Karnal Leather Karamchari ... vs Liberty Footwear Company (Regd.) & Ors on 31 August, 1989

Equivalent citations: 1990 AIR 247, 1989 SCR (3)1065, AIR 1990 SUPREME COURT 247, 1989 (4) SCC 448, 1990 LAB. I. C. 301, (1989) 3 JT 537 (SC), 1989 75 FJR 409, (1990) 1 UPLBEC 60, 1989 2 CURLR 531, (1990) 1 SERVLJ 108, (1990) 1 KER LT 56, 1989 2 LABLJ 550, 1990 SCC (L&S) 60, (1989) 2 LAB LN 507

Author: K.J. Shetty

Bench: K.J. Shetty, A.M. Ahmadi

PETITIONER:
KARNAL LEATHER KARAMCHARI SANGHATAN(REGD.)

Vs.

RESPONDENT:
LIBERTY FOOTWEAR COMPANY (REGD.) & ORS.

DATE OF JUDGMENT31/08/1989

BENCH:
SHETTY, K.J. (J)
BENCH:
SHETTY, K.J. (J)
AHMADI, A.M. (J)

CITATION:
1990 AIR 247 1989 SCR (3)1065
1989 SCC (4) 448 JT 1989 (3) 537
1989 SCALE (2)460

ACT:
Industrial Disputes Act 1947--Sub-section 3 of Section 10A-Publication of the arbitration Agreement in the Gazette--Whether obligatory or directory and non-publication thereof--Whether renders the award invalid and unenforce-able--Delay in publication--Effect of-Industrial Disputes (Central) Rules 1967--Rule 7.

HEADNOTE:
Respondent No. 1 is a registered partnership firm which deals in leather foot wears at Karnal in Haryana and at

other places under the name and style of "Liberty Footwear Company". It had an industrial dispute with his workmen; the latters' Union complaining that the management had terminated the services of more than 200 workmen. The management asserted that the persons whose services had been terminated were not its employees at the material time. The dispute having remained unsealed, the workmen went on strike as a result whereof the management had to lay off certain workers. The agitation of the workers in front of the factory created a law and order problem and the police had to intervene in the matter. With a view to bring about a settlement, the official authorities such as Labour Commissioner, Labour and Public Health Minister and other. Concerned officials all came and extended their good officers. They succeeded in their efforts and on March 31, 1988, the parties entered into an agreement containing the terms of settlement of their dispute. It was agreed between them that a committee consisting of five persons, two from the management and two from the workmen's union, with the Deputy Commissioner Karnal, as the President should be constituted, as arbitrators, to determine the dispute. The Committee gave its award on 29.4.1988 and 11.5.1988 directing the management to reinstate in all 159 workers. The management did not implement the award by reinstating the workmen but instead challenged the validity of the award by means of a Writ Petition before the High Court. The management inter alia contended before the High Court that (i) the committee procedural irregularities; (ii) that the committee did not afford opportunity to the management to produce evidence and (iii) that the arbitration agreement was not published in the official Gazette as required by

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Sub-section (3) of Section 10A of the Act and thus the award made without such publication was bad and invalid. The High Court without going into other contentions accepted the Writ Petition only on the ground of non-publication of the agreement in the Gazette. It held that the requirement of Sub-section 3 of Section 10A is mandatory and its non-compliance would vitiate the award. It accordingly directed the State Government to publish the agreement in the Gazette and also directed the committee to determine the dispute afresh and pass the award after the publication of the agreement.

The employees' Union has preferred this appeal after obtaining Special Leave. In the meanwhile the management had preferred Letters Patent Appeal against certain directions of the Single Judge of the High Court which is impugned in this appeal and the State Government has referred the dispute to the Industrial Tribunal, Ambala, under section 10(1) of the Act for adjudication.

Disposing of the appeal with directions this Court,

HELD: At both the places viz, in Sub-section (3) and Rule 7 of the Industrial Disputes (Central) Rules, 1967, it may be noted that the legislature has used the word "shall".

In the context in which the word has been, there is, little doubt about obligation to publish the agreement in the official Gazette. [1075F]

It is now well established that the wordings of any provision are not determinative as to whether it is absolute or directory. Even the absence of penal provision for non-compliance does not lead to an inference that it is only directory. The Court, therefore, must carefully get into the underlying idea and ascertain the purpose to be achieved notwithstanding the text of the provision. [i076D]

The Act seeks to achieve social justice on the basis of collective bargaining. Collective bargaining is a technique by, which dispute as to conditions of employment is resolved amicably by agreement rather than coercion. The dispute is settled peacefully and voluntarily although reluctantly between labour and management. The voluntary arbitration is a part of infrastructure of dispensation of justice in the industrial adjudication. The arbitrator thus fails within the rainbow of statutory tribunals when a dispute is referred to arbitration it is therefore necessary that the workers must be made aware of the dispute as well us the arbitrator whose award would ultimately bind them. They must know what is referred to arbitration, who is their arbitrator, and

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what is in store for them. They must have an opportunity to share their views with each other and if necessary to place the same before the arbitrator. This is the need for collective bargaining and there cannot be collective bargaining without involving the workers. The Union only helps the workers in resolving their disputes with management but ultimately it would be for the workers to take decision and suggest remedies. The arbitration agreement must therefore be published before the arbitrator considers the merits of the dispute. Non-compliance of this requirement would be fatal to the arbital award. [1076F-1077B]

In the modern, welfare state, healthy industrial relations are a matter of paramount importance. In attempting to solve industrial disputes, industrial adjudication, therefore, should not be delayed. Voluntary arbitration appears to be the best method for settlement of industrial disputes. [1077G]

The Court, therefore, gave the following directions:

(i) The State Government shall publish condition No. '3' in the arbitration agreement in the Government Gazette within four weeks from to-day; (ii) The agreement containing condition No. '3' stands referred to the Industrial Tribunal, Haryana at Ambala for passing arbitration award in accordance with law (iii) The reference made under section 10(1) of the Act to Industrial Tribunal is quashed and (iv) The management shall withdraw the aforesaid Letters Patent Appeal and the Writ Petition pending in the High Court within 3 weeks from to-day failing which the High Court

shall dispose them of as having become infructuous. [1078D-F]

Romington Rand of India Ltd. v. The Workmen, [1968] I SCR 164; Modern Stores v. Krishna das, AIR 1970 NIP 17; Landara Engineering and Fondary Works, Phillaur. v. The Punjab State & Ors., [1969] Lab. I.C. 52; Mineral Industry Association v. The Union of India & Anr., AIR 1971 Delhi 160; Rasbehary Mohanty and Presiding Officer Labour Court & Anr., [1974] II LLJ Orissa 222 to 226; Workmen of Woodlands Hotel v. K. Srinivasa Rao, [1972] Vol. 42 F.J.R. 223 at 226; Kathyee Cotton Mills Ltd. v. District Labour Officer & Ors., [1981] 1 LLJ Kerala 417 at 419, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDiCTION: Civil Appeal No. 1765 of 1989.

From the Judgment and order dated 1.6.1988 of the Punjab and Haryana High Court in C.W.P. No. 4046 of 1988. A.K. Goel for the Appellants.

B.D. Agarwal, V. Ram Swarup, S.K. Bagga, S.R. Srivastava and Ms. Anu Mohala for the Respondents.

The Judgment of the Court was delivered by K. JAGANNATHA SHETTY, J. This appeal by leave from a decision of the single Judge of Punjab & Haryana High Court raises a very short but important question of law relating to the validity of an arbitral award made before publishing the arbitration agreement under the Industrial Disputes Act, 1947 (The 'Act').

The facts which give rise to this appeal may briefly be stated thus.

The respondent-1 is a registered partnership firm carry- ing on its trading activities in leather footwears at Karnal and some other places under the name and style of 'Liberty Footwear Company'. It has its head office at Karnal in the State of Haryana. It had a serious dispute with the workers. The workers' union complained that the management has ille- gally terminated more than 200 workers. The respondent denied that claim and asserted that the persons whose serv- ices were alleged to have been terminated were not its employees at the material time. This dispute however, re- mained unsettled and the workers went on strike which took a violent turn. The management had to lay off certain workers and that added fuel to the fire. The agitation of the work- ers before the factory premises created law and order prob- lem attracting the police to intervene. The Labour Commis- sioner and other top officials of the District arrived and they initiated conciliation proceedings. The then Labour Minister and the Public Health Minister of the State Govern- ment were also alerted. They also came and extended their good offices to bring about a settlement. They succeeded in their efforts. On March 31, 1988, the parties entered into an agreement containing the terms of settlement of their dispute. On behalf of the management, the agreement was signed by respondents 1, 7 and 8. On behalf of the workers, it was signed by the President and Secretary of the workers' union. It was

mutually agreed that a committee consisting of five persons, two from the management and two from the union with the Deputy Commissioner, Karnal as the President should be constituted. They would be the arbitrators to determine the said dispute.

The committee of arbitrators was accordingly constitut- ed. The Committee gave its award on April 29, 1988 and May 11, 1988 directing the management to reinstate in all 159 workmen. This was the beginning of another dispute which led to frustrated litigation. The management did not reinstate the workers. It challenged the validity of the award by way of writ petition in the High Court. The award was challenged in the first place on procedural irregularity committed by the Committee of arbitrators. It was, inter alia, contended that the Deputy Commissioner did not participate in the entire proceedings and during his absence the administrator Municipal Committee Karnal held the enquiry. It was also alleged that the Committee did not afford opportunity to the management to produce evidence. Secondly, it was claimed that the arbitration agreement was not published in the official Gazette as required under sub-sec. (3) of Sec. 10A of the Act and the award made without such publication would be invalid. The learned single judge of the High Court who considered the matter did not examine all the contentions urged by the management. He, however, accepted the writ petition only on the effect of non-publication of the agree- ment in the Gazette. He expressed the view that the require- ment of the sub-sec. (3) is mandatory and its non-compliance would vitiate the award. With this conclusion he quashed the award and directed the State Government to publish the agreement in the Gazette. He also directed the Committee to determine the dispute afresh and pass an award after publi- cation of the agreement.

The employees' union without preferring Letters Patent Appeal before the High Court against the judgment of learned single judge has directly appealed to this Court by obtain- ing special leave. Ordinarily, we would have revoked the leave since the party has not exhausted the remedy available by way of appeal. But in view of the importance of the question raised and the need to decide it promptly in the interest of industrial adjudication, we proceed to consider the appeal on merits.

The principal question that arises for consideration is whether non-publication of the arbitration agreement as required under subsec. (3) of sec. 10-A, renders the arbi- tral award invalid and unenforceable?

Before outlining the statutory provisions having a bearing on the question, we may call attention to the rele- vant terms of the arbitration agreement.

> "1. xxx xxx xxx xxx
>
> 2. xxx xxx xxx xxx
>
> 3. Out of alleged more than 200 termi- nated workers the workers doing the work of cutting and sking are taken back with immediate effect and about the reinstatement of the remaining workers a committee is constituted. In the Com- mittee two members namely S/Shri Ishwar and Ram Badan will represent the workers and S/Shri Sunil Bansal and Mohan Lal Wadhwa will be the representatves of the

> Management. The Deputy Commissioner, Karnal would be the President of the Committee. This Committee will decide this matter that out of those alleged more than 200 workers whose services have been terminated how many and who are workers of Liberty Group. The workers found to be of the Liberty Group would resume work with immediate effect. The Committee will take decision in this behalf upto 26th April, 1988. In order to ascertain as to which of the workers worked in which factory of the Liberty Group, the President shall have the right to adopt any procedure or method and the decision given by him shall be binding on both the parties."

The parties entered into the above agreement and re- ferred the dispute for arbitration under sec. 10-A of the Act. Section 10-A is, therefore, important and must be set out in full:

> "10-A. Voluntary reference of disputes to arbitration--
>
> (1) Where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may, at any time before the dispute has been referred under sec. 10 to a Labour Court or Tribunal or National Tribunal, by a written agreement, refer the dispute to arbitration and the reference shall be to such person or persons (including the presiding officer of a Labour Court or Tribunal or National Tribunal) as an arbitrator or arbi-

trators as may be specified in the arbitration agreement.

(l-A) where an arbitration agreement provides for a reference to the dispute to an even number of arbitrators, the agreement shall provide for the appointment of another person as umpire who shall enter upon the reference, if the arbitrators are equally divided in their opinion, and the award of the umpire shall prevail and shall be deemed to be the arbitration award for the purpose of this Act.

(2) An arbitration agreement referred to in sub-sec. (1) shall be in such form and shall be signed by the parties thereto in such manner as may be prescribed.

(3) A copy of the arbitration agreement shall be forwarded to the appropriate Government and the conciliation officer and the appropriate Government shall, within (one month) from the date of the receipt of such copy, publish the same in the Official Gazette.

(3:A) Where an industrial dispute has been referred to arbitration and the appropriate Government is satisfied that the persons making the reference represent the majority of each party, the appropriate Government may, within the time referred to in sub-sec. (3), issue a notification in such manner as may be prescribed; and when any such notification is issued, the employers and workmen who are not parties to the arbitration agreement but are concerned in the dispute, shall be given an opportunity of presenting their case before the arbitrator or arbitrators.

(4) The arbitrator or arbitrators shall inves- tigate the dispute and submit to the appropri- ate Government the arbitration award signed by the arbitrator or all the arbitrators, as the case may be.

(4-A) Where an industrial dispute has been referred to arbitration and a notification has been issued under sub-sec. 3(a), the appropri- ate Government may, by order, prohibit the continuance of any strike or lock out in connection with such dispute which may be in existence on the date of the reference."

It may be noted that Sec. 10-A excluding sub-secs. l-A, 3-A and 4-A have been added to the parent Act by Act No. 36 of 1956. After about eight years, sub-secs. l-A, 3-A and 4-A came to be added by the amending Act No. 36 of 1964.

Consequent upon the additions of these provisions, several corresponding changes were also made in the other provisions of the Act. Section 2(b) which defines an award was amended by the addition of the words "it includes an arbitration award made under sec. 10-A". As a result of this amendment of the definition an arbitration award has now become an award for all purposes of the Act attracting the application of secs. 17, 17-A, 18(2), 19(3), 21, 29, 30, 33-C and 36-A of the Act.

It may be noted that secs. 23 and 24 as originally stood provided power to the appropriate government to prohibit strikes and lock-outs, but they could not be invoked in relation to proceedings before the arbitrator. So these sections were also amended to bring them in harmony with sub-secs. (3-A) and (4-A) of sec. 10-A. The Government could now by order prohibit continuance of any strike or lock-out in connection with a dispute referred to arbitration and in respect of which a notification has been issued under sub- sec. 3-A. Sub-section (4) of sec. 10-A empowers the arbitrator to investigate and adjudicate upon the industrial dispute referred to him under the arbitration agreement. He shall submit an award signed by him. If there are more than one arbitrator, all of them must sign the award. The award shall be submitted to the appropriate Government. It is also to be published like any other award under the Act in accordance with the provisions of sub-sec. (1) of sec. 17. Section 17-A provides that an award (including an arbitration award) shall become enforceable on the expiry of 30 days from the date of its publication. Sub-sec. (2) of sec. 18 makes an arbitration award which has become enforceable, binding on the parties to the agreement. Sub-section (3) of sec. 18 goes a step further. In a case where notification has been issued under sub-sec. (3-A) of sec. 10-A, the arbitration award would be binding on all parties to the dispute as well as on all other persons summoned to appear in the proceed- ings as parties to the dispute. Such an award will also bind the successors or assigns of the employer and all present and future workmen employed in the establishment.

For completeness of the picture we may refer to the rules framed by the Central Government under sec. 38(2)(aa). These rules make provision for the form of arbitration agreement, the place and time of hearing and the powers of the arbitrator to take evidence. Rule 7 of the Industrial Disputes (Central) Rules, 1957 which is relevant for our purpose provides:

> "7. Arbitration Agreement--An arbitration agreement for the reference of an industrial dispute to an arbitrator or arbitrators shall be made in Form C and shall be

> delivered personally or forwarded by registered post to the Secretary to the Government of India in the Ministry of Labour (in triplicate), the Chief Labour Commissioner (Central), New Delhi and the Regional Labour Commissioner (Central) concerned. The agreement shall be accompanied by the consent, in writing, of the arbitrator or arbitrators."

In the light of these statutory provisions, it is now necessary to consider whether publication of the arbitration agreement is obligatory and if so, when it should be pub- lished? To put the question more precisely; whether it is necessary to publish the agreement within the time pre- scribed under sub-section (3) of sec. 10-A? And what would be the consequences of delayed publication? Arguments before us ranged a good deal wider than they appear to have done in the High Court. The counsel for the appellant claimed that the publication in the Gazette is only for general information and not a condition precedent for making the award. When parties have voluntarily agreed and referred their problem to arbitration and also partici- pated in the award proceedings, mere non-publication of the agreement cannot render the award invalid. Such a view, counsel asserted, would defeat the very purpose of industri- al adjudication by consent of parties. He also urged that penal consequence for nonpublication of the agreement since not prescribed, the requirement of publication is only directory and not mandatory. He finally rounded off his submission by stating that the publication of the agreement is necessary, but the period specified under sub-section(3) is only directory.

Before examining these contentions, it will be useful to have a brief survey of the authorities referred to us at the Bar. In Remington Rand of India Ltd. v. The Workmen, [1968] 1 SCR 164, the question arose whether the award published after the lapse of 30 days as specified in sec. 17(1) would become invalid for non-publication within the prescribed time. Mitter, J., speaking for a Bench of this Court held that though sec. 17(1) makes it obligatory on the Government to publish the award, the time limit of 30 days prescribed therein, however, is merely directory and not mandatory. The learned judge observed:

> "The limit of time has been fixed as showing that the publication of the award ought not to be held up. But the fixation of the period of 30 days mentioned therein does not mean that the publication beyond that time will render the award invalid. It is not difficult to think of circumstances when the publication of the award within thirty days may not be possi- ble. For instance, there may be a strike in the press or there may be any other good and sufficient cause by reason of which the publi- cation could not be made within thirty days. If we were to hold that the award would, therefore, be rendered invalid, it would be attaching undue importance to a provision not in the mind of the legislature. It is well known that it very often takes a long period of time for the reference to be concluded and the award to be made. If the award becomes invalid merely on the ground of publication after thirty days, it might entail a fresh reference with needless harassment to the parties. The non-publication of the award within the period of thirty days does not entail any penalty and this is another consid- eration which has to be kept in mind."

A Division Bench of Madhya Pradesh High Court in Modern Stores v. Krishna das, AIR 1970 MP 17 took the view that the publication or arbitration agreement in the gazette is obligatory, that is, a sine qua non, but the requirement of time "within one month" is only directory and not impera- tive. There the management entered into an arbitration agreement with respect to a dispute with the Union on Janu- ary 22, 1968. It was referred to the Presiding Officer of the Labour Court, Jabalpur for arbitration. An award was made on March 8, 1968 but it was not pronounced until April 15, 1968, for want of publication of the agreement under sub-sec. (3) of sec. 10-A. The agreement was published in the Gazette on March 29, 1968. The Court however, quashed the award with a direction to the Presiding Officer Labour Court to read judicate the dispute referred under sec. 10-A of the Act.

A similar view was expressed by the Punjab & Haryana High Court in Landara Engineering and Foundary Works, Phil- laur v. The Punjab State and Others, [1969] Lab. I.C. 52.

The Delhi High Court in Mineral Industry Association v. The Union of India and Another, AIR 1971 Deihi 160 has also accepted the same principle but by simply following the decision of the M.P. High Court in Modern Stores case.

The Orissa High Court in Rasbehary Mohanty and Presiding Officer Labour Court and Anr., [1974] (II) LLJ Orissa 222 at 226 has held that if the arbitration agreement is not pub- lished as required under sub-sec. (3), it would be an in- fraction of the statutory provisions in the matter of refer- ence to the arbitrator and in the making of an award. The Mysore High Court since called the Karnataka High Court in Workmen of Woodlands Hotel v. K. Srinivsa Rao, [1972] Vol. 42 F.J.R. 223 at 226 has observed that an award of the arbitration under sub-section. (4) cannot be regarded as valid if the agreement for arbitration is not published as prescribed under sub-sec. (3).

The Kerala High Court in Kathyee Cotton Mills Ltd. v. District Labour Officer and Ors., [1981] 1 LLJ Kerala 417 at 419 has expressed the view that the requirements of sub-sec. (3) are mandatory and a failure to comply with the provi- sions would vitiate the award.

The foregoing authorities of the High Courts do not indicate the reasons in support of the views expressed. But the reasons in our opinion, are not far to seek, and are immanent in the importance of provisions of sub-section (3) and the object underlying thereunder. We may read sub-sec- tion (3) along with Rule 7. Rule 7 states that the arbitra- tion agreement shall be made in form C and delivered person- ally or forwarded by registered post to the Secretary to the Ministry of Labour and Chief Labour Commissioner etc. It shall be accompanied by the consent, in writing, of the arbitrator or arbitrators. Sub-section (3) also requires that a copy of the agreement shall be forwarded to the appropriate government and the appropriate government shall, within one month from the date of receipt of such copy publish it in the Official Gazette. At both the places it may be noted that the legislature has used the word "shall". In the context in which this word has been used, there is, in our opinion, little doubt about obligation to publish the agreement in the Official Gazette. Counsel for the appellant also did not dispute this proposition.

The next question for consideration is whether it should be imperative to publish the agreement within the period of one month as prescribed under sub-section (3). This is indeed not an easy question for solution. Maxwell tells us:

> "That it is impossible to lay down any general rule for determining whether a provision is imperative or directory." [Maxwell on the Interpretation of Statutes 12th Ed. p. 3 14]. Craies, however, gives us some guidelines:
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> "When a statute is passed for the purpose of enabling something to be done, and prescribes the formalities which are to attend its per- formance, those prescribed formalities which are essential to the validity of the thing when done are called imperative or absolute; but those which are not essential, and may be disregarded without invalidating the thing to be done, are called directory." Craeis on Statute Law 5th Ed. p. 63].
>
> It is now well established that the wording of any provision are not determinative as to whether it is absolute or directory. Even the absence of penal provision for non-compliance does not lead to an inference that it is only directory. The Court, therefore, must carefully get into the underlying idea and ascertain the purpose to be achieved notwithstanding the text of the provision. Now look at the provisions of sub-section (3). It is with respect to time for publication of the agreement. But publication appears to be not necessary for validity of the agreement. The agreement becomes binding and enforceable as soon as it is entered into by the parties. Publication is also not an indispensable foundation of jurisdiction of the arbitrator. The jurisdiction of the arbitrator stems from the agreement and not by its publication in the Official Gazette. Why then publication is necessary? Is it an idle formality? Far from it. It would be wrong to construe sub- section (3) in the manner suggested by counsel for the appellant. The Act seeks to achieve social justice on the basis of collective bargaining. Collective bargaining is a technique by which dispute as to conditions of employment is resolved amicably by agreement rather than coercion. The dispute is settled peacefully and voluntarily although reluctantly between labour and management. The voluntary arbitration is a part of infrastructure of dispensation of justice in the industrial adjudication. The arbitrator thus falls within the rainbow of statutory tribunals. When a dispute is referred to arbitration, it is therefore, neces- sary that the workers must be made aware of the dispute as well as the arbitrator whose award ultimately would bind them. They must know what is referred to arbitration, who is their arbitrator and what is in store for them. They must have an opportunity to share their views with each Other had if necessary to place the same before the arbitrator. This is the need for collective bargaining and there cannot be collective bargaining without involving the workers. The Union only helps the workers in resolving their disputes with management but ultimately it would be for the workers to take decision and suggest remedies; it seems to us, therefore, that the arbitration agreement must be published before the arbitrator considers the merits of the dispute. Non-compliance Of this requirement would be fatal to the arbitral

award.

This takes us to the nature of the relief to be granted in this appeal. The High Court has directed the State to pUbliSh the arbitration agreement in the Government Gazette. It has further directed the Committee of arbitrators to determine the dispute only after its publication. But there are certain problems in this case to pursue that course. The Deputy Commissioner who was the Chairman of the Committee of arbitrators has since resigned.'it appears that he wants to run away from his responsibility. The State Government has created a fresh problem. Under section 10(1) of the Act, the State Government has referred the dispute to the Industrial Tribunal, Ambala, for adjudication. That dispute relates to termination of 150 employees whose reinstatement was the subject matter of the arbitration agreement. There is yet another problem from the side of the management. Against the judgment of the learned single judge giving certain direc- tions, the management has preferred Letters Patent Appeal No. 511 of 1988 before a Division Bench of the High Court and obtained stay of the directions. Not merely that, the management has also challenged the reference made by the State Government under section 10(1) of the Act. It has moved the High Court under Article 226 of the Constitution with CWP No. 9455 of 1988 and obtained stay of further proceedings before the Tribunal.

It must be recognised that in the modern welfare state, healthy industrial relations are a matter of paramount importance. In attempting to solve industrial disputes, industrial adjudication, therefore, should not be delayed. Voluntary arbitration appears to be the best method for settlement of industrial disputes. The disputes can be resolved speedily and in less than a year, typically in a few months. The Tribunal adjudication of reference under section 10(1) often drags on for several years, thus defeat- ing the very purpose of the industrial adjudication. Arbi- tration is also cheaper than litigation with less legal work and no motion practice. It has limited document discovery with quicker hearing and less formal than trials. The greatest advantage of arbitration is that there is no right of ap- peal, review or writ petition. Besides, it may, as well reduce company's litigation costs and its potential exposure to ruinous liability apart from redeeming the workmen from frustration.

This is with regard to advantages of voluntary arbitra- tion. There is another aspect which was perhaps not realised by the State Government when it referred the dispute under section 10(1). Section 10 and 10-A of the Act are the alter- native remedies to settle an industrial dispute. An indus- trial dispute can either be referred to an Industrial Tribu- nal for adjudication under section 10, or the parties can enter into an arbitration agreement and refer it to an arbitrator under section 10-A. But once the parties have chosen their remedy under section 10-A the Government cannot refer that dispute for adjudication under section 10. The said reference made by the Government under section 10(1) cannot, therefore, be sustained.

With these prefatory observations w.e" make the follow- ing directions:

(i) The State Government shall publish condition No. '3' in the arbitration agreement in the Government Gazette within four weeks from today. (ii) The agreement containing condition No. '3' stands referred to the Industrial Tribunal, Haryana at Ambala for passing arbitration award in accordance with law; (iii) The reference made under section 10(1) of the Act to the Industrial Tribunal is quashed; and (iv) The management shall with-

draw the aforesaid Letters Patent Appeal and the Writ Petition pending in the High Court within three weeks from today failing which the High Court shall dispose them of as having become infructuous.

A copy of this judgment shall be transmitted forthwith to the Industrial Tribunal Haryana at Ambala. The Tribunal after affording opportunity to parties to produce evidence of their choice and also opportunity cross examine each other shall dispose of the matter expeditiously, and at any rate not later than six months from the date of first ap- pearance of parties. The parties shall appear before the Tribunal on 15th September, 1989 to receive further direc- tion.

The appeal is accordingly disposed of with no order as to costs.

Appeal disposed of. Y. Lal