ petition lie in a rather narrow compass. Messrs Dalmia Dadri Cement Limited, the petitioner company—hereinafter referred to as the Company—employs a substantial number of workmen. These workmen have formed three separate labour Unions, namely (i) The Dalmia Dadri Cement Factory Men's Union (respondent No. 4), hereinafter called the Men's Union; (ii) The Cement Factory Workers' Union (respondent No. 5), hereinafter referred to as the Workers' Union; and (iii) The Cement Udyog Karmchari Sangh (respondent No. 6), hereinafter referred to as the Sangh. Each of these three Unions represents different set of workmen. The petitioner Company states that the interests of these Labour Unions clash *inter se* and they have their own rivalries. On August 16, 1963, the Workers' Union served a notice of demand on the Company requiring the Company to confirm in service certain workers, who were employed on temporary or casual basis. Obviously, the Company did not concede the demand. The State Government, by their letter of December, 1963 (the date is not specified), declined to make a reference of the dispute for adjudication to some Labour Court or Tribunal for the reasons stated in that letter, copy of which is annexure '1' to the writ petition.

Similarly, by order, dated 16th May, 1964 (copy attached to the writ petition as annexure 'II'), the State Government declined to refer for adjudication a similar demand of the Sangh, on the ground that the demand did not constitute an industrial dispute within the meaning of section 2(k) of the Industrial Disputes Act (14 of 1947)—hereinafter referred to as the Act—as the notice of demand did not enjoy the support of a substantial number of workmen of the Company. The Men's Union did not lag behind in this respect. It appears that this Union also served a similar notice of demand, dated the 28th December, 1963, copy of which has been filed in this case by that Union as Annexure 'R.I.' to its written statement. Two demands were made in the said notice. Though we are concerned with demand No. 1 only, it is convenient to reproduce both the demands as contained in that notice,

dated the 28th December, 1963. These demands were in the following terms:—

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Demand No. 1.

All the workmen, who have completed three months' service on the permanent nature of job should be made permanent as per approved standing order of the Company, the list will be submitted on demand.

Demand No. 2—

Break system should be stopped. All the previous breaks should not debar the continuity of service of workmen."

By notification, dated the 26th June, 1964 (copy annexure 'III' to the writ petition), this dispute was referred by the Punjab Government (which, it is not disputed, is the appropriate Government in this case) under section 10(1) (d) of the Act to the Industrial Tribunal, Punjab. For facility of reference the subject-matter of the notification is reproduced below—

"Whereas the Governor of Punjab is of opinion that an industrial dispute exists between the workmen and the management of Messrs Dalmia Dadri Cement Limited, Charkhi Dadri, regarding the matter hereinafter appearing;

"And whereas the Governor of Punjab, considers it desirable to refer the dispute for adjudication; Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Punjab hereby refers to the Industrial Tribunal, Punjab, Chandigarh, constituted under section 7-A of the said Act, the matters specified below, being either matters in dispute or matters relevant to or connected with the dispute as between the said management and the workmen for adjudication:—

(1) Whether the workers—as per list as annexure 'A'—should be made permanent by the management of the factory ?

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(2) Whether the management be required to do away with practice of bringing about breaks in the services of the workers and whether the services of the workers as per list as annexure 'B' should be treated as continuous ? If so, with what detail ?.

(3) Whether the management be required to abolish the contract system branding and making values in gunny-bags and further whether the management be required to take the workmen as per list as annexure 'C' on permanent roll of the factory and to pay them wages in accordance with the recommendations of the Central Wage Board for Cement Industry ? If so, with what details ?

(4) Whether the action of the management in terminating the services of workmen as per list as annexure 'D' from 1st January, 1964, is justified and in order ? If not, to what relief they are entitled ?"

(Annexures 'A' to 'D'—lists of workmen covered by demands Nos. 1, 2, 3 and 4, respectively, are attached with this notification).

Though in the writ petition an attempt had been made to impugn the validity of the reference, dated the 26th June, 1964, the learned counsel for the petitioner Company, at the hearing before us, rightly conceded that there was no cogent ground on which he could attack the validity or legality of this reference. It appears that in pursuance of this notification parties appeared before the Industrial Tribunal and filed their pleadings.

It is not clear on the record whether it was as a result of any subsequent representation made by any of the other Unions or otherwise that the Punjab Government issued a 'corrigendum' notification, dated the 10th August, 1964, (copy annexure 'IV' to the writ petition), the operative part of which reads as follows—

"In Punjab Government Labour Department notification No. 229-3-Lab.-I-64/12620, dated 26th

June, 1964, published in the *Punjab Government Gazette Extraordinary*, dated 26th June, 1964, the following 43 names may also be added to the list of 95 workers as mentioned in annexure 'A'."

This is followed by a list of 43 workmen.

Parties appeared before the Industrial Tribunal with reference to this notification also. It appears that on the 28th of August, 1964, the Punjab Government, issued still another notification under section 10(1)(c) of the Act, referring to the Labour Court, Rohtak, the matters specified in that notification including a claim for confirming 35 workmen of the Company. A copy of this notification is attached to the writ petition as annexure 'V'. Parties also appeared before the Labour Court, Rohtak in pursuance of notices issued by that Court on this third reference.

One of the anomalies, which was alleged to have arisen in these circumstances, was that 17 workmen of the Company, in respect of whom claim for confirmation had been made, were common in the list of the reference to the Industrial Tribunal, Punjab, Chandigarh, and to the list of workers, whose claim to the same effect had been referred to the Labour Court, Rohtak. This writ petition came up for hearing before my learned brother (Dua J.), on 23rd February, 1965. The learned counsel for the petitioner Company stated before this Court on that occasion that the third Union had made a statement before the Labour Court that the demand in respect of the 17 workmen who, according to the petitioner Company, are common to both the proceedings, was not being pressed before the Labour Court. Dua J., therefore, made a note of this fact in his order of reference and observed that the objection to two different Tribunals having been constituted for dealing with the same controversy was no more tenable in view of these circumstances. Counsel for the petitioner Company has not resiled from that position and it is, therefore, wholly unnecessary to deal with the original challenge to the pending proceedings on that account. After hearing the counsel for the parties at substantial length, the learned Single Judge referred this case to a larger Bench as the matter was of great importance and the learned Single

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Judge was not inclined to agree with the judgment of the Calcutta High Court in *Kesoram Cotton Mills Limited* v. *Second Labour Court and others* (1). That is, how, this case has come up before us.

The learned counsel for the petitioner Company has only impugned the second notification, that is the one headed as 'Corrigendum', dated the 10th August, 1964, by which all that was done was to add the names of 43 workmen to the list of 95 workers mentioned in annexure 'A' to the notification, dated 26th June, 1964. The attack is two-fold. Firstly, it is urged that except for the circumstances in which parties can be added to a pending reference under section 10(5) of the Act, there is no jurisdiction in a State Government to add any persons as parties to a reference, who were not originally so added. In the alternative, it is contended that if the State Government invokes section 10(5) in aid of the validity of the impugned notification, the said provision has no application to the facts of this case, because the forty-three workers whose names are sought to be added to the original reference, do not constitute a separate establishment, group or class of establishments as is referred to and envisaged in that provision of law. The workers whose names are contained in list 'A' to the notification, dated 26th June, 1964, and the forty-three workers, whose names are sought to be added by the impugned notification, are not shown to form different establishments. In order to refer the dispute relating to the forty-three workers named in the impugned notification, the Punjab Government should have, according to the learned counsel, issued an independent and separate notification under section 10(1) of the Act, in the name of the Governor of the Punjab, according to law. Counsel contends that no provision in the Act allows the scope of an existing reference being enlarged either by the addition of new disputes or new parties by merely issuing a corrigendum notification. Under section 10(1) of the Act, the appropriate Government itself must be satisfied of the existence of an industrial dispute and of the expediency of referring it for adjudication and on such satisfaction it has to state in the order of reference that "the Government is of opinion that an industrial dispute exists or is apprehended" and then make the reference.

(1) 1963(1) L.L.J. 169.

This is the argument of the counsel for the petitioner Company. Lastly, he states that even if the impugned notification could be issued in the manner in which it had been issued it should be in the name of the Governor and could then be authenticated by a Secretary to the Punjab Government under Article 166 of the Constitution in accordance with the rules of procedure; but inasmuch as the notification has not been expressed to be issued in the name of the Governor of the Punjab, it is wholly unauthorised, as Shri Hardev Singh Chhina, Secretary to the Government of Punjab, Labour Department, who purports to have issued the notification, has no authority under the Act to make a reference under section 10(1) of the Act in his own name.

On behalf of the respondent, it has been argued, as stated in para 9, of the written statement of respondent No. 1, that the Punjab Government was within its rights in amending the original notification as there was no substantial change in the terms of reference and it was simply in order to add to the list of workmen contained in the original notification that the impugned notification was issued. In spite of the challenge contained in the writ petition, the State Government has not taken care to solemnly affirm or to prove that the Governor of Punjab was, in fact, satisfied of the existence or apprehension of an industrial dispute and of the expediency of making the reference in respect of the added workmen. According to the learned counsel for the petitioner Company, however, the impugned notification is a matter of substance and is not in the nature of a genuine corrigendum which might possibly be resorted to for correcting some clerical mistake. According to him, an independent notification under section 10(1) was, therefore, necessary in this case if it was intended by the State Government to have the dispute of added 43 workmen also adjudicated upon by the Industrial Tribunal.

A passing reference was made by the learned counsel for the petitioner Company to the judgment of Bishan Narain, J., in the *Textile Workers Union, Amritsar*, v. *The State of Punjab* (2), but it was frankly conceded by the counsel that this judgment has since been over-ruled by

(2) A.I.R. 1957 Punj. 255.

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the Supreme Court in the *State of Bihar* v. *D. N. Ganguly* (3). It is, therefore, no use referring to the judgment of Bishan Narain, J., except to point out that he had held that on the strength of the rule of construction contained in section 21 of the General Clauses Act, the appropriate Government had the power to add to, amend, vary or rescind any notification originally issued by it under section 10(1) of the Act. In the Supreme Court case what was impugned was the power of the appropriate Government to cancel or revoke a notification originally issued under section 10(1) of the Act and the Supreme Court held, overruling the view expressed in the judgment of Bishan Narain, J., as follows—

> "The scheme of the Act, plainly appears to be to leave the conduct and final decision of the industrial dispute to the industrial tribunal once an order of reference is made under section 10(1) by the appropriate Government. We must accordingly hold that Bishan Narain, J., was in error in taking the view that the appropriate Government has power to cancel its own order made under section 10(1) of the Act."

When the judgment of the Madras High Court in *South India Estate Labour Relations Organisation* v. *The State of Madras* (4), was cited before their Lordships of the Supreme Court in the aforesaid case, (*The State of Bihar* v. *D. N. Ganguly*) (3), it was observed as follows—

> "It would thus appear that the question before the Court was whether the appropriate Government can amend the reference originally made under section 10, so far as the new matters not covered by the original reference are concerned, and the Court held that what the appropriate Government could have achieved by making an independent reference, it sought to do by amending the original reference itself. This decision would not assist the appellant because in the present case we are not considering the power of the Government to amend or add to, a reference

(3) A.I.R. 1958 S.C. 1018.
(4) A.I.R. 1955 Mad. 45.

made under section 10(1). Our present decision is confined to the narrow question as to whether an order of reference made by the appropriate Government under section 10(1) can be subsequently cancelled or superseded by it."

The judgment of the Madras High Court in the aforesaid case of *South India Estate Labour Relations Organisation* v. *The State of Madras* (4), which is clearly against the contentions of the petitioner Company, was not, therefore, dissented from by the Supreme Court. Nor was it directly affirmed, and the question of the power of the Government to amend the existing notification appears to have been left open by the Supreme Court in this case. It was argued on behalf of the State that the objection to the impugned notification is a mere matter of form and not of substance, particularly when no motive is ascribed to the State for resorting to the procedure which it adopted in issuing this notification. Mr. Anand Parkash, learned counsel for the petitioner Company, contends that where the power of a statutory authority is questioned, the matter of motive is wholly irrelevant and no amount of *bona fides* can vest an authority with power to do something which it is enjoined to do by a statute only in particular circumstances and in a specified manner.

Out of the cases cited by the learned counsel for the petitioner Company, the judgment of B. N. Banerjee, J., in *Kesoram Cotton Mills Limited* v. *Second Labour Court and others* (1), does appear to support him. In that case by the original order of reference under section 10(1) of the Act, the validity of the order of dismissal of the workers named in list 'A' attached to the reference and the validity of the order of suspension of the workmen named in list 'B' attached to the order of reference, had been referred for adjudication. The State Government thereafter issued a corrigendum to the original order of reference by which corrigendum the names of the workmen in list 'A' were transferred to list 'B' and some more names were also added to list 'B' and the names of workmen in list 'B' were transferred to list 'A'. The transfer of the names of workmen from list 'A', to list 'B' and *vice versa* was to correct and rectify an error and the addition of the names was said to be to rectify an omission of certain names from list

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'B'. The employer challenged the validity of the corrigendum notification and the same was struck down by the learned Single Judge of the Calcutta High Court. Adverting to the addition of names of new workmen, the Calcutta High Court held that the eleven workmen whose names were subsequently added in list 'B' of the corrigendum notification did not constitute an establishment or group or class of establishments of the similar nature as the petitioner company and, therefore, the names could not be added to the reference under section 10(5) of the Act. It was conceded by the Calcutta High Court in that judgment that—

> "If there is an apparent error in the order of reference (and no question arises either of supersession, cancellation, modification of the reference or of any addition thereto), such an error might be corrected by way of corrigendum."

The addition of new names to the reference was, however, held to be not such an apparent error. The State Government was expressly allowed in the judgment to correct the apparent error in the names of the dismissed employees and the suspended employees having been erroneously put in the opposite lists.

Mr. Anand Parkash, strongly relies on the judgment of the Calcutta High Court and contends that no addition of parties can be made to a pending reference in any contingency other than that covered by section 10(5) of the Act and that the corrigendum notification must be struck down on the short ground that it is devoid of any statutory power behind it. In support of his second contention, Mr. Anand Parkash, has emphasised that in para 15(iv) of his writ petition it had been specifically averred by the petitioner Company that the Secretary to the Punjab Government was not competent to amend or add to an order of the Governor of Punjab, and that in the corresponding paragraph of the written statement of the State a mere vague denial has been made and it has only been stated that—

> "The contention of the petitioner has no force in view of the position already explained in para 9 above."

In para 9 of the written statement all that is stated is that the Government was within its rights to amend the notification as there was no substantial change in the terms of reference. What is contended by the learned counsel is that in spite of an opportunity having been allowed to the State to swear an affidavit as to the satisfaction of the Governor so as to rule out the applicability of the second attack on the notification, the Government has not made any such affirmation and that, therefore, the Government cannot call in aid the provisions of Article 166 of the Constitution in this case. Reliance is placed by him in this connection on the judgment of the Andhra Pradesh High Court in *the Employers of Daily News* v. *Workmen of Daily News* (5), wherein it was held that—

> "An omission to make and authenticate an executive decision in the form mentioned in Article 166 does not make the decision itself illegal for the provisions of that Article are merely directory and not mandatory."

The leading case on which reliance is placed by the learned counsel for the petitioner Company in this respect is the judgment of the Supreme Court in *Dattatraya Moreshwar* v. *The State of Bombay* (6), wherein it was held per B. K. Mukherjea, J., as follows—

> "In my opinion, Article 166 of the Constitution which purports to lay down the procedure for regulating business transacted by the Government of a State should be read as a whole .....while clause (1) relates to the mode of expression of an executive order or instrument, clause (2) lays down the way in which such order is to be authenticated; and when both these forms are complied with, an order or instrument would be immune from challenge in a Court of law on the ground that it has not been made or executed by the Governor of the State. This is the purpose which underlies these provisions and I agree with the learned Attorney-General that non-compliance with the provisions of either of the

(5) A.I.R. 1960 A.P. 556.
(6) A.I.R. 1952 S.C. 181.

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clauses would lead to this result that the order in question would lose the protection which it would otherwise enjoy, had the proper mode for expression and authentication been adopted. It could be challenged in any Court of law even on the ground that it was not made by the Governor of the State and in case of such challenge the onus would be upon the State authorities to show affirmatively that the order was in fact made by the Governor in accordance with the rules framed under Article 166 of the Constitution."

The learned counsel relying on this authority pronounced by the Supreme Court states that the impugned notification is not expressed to be in the name of the Governor nor does it purport to have been signed by a Secretary of the Government by the order of the Governor and that, therefore, the protection afforded by Article 166 of the Constitution is not available to the State in defending this attack on the notification and that the State had failed even to affirm on affidavit that the Governor of the State was, in fact, of the opinion that this notification should issue, and the requisite affidavit not having been filed, the notification should be struck down on this short ground.

The only reply which could be given by the learned counsel for the State to this objection was that the objection had not been taken up in the writ petition in so many words. It is correct that the objection on this score was not worded in the writ petition specifically in the manner in which it has been argued before us. But I think that para 15(iv) of the writ petition gave a clear indication of the point and the denial of the same by the State is wholly vague and does not weaken in any manner the attack against the notification in question on this score by the petitioner Company.

Mr. Anand Mohan Suri, learned counsel for the State, relied regarding the main question on the judgment of the Assam High Court, reported in *Rivers Steam Navigation Company Limited* v. *Radhanath Hazarika* (7), wherein it

(7) A.I.R. 1960 Assam 39.

was held that the State Government could amend a notification under section 10(1) of the Act by adding a party or even by additing a new issue. Sarjoo Prosad, C.J., who wrote the judgment in that case, held in this connection as follows—

> "The second contention of Mr. Das is that once having made a reference under section 10 of the Industrial Disputes Act, the Government had no authority to make any changes or modifications in the said notification. The learned counsel points out that in the earlier notification making the reference the dispute was confined merely to the workmen on the one hand and the contractor on the other. He submits that on the terms of the notification, dated 4th September, 1956 it appears that Government had superseded the earlier notification dated 11th August, 1956. He contends that this supersession could not be possible under section 10 of the Industrial Disputes Act, or any other provision of the law; and inasmuch as Government purported to issue a notification of this kind, the notification is invalid. In support of his contention the learned counsel has relied upon a decision in *D. N. Ganguly* v. *State of Bihar* (8) ..... Reliance was placed on section 21 of the General Clauses Act, in support of the argument that the State Government had implied power of revoking the reference. It was argued that the authority having the power to make a reference had also the power to revoke the same..... The observations in this judgment, therefore, in my opinion, do not support the contention of Mr. Das, that it was not open to the State Government even to modify the notification which they had made earlier impleading the petitioners as a party to the dispute ..... His Lordship (S. K. Das, C.J., of Patna High Court) does not hold that in no case an amendment is possible. All that he says is that no such amendment would be permissible so as to nullify the provi-

(8) A.I.R. 1956 Pat. 449.

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sions of the Industrial Disputes Act. Mr. Das has been unable to point out to us that by the amendment in the instant case any of the provisions of the Industrial Disputes Act have been nullified. ..... Mr. Das concedes that it was open to Government to make a fresh reference if it thought that a dispute existed between the petitioners on the one hand and the workmen on the other ..... I am unable to see why the amendment, by virtue of that power, could not be permitted. The power to make the amendment of the nature with which we are concerned in the present case, therefore, flows from section 10 itself, because if in a given case by some mistake or oversight a person or a party whose presence was necessary for a proper adjudication of the industrial dispute is not made a party, then it would be the clear duty of the Government making a reference under section 10 to make such a person a party to the dispute, even by a subsequent notification. Otherwise the reference itself would be rendered infructuous and the duty or the obligation which the statute imposes upon the Government would not be carried out. For this reason we have no doubt that Government had the power on the terms of section 10 of the Industrial Disputes Act itself read with section 21 of the General Clauses Act, to make the proposed amendment. Indeed that this was a matter of mere form and not of substance has been recognised by a decision of the Madras High Court in *South India Estate Labour Relations Organisation* v. *State of Madras* (4) ....."

Mr. Suri, then relied on the judgment of the Madras High Court in *South India Estate Labour Relations Organisation* v. *State of Madras* (4). In that case, it was held that this kind of objection was of form than of substance and when it was open to the Government to make an independent reference under section 10 concerning any matter not covered by the previous reference, the fact that it took the form of an amendment to the existing reference was a mere technicality which did not merit any consideration.

Reliance was then placed by the learned counsel for the State on a judgment of the Supreme Court in *Kamla Prasad Khetan* v. *Union of India* (9). This case did not relate to the Industrial Disputes Act, but a similar question arose in the matter of an amendment of an order made under section 18-A of the Industries (Development and Regulation) Act, 1951. In that connection, it was held by the Supreme Court that—

> "The power to amend, which is included in the power to make the order, is exercisable in the like manner and subject to the like sanction and conditions, if any, as govern the making of the original order ....."

The Supreme Court, however, pointed out that at the same time it must be remembered that section 21 of the General Clauses Act, embodies a rule of construction and that rule must have reference to the context and subject-matter of the statute to which it is being applied. It was held in that case that the rule contained in section 21 of the General Clauses Act, could not be extended to a revocation or cancellation of an original notification under section 18-A of the Industries (Development and Regulation) Act.

To supplement the argument of the State, Mr. Anand Sarup, appearing for one of the contesting respondents, invited our attention to the judgment of the Madras High Court in the *Workers employed in the Thambi Motor Service* v. *The Management of Thambi Motor Service* (10), but I do not think it can assist us substantially in deciding the precise question, which is before us in this case.

Reliance was also placed by Mr. Anand Sarup on a judgment of the Bombay High Court in *State of Maharashtra* v. *Anantha Krishnan* (11). In that case, the Government of Bombay modified the original order of reference by a subsequent amending notification by substituting the company's demand on the item referred for adjudication. On a writ petition having been filed on behalf of the Union for quashing the order of the Government on the ground that

(9) A.I.R. 1957 S.C. 676.
(10) 1963 (1) M.L.J. 33.
(11) (1961) 2 L.L.J. 732.

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the State Government had no power to cancel an order of reference, the writ was originally granted by a learned Single Judge of the High Court. The appeal of the State against the grant of the relief was accepted by the Division Bench judgment of the Bombay High Court (Chinani, C.J. and Mody, J.) and it was held that the first order having been made through a mistake, the Government was competent to correct it and that, in fact, there was no cancellation of the original order of reference, as the original order did not embody the decision of the Government. It was held that it was the second order which was issued to correct the mistake that contained in the decision of the Government. The dictum of the Bombay High Court does not apply to the instant case at all. No error or omission has been corrected by the impugned notification in the case before us. It is not disputed that it was the order of the Punjab Government, which was notified on the 26th of June, 1964. It is also not disputed that the forty-three workmen, whose names are sought to be added to the reference by the amending notification, were not parties to the original reference or to the dispute sought to be adjudicated upon. Nor were these 43 persons necessary parties to the original reference, nor were their names shown to have been omitted by some mistake.

Mr. Anand Parkash, learned counsel for the petitioner Company, vehemently contends that the provisions of section 10(1) of the Act are mandatory and whenever a notification purporting to have been issued under that section is impugned it has to be shown by the Government that the notification had been issued because the appropriate Government was of the opinion that the requirements of section 10(1) of the Act, had been satisfied. Section 10, argues Mr. Anand Parkash cannot be equated with Article 166 of the Constitution. The provisions of section 10, according to him, are mandatory and not merely directory.

After a careful consideration of the cases cited before us I am of the opinion that it is not necessary to lay down the proposition in this respect as broadly as was done by Venkatarama Aivar, J., in *South India Estate Labour Relations Organisation* v. *The State of Madras* (4), or by Sarjoo Prosad, C.J., in *Rivers Steam Navigation Company Limited* v. *Radhanath Hazarika* (7), nor is it necessary to narrow down the powers of the State Government to the extent to which Banerjee, J. went in *Kesoram Cotton Mills Limited*

v. *Second Labour Court* (1). I am in respectful agreement with the view expressed in this connection by S. K. Das, C.J., in *D. N. Ganguly* v. *State of Bihar* (8), wherein it was held that it would depend on the nature of the amendment as to whether it would be allowed or not and that the power of amendment, etc., given by section 21 of the General Clauses Act, could not be so used as to nullify or render ineffective the other provisions of the Industrial Disputes Act. The appeal by the State of Bihar against the said judgment of the Patna High Court was dismissed by the Supreme Court as stated above,—*vide State of Bihar* v. *D. N. Ganguly* (3). The provisions of section 21 of the General Clauses Act contain only a rule of construction and it is neither possible nor proper to lay down definitely the circumstances in which it is open to the State Government to amend or not to amend any clerical or other errors in the original notification issued under section 10(1) of the Act.

The impugned notification in this case, however, must be struck down for three reasons. This is not an independent notification under section 10(1) of the Act. Reading the two notifications, it is obvious that the original notification did not need any amendment and could stand by itself. By the second notification, a dispute between two different parties is sought to be included in the existing reference. Even if the provisions of section 21 of the General Clauses Act could be invoked by the State Government, the defence under that provision is not available to the respondent in this case, because the impugned notification has not been issued 'in the like manner' and 'subject to the like sanction and conditions' as the original notification. In *Kamla Prasad Khetan* v. *Union of India* (9), while dealing with the power to amend a notification under section 18-A of the Industries (Development and Regulation) Act, their Lordships of the Supreme Court observed as follows—

> "In the case of an amendment made in an order under section 18-A, Industries (Development and Regulation) Act, in the same manner as the original order, that is, by means of a notified order the only question that has to be decided by the Court, sanction being not required for an order under section 18-A, is whether the amending order complied with the like conditions under which the original order was made. For that purpose it is

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essential to understand the true nature of the conditions which have to be fulfilled before an order under that section could be passed."

Obviously, the impugned notification does not show that the conditions precedent for the exercise of jurisdiction by the appropriate Government under section 10(1) of the Act have been satisfied in this case. Applying the test laid down by the Supreme Court in *D. N. Ganguly's case*, I hold that the State Government is not leaving the conduct of the original reference to the Industrial Tribunal, but is seeking to interfere in it by the impugned notification by which an order in the nature of one envisaged by Order 1, rule 10, Code of Civil Procedure, is being passed by the Government in respect of proceedings pending before the Tribunal. This cannot be allowed to be done. The third reason why the notification is liable to be struck down is that it is neither expressed to be in the name of the Governor nor purports to have been signed by the order of the Governor and in spite of an opportunity having been available to the State, no affidavit has been filed to say that it was, in fact, the opinion of the Governor that this additional dispute should also be referred to the Labour Tribunal. Normally, the first objection could, in certain circumstances, be treated as an objection of form and not of substance, but where the statute prescribes certain conditions for the exercise of a power and those are not satisfied, the question relates to the inherent power of the authority exercising it and ceases to be a matter of mere form.

In this view of the matter, this writ petition is allowed and the impugned notification, dated the 10th August, 1964 (copy annexure 'IV' to the writ petition), is struck down as invalid. This may not be construed to debar the appropriate Government from making a separate reference of the dispute relating to those 43 workers also to the Labour Tribunal or Court in accordance with law, if the Government finds that an Industrial dispute exists *qua* those workers and that it is expedient to have it adjudicated upon. In the peculiar circumstances of the case the parties are left to bear their own costs.

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INDER DEV DUA, J.—I agree.

B.R.T.

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