The Rajasthan State Road ... vs Krishna Kant Etc.Etc on 3 May, 1995

Equivalent citations: 1995 AIR 1715, 1995 SCC (5) 75, AIR 1995 SUPREME COURT 1715, 1995 (5) SCC 75, 1995 AIR SCW 2683, 1995 LAB. I. C. 2241, (1995) 2 RAJ LW 1, (1995) 2 SERVLR 784, (1995) 3 SCR 1118 (SC), (1995) 31 ATC 110, (1995) 87 FJR 204, (1995) 71 FACLR 211, (1995) 2 LAB LN 271, (1995) 2 SCJ 511, 1995 ALL CJ 2 1100, 1995 SCC (L&S) 1207, (1995) 2 GUJ LH 116, (1995) 2 LABLJ 728, 1995 LABLR 481, (1995) 2 MAD LJ 48, (1995) 3 SERVLJ 161, (1995) 2 CURLR 180, (1995) 59 DLT 29, (1995) 4 JT 348 (SC)

Author: B.P. Jeevan Reddy

Bench: B.P. Jeevan Reddy, S.C. Sen, G.T Nanavati

PETITIONER:
THE RAJASTHAN STATE ROAD TRANSPORTCORPORATION & ANR. ETC.ETC

Vs.

RESPONDENT:
KRISHNA KANT ETC.ETC.

DATE OF JUDGMENT03/05/1995

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
SEN, S.C. (J)
NANAVATI G.T. (J)

CITATION:
1995 AIR 1715 1995 SCC (5) 75
JT 1995 (4) 348 1995 SCALE (3)440

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T B.P.JEEVAN REDDY.J. Leave granted in all Special Leave Petitions. The respondents in these appeals are the employees of the appellant-corporation, viz., Rajasthan State Road Transport Corporation.Pursuant to disciplinary enquiries held against them on charges of misconduct, their services were terminated. They filed civil suits for a declaration that the order terminating their services is illegal and invalid and for a further declaration that they must be deemed to have continued and are still continuing in the service of the Corporation with all consequential benefits.The Corporation resisted the suits on the ground inter alia that the Civil court had no jurisdiction to entertain the suits.The Trial court decreed the suits as prayed for. Appeals as also Second appeals preferred by the Corporation were dismissed by the learned District Judge and High Court.

When these appeals came up for hearing before a Bench of two learned Judges of this Court, the apellant- Corporation relied upon the principles enunciated in Paragraphs 23 and 24 of the judgment in Premier Automobiles Limited etc. v. Kamlekar Shantaram Wadke of Bombay & Ors. etc. (1976 (1) S.C.C.496) and in particular upon the decision in Jitendra Nath Biswas v. M/s. Empire of India and Ceylone Tea Co. & Anr. (1989 (3) S.C.C.582). The Bench was of the opinion, agreeing with the decision in Jitendra Nath Biswas, that the Civil Court had no jurisdiction to entertain the present suits but in view of the order dated October 18, 1989 in S.L.P.(C) No.9386 of 1988 (rendered by two-Judge Bench of this Court) holding a civil suit concerning a similiar dispute to be maintainable, the Bench thought it appropriate that the appeals are heard by a Bench of three Judges. It is pursuant to their order dated September 23, 1993 that these appeals have been placed before this Bench.

The appellant-Corporation has been constituted under the Road Transport Corporations Act, 1950. It is a statutory Corporation. Though Section 45 of the said Act empowers the Corporation to frame regulations prescribing the conditions of service of its employees, no such regulations have been framed insofar as the employees answering the description of "workman" as defined in Section 2(s) of the Industrial Disputes Act, 1947, are concerned. They are governed by the certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946. These Standing Orders inter alia define "misconduct" and prescribe the procedure for conducting the disciplinary proceedings against such employees.

The Corporation says that the disciplinary enquiries, which resulted in the dismissal of the respondents were conducted perfectly in accordance with the Standing Orders, whereas the case of the respondents/plaintiffs is that they were conducted in violation of the Standing Orders. The precise question in these appeals is whether a suit of this nature is maintainable in a Civil Court. The Corporation says that it is not. According to them the respondent's only remedy was to approach the Labour Court for the reliefs sought for by them in the suit.

Section 9 of the Code of Civil Procedure says that "the courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature except the suits of which their cognizance is either expressly or impliedly barred." The question is whether by virtue of the provisions of the Industrial Disputes Act read with the Standing Orders aforesaid, the Civil Court's jurisdiction to take cognizance of such suits is barred? This question calls for a brief reference to the relevant provisions

of the Industrial Disputes Act as well as the Standing Orders Act, 1946.

The Industrial Disputes Act (the Act) was enacted to make provision for the investigation and settlement of industrial disputes and for certain other purposes. The statement of objects and reasons appended to the Bill (which became the Act) stated inter alia, "(T)he bill also seeks to re-orient the administration of the conciliation machinery provided in the Trade Disputes Act. Conciliation will be compulsory in all disputes in public utility services and optional in the case of other industrial establishments. With a view to expedite conciliation proceedings, time limits have been prescribed for conclusion thereof - fourteen days in the case of conciliation officer and two months in the case of Board of Conciliation, from the date of notice of strike. A settlement arrived at in the course of conciliation proceedings will be binding for such periods as may be agreed upon by the parties and where no period has been agreed upon, for a period of one year, and will continue to be binding until revoked by a three months' notice by either party to the dispute."

Section 2 defines certain expressions occurring in the Act. The expression "industrial dispute" is defined in clause (k) in the following words:

> "(K) 'industrial dispute' means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-

employment or the terms of employment or with the conditions of labour, of any person;"

> The expression "workman" is defined in clause (s), while the expression "employer" is defined in clause (g). Sections 4 to 7 provide for appointment/constitution of Conciliation Officers, Boards of Conciliation, Courts of Enquiry and Labour Courts while Sections 7-A and 7-B provide for constitution of Tribunals and National Tribunals. Section 9-A provides that any change in the conditions of service applicable to any workman in respect of matters specified in the Fourth Schedule shall be effected only in accordance with the procedure prescribed by it. Section 10 is relevant for our purposes since it provides for reference of disputes to Boards, courts or Tribunals.It provides for the government referring an industrial dispute to specified authorities for adjudication, where it is of the opinion that an industrial dispute exists or is apprehended. Section 10-A provides for voluntary reference of an industrial dispute to arbitration. Section 11 prescribes the procedure and powers of the Courts and Tribunals while Section 11-A confers upon the Labour Court and Tribunals an express power to substitute the punishment awarded in the domestic enquiry if it is satisfied that such a course is called for in the circumstances of a given case. Section 12 prescribes the duties of conciliation officers. It says that "where an industrial dispute exists or is apprehended, the conciliation officer may, or where the disputes relates to a public utility service and notice under Section 22 has been given, shall hold conciliation proceedings in the prescribed manner." The duty of such officer is to bring about a settlement as far as possible and if he fails in that effort, to make a report to the government. The government is thereupon empowered to refer

the dispute to appropriate Tribunal or Court for adjudication. Sub-section (6) provides that a report under Section 12 shall be submitted within fourteen days of the commencement of the conciliation proceedings unless of course extended by agreement between the parties to the dispute. Section 14 provides that a court shall decide a matter referred to it within six months of the commencement of enquiry. Section 15 directs the authorities to decide the matters expeditiously and within the period specified in the order of reference. Section 16 provides for submission of the award by the Tribunal/Court, while Section 17 provides for its publication by the Government in the prescribed manner. Sub-section (2) of Section 17 then says "subject to the provisions of Section 17-A, the award published under Sub-section (1) shall be final and shall not be called in question by any court in any manner whatsoever". Section 18 provides for a settlement between the parties to an industrial dispute while Section 19 provides for certain matters incidental thereto. Chapter- V prohibits strikes and lock-outs. Chapter - VA and Chapter V-B contain several provisions of a substantive nature regulating retrenchment and lay-off of workmen, closure of industrial establishments and other related matters. Chapter

- VI deals with penalties. Section 29 provides that any person who commits a breach of any award which is binding upon him shall be punishable with imprisonment or with fine or with both as provided therein. Chapter-VII contains certain miscellaneous provisions. Section 33- C provides for recovery of money due from an employer to a workman in the manner provided thereby. The forum prescribed is the Labour Court. For the purpose of these appeals, it may not be necessary to refer to the five schedules appended to the Act.

The Industrial Employment (Standing Orders) Act, 1946 was enacted by Parliament to require employers in industrial establishments to define formally the conditions of employment under them with sufficient precision and to make them known to the workers. The Act applies to every industrial establishment wherein 100 or more workers are employed or were employed on any day of the preceding 12 months. Clauses (c), (d) and (e) define the expressions "certified officer", "employer" and "industrial establishment". The expression "workman" carries the same meaning as is assigned to it in the Industrial Disputes Act. Section 3 makes it obligatory upon every industrial establishment to frame Standing Orders in respect of matters set out in the Schedule to the Act and submit the same to the certified officer who shall, after making the necessary enquiry, certify the same, on being satisfied that they have been framed in accordance with the Act. Upon such certification, the Standing Orders become binding upon both the employer and the employees. They are required to be published in the manner prescribed by the Act. Model Standing Orders have been framed which are to be effective till the certified Standing Orders are made and published under the Act. Failure to submit or frame Standing Orders by the employer is made punishable by Section 13 while Section 13-A prescribes the forum for determination of questions arising with respect to the application or interpretation of the certified Standing Orders. Section 13-A reads as follows :

> "13-A.-Interpretation, etc., of standing orders. If any question arises as to the application or interpretation of a standing order certified under this Act, any employer or workman [or a trade union or other representative body of the workmen] may refer the question to any one of the Labour Courts constituted under the Industrial Disputes Act, 1947, and specified for the disposal of such proceeding by the appropriate Government by notification in the Official Gazette, and the Labour Court to which the question is so referred, shall after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties."

The schedule to the Act specifies the matters which have to be provided for in the Standing Orders. Rules have been made called 'Industrial Employment Standing Orders (Central) Rules, 1946.

The nature of the Standing Orders and the meaning and scope of Section 13-A:

> With a view to clear the ground, we may deal with these two issues debated before us at some length. The first one relates to the nature and character of the certified Standing Orders. We may indicate the relevance of this discussion. Sri Jitender Sharma, learned counsel for respondents-workmen submits that the certified Standing Orders have statutory force and their violation enables the Civil Court to decree reinstatement in service and that bar of Section 14 of the Specific Relief Act does not operate in such a case. He relies upon the holding in Sukhdev Singh v. Bhagat Ram (1975 (3) S.C.R.618). The appellant's counsel, however, dispute this proposition. Bereft of authority, we find it difficult to agree with Sri Sharma. The certified Standing Orders are not in the nature of delegated/subordinate legislation. It is true that the Act makes it obligatory upon the employer (of an industrial establishment to which the Act applies or is made applicable) to submit draft Standing Orders providing for the several matters prescribed in the Schedule to the Act and it also provides the procedure - inter alia, the certifying officer has to examine their fairness and reasonableness - for certification thereof. Yet it must be noted that these are conditions of service framed by the employer - the employer may be a private corporation, a firm or an individual and not necessarily a statutory Corporation
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> - which are approved/certified by the prescribed statutory authority, after hearing the concerned workmen. The Act does not say that on such certification, the Standing Orders acquire statutory effect or become part of the statute. It can certainly not be suggested that by virtue of certification, they get metamorphosed into delegated/subordinate legislation. Though these Standing Orders are undoubtedly binding upon both the employer and the employees and constitute the conditions of service of the employees, it appears difficult to say, on principle, that they have statutory force. The decisions of this Court, however, read differently though some dissonance is to be found among them. In Baqalkot Cement Co.Ltd. V. R.K.Pathan & Ors. (1962 Suppl.(2) S.C.R.697), the question was whether the certifying officer had

> the power to add a condition prescribing the procedure for applying for leave and the authority competent to sanction it. The Court held that the officer did possess such a power. In that connection, Gajendragadkar, J. speaking for the Bench, referred to the object and scheme of the enactment and observed:
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> "That is why the Legislature took the view that in regard to industrial establishments to which the Act applied, the conditions of employment subject to which industrial labour was employed, should be well-defined and should be precisely known to both the parties. With that object, the Act has made relevant provisions for making Standing Orders which, after they are certified, constitute the statutory terms of employment between the industrial establishments in question and their employees. That is the principal object of the Act."

In Buckingham and Carnatic Co.Ltd V. Venkatiah & Anr. (1964 (4) S.C.R.265) the service of the respondent-employee was terminated under and as provided by the Standing Orders. The order of termination was interferred with by the Labour Court, whose award was affirmed by the Letter Patent Bench of the High Court. The appellant's contention was that once it has acted in accordance with the Standing Orders, the Labour Court had no jurisdiction to interfere with it. In that connection, Gajendragadkar,J. speaking for the Bench, observed:

> "The certified Standing Orders represent the relevant terms and conditions of service in a statutory form and they are binding on the parties atleast as much, if not more, as private contracts embodying similar terms and conditions of service".

In The Workmen of Dewan Tea Estate & Ors. v. The Management (1964 (5) S.C.R.548) the contention of the management was that Standing Order 8(a)(i), having been certified before insertion of the definition of "lay-off" by Section 2(kkk) in the Industrial Disputes Act, should be construed in the light of the said definition. While rejecting the said argument, Gajendragadkar,J. observed thus with respect to the nature of the Standing Orders:

> "It will be recalled that the Standing Orders which have been certified under the Standing Orders Act became part of the statutory terms and conditions of service between the industrial employer and his employees. Section 10(1) of the Standing Orders Act provides that the Standing Orders finally certified under this Act shall not, except on agreement between the employer and the workmen, be liable to modification until the expiry of six months from the date on which the Standing Orders or the last modification thereof came into operation. If the Standing Orders or the last modification thereof came into operation. If the Standing Orders thus become the part of the statutory terms and conditions of service, they will govern the relations between the parties unless, of course,it can be shown that any provision of the Act is inconsistent with the said Standing Orders."

In Workmen and Buckingham & Carnatic Mills, Madras V. Buckingham and Carnatic Mills, Madras (1970 (1) L.L.J.26) Vaidialingam, J., speaking for a Bench of two learned Judges, stated:

> "(T)he labour court has observed that the standing orders of the company which have been certified under the Industrial Employment (Standing Orders) Act, 1946, though binding on the employer and the workers have no statutory force and, in consequence, they are merely directive and not mandatory. It has further observed that any non-compliance of the standing orders whill not render an enquiry bad, for that reason.

We may straightaway say that these observations of the labour court are erroneous. The labour court has misunderstood the decisions of this Court on this point. This Court has held that standing orders, which have been certified under the Industrial Employment (Standing Orders) Act, 1946, become part of the statutory terms and conditions of service between the industrial employer and his employees and that they will govern the relations between the parties - vide workers of Dewan Tea Estates & Ors. v. Their Manager (1964 (1) LLJ 358)."

In D.K.Yadav v. J.M.A. Industries Ltd. (1993 (3) S.C.C.259) K.Ramaswamy, J. has observed:

> "It is settled law that certified standing orders have statutory force which do not expressly exclude the application of the principles of natural justice."

It is evident from a perusal of the above decisions that while the first decision referred to the certified Standing Orders as constituting " the statutory terms of employment". they were described as "conditions of service in a statutory form" and as "binding on the parties at least as much, if not more, as private contracts embodying similar terms and conditions of service" in the second decision. The third decision, reiterated the holding in the first decision. So far as the two last-mentioned decisions are concerned, it is obvious, they only purport to set out the purport of the earlier decisions. Vaidialingam,J. used the very expression "part of the statutory terms and conditions of service", while K.Ramaswamy,J. stated more emphatically that "certified standing orders have statutory force". It must, however, be said that in the decision rendered by Ramaswamy,J., the question as to the nature and character of the certified Standing Orders did not arise for consideration; the said observation was made in another context. The concensus of these decisions is: the certified Standing Orders constitute statutory terms and conditions of service. Though we have some reservations as to the basis of the above dicta as pointed out supra, we respectfully accept it both on the ground of stare decisis as well as judicial discipline. Even so, we are unable to say that they constitue "statutory provisions" within the meaning of the dicta in Sukhdev Singh where it was held: "(T)he employees of these statutory bodies have a statutory status and they are entitled to declaration of being in employment when their dismissal or removal is in contravention of statutory provisions". Indeed, if it is held that certified Standing Orders constitute statutory provisions or have statutory force, a writ petition would also lie for their enforcement just as in the case of violation of the Rules made under the proviso to Article 309 of the Constitution. Neither a suit would be necessary nor a reference under Industrial Disputes Act. We do not think the certified Standing Orders can be elevated to that status. It is one thing to say that they are statutorily imposed conditions of service and an altogether different thing to say that they constitute statutory provisions themselves.

So far as the meaning and ambit of Section 13-A of the Standing Orders Act is concerned, a good amount of debate took place before us. Certain decisions of the High Courts have also been brought to our notice. The Section provides that "if any question arises as to the application or interpretation of a Standing Order certified under this Act," any employer or workman or their union may refer the question to " the Labour Court constituted under the Industrial Disputes Act, 1947 and specified for the disposal of such proceedings by the appropriate Government by notification in the official gazette". The determination of the Labour Court is made final and binding on the parties. The contention of Sri Altaf Ahmed, learned Additional Solicitor General is that any and every violation of Standing Order entitles the workman to appoach the Labour Court directly under this provision and obtain relief. He submits that the Labour Court is empowered under this provision to adjudicate disputes between workmen and employer arising from the certified Standing Orders and grant such relief as is appropriate in the circumstances of the case. We are afraid, we cannot give effect to this submission. Acceptance of the said submission would mean that Section 13-A creates a parallel forum for adjudication of the very questions which the Labour Court or the Industrial Tribunal has been empowered to adjudicate under the Industrial Disputes Act and that too without the requirement of a reference by the Government. While we agree that language of Section 13-A is not very clear, it cannot certainly be understood as creating a forum for adjudication of industrial disputes involving the application and/or interpretation of the Standing Orders. That is the function of the Courts and Tribunals constituted under the Industrial Disputes Act. The limited purpose of Section 13-A is to provide a forum for determination of any question arising "as to the application or interpretation" of the certified Standing Orders as such, in case either the employer or the employee(s) entertain a doubt as to their meaning or their applicability. Probably it was thought that a decision of the appointed forum on the said question would itself facilitate the resolution of an industrial dispute, whether existing or apprehended. So far as the Labour Court, Industrial Tribunal or other adjudicatory bodies under the Industrial Disputes Act are concerned, it is agreed on hands

- and we endorse it - that where a dispute is referred to any of them they are undoubtedly competent to go into and decide questions as to the application or interpretation of the certified Standing Orders insofar as they are necessary for a proper adjudication of the question or dispute referred.

The scope of "Industrial Dispute".

The expression "Industrial Dispute" is defined in Section 2(k) to mean any dispute or differeence (i) between employers and employers; (ii) between employers and workmen; and (iii) between workmen and workmen, provided such dispute is connected with the employment, non-employment, terms of employment or conditions of labour of any person. It is well settled by several decisions of this court that a dispute between the employer and an individual workman does not constitute an industrial dispute unless the cause of the workman is espoused by a body of workmen [See Bombay Union of Journalist v. "The Hindu" (1961 (2) L.L.J.436 (SC)]. Of course, where the dispute concerns the body of the workers as a whole or to a section thereof, it is an industrial dispute. It is precisely for this reason that Section 2-A was inserted by Amendment Act 35 of 1965. It says, "where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination

shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute". By virtue of this provision, the scope of the concept of industrial dispute has been widened, which now embraces not only Section 2(k) but also Section 2-A. Section 2-A, however, covers only cases of discharge, dismissal, retrenchment or termination otherwise of services of an individual workman and not other matters, which means that - to give an example - if a workman is reduced in rank pursuant to a domestic enquiry, the dispute raised by him does not become an industrial dispute within the meaning of Section 2-A. (However, if the union or body of workmen espouses his cause, it does become an industrial dispute.) We have given only one instance; there may be many disputes which would not fall within Section 2(k) or Section 2-A. It is obvious that in all such cases, the remedy is only in a Civil Court or by way of arbitration according to law, if the parties so choose. The machinery provided by the Industrial Disputes Act for resolution of disputes (in short, Sections 10 or 12) does not apply to such a dispute.

Secondly, where a right or obligation is created by the Industrial Disputes Act, it is agreed by all sides that disputes relating to such right or obligation can only be adjudicated by the forums created by the Act. This is Principle No.3 in Premier Automobile.

The core question:

> We may now indicate the area of dispute. It is this:
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> where a dispute between the employer and the employee does not involve the recognition or enforcement of a right or obligation created by the Industrial Disputes Act and where such dispute also amounts to an industrial dispute within the meaning of Industrial Disputes Act, whether the Civil Court's jurisdiction to entertain a suit with respect to such dispute is barred? To put it nearer to the facts of these appeals, the question can be posed thus: Where the dispute between the employer and the workman involves the recognition, application or enforcement of certified Standing Orders, is the jurisdiction of the Civil Court to entertain a suit with respect to such dispute is barred? This question involves the perennial problem concerning the jurisdiction of the Civil Court vis-a-vis Special Tribunals, a subject upon which the decisions of this Court, let alone other courts, is legion. We do not, however, propose to burden this judgment with all of them. We shall refer only to those which have dealt with the question in the context of Industrial Disputes Act. By way of introduction though, we may refer to the summary of principles enunciated in Dhulabhai v. State of M.P. (1968 (3) SCR 662 = AIR 1969 SC
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> 78). They are the following:
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> "(1) Where the statute gives a finality to the orders of the special tribunals the Civil Court's jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental

principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the Civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authority and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevent enquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply."

Dhulabhai, it must be remembered, concerned a dispute arising under a sales tax enactment. Most of the decisions referred to therein concerned taxing enactments. Having regard to the facts of that case, therefore, it would fall under principle No.2 enunciated therein.

Premier Automobiles was decided by a Bench comprising A.Alagiriswami, P.K. Goswami and N.L.Untwalia, JJ. The Court found that the dispute concerned therein involved adjudication of rights/obligations created by the Industrial Disputes Act which means that it fell under Principle No.2 in Dhulabhai. Even so, the Court considered several decisions, English and Indian, on the subject and enunciated the following principles in Paras 23 and 24:

"23. To sum up, the principles applicable to the jurisdiction of the civil court in relation to an industrial dispute may be stated thus:

(1) if the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the civil court. (2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the civil court is alternative, leaving it to the election of the suiter concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.

(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to act an adjudication under the Act.

(4) If the right which is sought to be enforced is a right created under the Act such as Chapter V-A then the remedy for its enforcement is either Section 33C or the raising of an industrial dispute, as the case may be.

24. We may, however, in relation to principle No.2 stated above hasten to add that there will hardly be a dispute which will be an industrial dispute within the meaning of Section 2(k) of the Act and yet will be one arising out of a right or liability under the general or common law only and not under the Act. Such a contingency, for example, may arise in regard to the dismissal of an unsponsored workman which in view of the provision of law contained in Section 2A of the Act will be an industrial dispute even though it may otherwise be an individual dispute. Civil Courts, therefore, will have hardly an occasion to deal with the type of cases falling under principle No. 2. Cases of industrial disputes by and large, almost invariabley, are bound to be covered by principle No.3 stated above."

It is the Principle No.2, and particularly the qualifying statements in Para 24, that has given rise to good amount of controversy. According to Principle No. 2, if the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Industrial Disputes Act, the jurisdiction of the Civil Court is alternative and it is left to the person concerned either to approach the Civil Court or to have recourse to the machinery provided by Industrial Disputes Act. But Principle No.2 does not stand alone; it is qualified by Para

24. Now what does Para 24 say? It says (i) in view of the definition of "industrial dispute" in the Industrial Disputes Act, there will hardly be an industrial dispute arising exclusively out of a right or liability under the general or common law. Most of the industrial disputes will be disputes arising out of a right or liability under the Act. (ii) Dismissal of an unsponsored workman is an individual dispute and not an industrial dispute (unless of course, it is espoused by the Union of Workmen or a body of workmen) but Section 2-A has made it an industrial dispute. Because of this "civil courts will have hardly an occasion to deal with the type of cases falling under principle No.2". By and large, industrial disputes are bound to be covered by Principle No.3. (Principle No.3 says that where the dispute relates to the enforcement of a right or obligation created by the Act, the only remedy

available is to get an adjudication under the Act.) Before we proceed to consider the effect and impact of Para 24 on Principle No.2 in Para 23, it would be appropriate to refer briefly to the decisions referred to in Para 26 of the said judgment. The Court approved the following decisions: (i) Krishnan v. East India Distilleries and Sugar Factories Ltd., Nellikuppam (1964 (1) L.L.J.217 :

> A.I.R.1964 Mad.81), a decision rendered by a Single Judge of the Madras High Court. It was held therein that "the jurisdiction of the civil court is ousted impliedly to try a case which could form subject-matter of an industrial dispute collectively between the workmen and their employer." (ii) Madura Mills Company Ltd. v. Guruvammal (1967 (2) L.L.J.397 : (1967) 2 Mad. L.J.287), decided by Alagiriswami, J., (at that time a Judge of the Madras High Court). It was a case concerning the enforcement of a right created by Industrial Disputes Act. (iii) The decision of a learned Single Judge of Mysore High Court in Nippani Electricity Company (Private) Ltd. (by its director V.R. Patravali) v. Bhimarao Laxman Patil (1969 (1) L.L.J.268:
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> 1968 Lab IC 1571), a decision of the Division Bench of the Bombay High Court in Pigment Lakes and Chemical Manufacturing Co. Private Ltd. v. Sitaram Kashiram Konde [71 Bom LR 452: 1970 Lab IC 115 (Bom)] and the decision of a learned Single Judge of the Kerala High Court in N.A.Madhavan v. State of Kerala (1970 (1) L.L.J. 272) where it was held that the jurisdiction of the Civil Court to deal with matters mentioned in Chapter V-A is impliedly barred.
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> (iv) The decision of a Division Bench of the Calcutta High Court in M/s. Austin Distributors Pvt. Ltd. v. Nil Kumar Das [1970 Lab IC 323 (Cal.)], which arose from a suit for recovery of damages for wrongful dismissal. There was no prayer for reinstatement. The High Court held that Civil Court's jurisdiction is not barred, inasmuch as the only ground upon which the dismissal was impugned was in violation of the contract of service governed by general law. A decision of the Mysore High Court in Syndicate Bank v. Vincent Robert Lobo [(1971) 2 L.L.J.46: 1971 Lab IC 1055 (Mys.)] to the same effect.

The Court disapproved the decision of a learned Single Judge of the Calcutta High Court in Bidyut Kumar Chatterjee v. Commissioners for the Port of Calcutta [(1970) 2 L.L.J.148: 1971 Lab IC 708 (Cal.)] to the extent it went against the principles enunciated in Premier Automobiles.

Now, coming back to Principle No.2 and its qualification in Para 24, we must say that Para 24 must be read harmoniously with the said principle and not in derogation of it - not so as to nullify it altogether. Indeed, Principle No.2 is a reiteration of the principle affirmed in several decisions on the subject including Dhulabhai. Principle No.2 is clear whereas Para 24 is more in the nature of a statement of fact. It says that most of the industrial disputes will be disputes involving the rights and obligations created by the Act. It, therefore, says that there will hardly be any industrial dispute which will fall under Principle No.2 and that almost all of them will fall under Principle No.3. This statement cannot be understood as saying that no industrial dispute can ever be entertained by or adjudicated upon by the Civil Courts. Such an understanding would not only make the statement of

law in Principle No.2 wholly meaningless but would also run counter to the well-established principles on the subject. It must accordingly be held that the effect of Principle No.2 is in no manner whittled down by Para 24. At the same time, we must emphasise the policy of law underlying the Industrial Disputes Act and the host of enactments concerning the workmen made by Parliament and State legislatures. The whole idea has been to provide a speedy, inexpensive and effective forum for resolution of disputes arising between workmen and their employers. The idea has been to ensure that the workmen do not get caught in the labyrinth of Civil Courts with their layers upon layers of appeals and revisions and the elaborate procedural laws, which the workmen can ill afford. The procedures followed by Civil Courts, it was thought, would not facilitate a prompt and effective disposal of these disputes. As against this, the Courts and Tribunals created by the Industrial Disputes Act are not shackled by these procedural laws nor is their award subject to any appeals or revisions. Because of their informality, the workmen and their representatives can themselves prosecute or defenn their cases. These forums are empowered to grant such relief as they think just and appropriate. They can even substitute the punishment in many cases. They can make and re-make the contracts, settlements, wage structures and what not. Their awards are no doubt amenable to jurisdiction of the High Court under Article 226 as also to the jurisdiction of this Court under Article 32, but they are extra-ordinary remedies subject to several self-imposed constraints. It is, therefore, always in the interest of the workmen that disputes concerning them are adjudicated in the forums created by the Act and not in a Civil Court. That is the entire policy underlying the vast array of enactments concerning workmen. This legislative policy and intendment should necessarily weigh with the Courts in interpreting these enactments and the disputes arising under them.

Now let us examine the facts of the appeals before us in the light of the principles adumbrated Premier Automobiles. The first thing to be noticed is the basis upon which the plaintiffs-respondents have claimed the several reliefs in the suit. The basis is the violation of the certified Standing Orders in force in the appellant- establishment. The basis is not the violation of any terms of contract of service entered into between the parties governed by the Law of Contract. At the same time, it must be said, no right or obligation created by the Industrial Disputes Act is sought to be enforced in the suit. Yet another circumstance is that the Standing Orders Act does not itself provide any forum for the enforcement of rights and liabilities created by the Standing Orders. The question that arises is whether such a suit falls under Principle No.3 of Premier Automobiles or under Principle No.2? We are of the opinion that it falls under Principle No.3. The words "under the Act" in Principle No.3 must, in our considered opinion, be understood as referring not only to Industrial Disputes Act but also to all sister enactments - [like Industrial Employment (Standing Orders) Act] which do not provide a special forum of their own for enforcement of the rights and liabilities created by them. Thus a dispute involving the enforcement of the rights and liabilities created by the certified Standing Orders has necessarily got to be adjudicated only in the forums created by the Industrial Disputes Act provided, of course, that such a dispute amounts to an industrial dispute within the meaning of Sections 2(k) and 2-A of Industrial Disputes Act or such enactment says that such dispute shall be either treated as an industrial dispute or shall be adjudicated by any of the forums created by the Industrial Disputes Act. The Civil Courts have no jurisdiction to entertain such suits. In other words, a dispute arising between the employer and the workman/workmen under, or for the enforcement of the Industrial Employment Standing Orders is an Industrial Dispute, if it satisfies the requirements of Section 2(k) and/or Section 2-A of the

Industrial Disputes Act and must be adjudicated in the forums created by the Industrial Disputes Act alone. This would be so, even if the dispute raised or relief claimed is based partly upon certified Standing Orders and partly on general law of contract.

But then it is argued that while a person can go and file a suit straightaway, he cannot resort to the forums under Industrial Disputes Act directly and that access to these forums is premised upon the appropriate government referring the dispute to them. The submission is no doubt attractive ex facie but not on deeper scrutiny. Firstly, the descretion to refer is not arbitrary. It has to be exercised to effectuate the objects of the enactment. An arbitrary refusal to refer is not un-challengeable. The Courts normally lean in favour of making a reference rather than the other way. In view of the manner in which the several governments have been acting over the last several decades there seems no basis for the apprehension that this power will be exercised arbitrarily. The circumstance suggested cannot, therefore, militate against the view taken by us herein.

The view taken by us finds support in the decision of this Court in Jitendra Nath Biswas (1989 (3) S.C.R.640). That was also a case where the conditions of service of the workmen were governed by the certified Standing Orders. The Court held that the Civil Court has no jurisdiction to entertain such a suit. Indeed this is also the opinion expressed by the Bench which referred these appeals to a larger Bench. The Bench observed:

> "The case of the respondents is that the said action has been taken in contravention of the Standing Orders framed by the Corporation under the Industrial Employment (Standing Orders) Act. The instant cases are, therefore, governed by the decision in Jitendra Nath Biswas case (supra) and in accordance with the said decision it must be held that the jurisdiction of the civil courts is excluded. It may be stated that from the point of view of the workmen also the remedy of adjudication available under the Act would be more beneficial to them than that of a civil suit inasmuch as the civil court cannot grant the relief of reinstatement which relief can be granted by the Labour Court/Industrial Tribunal."

We are in respectful agreement with the said opinion. Coming to the order dated October 18, 1989 in S.L.P.(C) No.9386 of 1988 made by a Bench of two learned Judges, the important fact to be noticed is that in that suit, no allegation of violation of the certified Standing Orders was made. The only basis of the suit was violation of principles of natural justice. It was,therefore, held that it was governed by Principle No.2 in Premier Automobiles. In this sense, this order cannot be said to lay down a proposition contrary to the one in Jitendra Nath Biswas. We may also refer to a decision of this Court rendered by Untwalia,J., on behalf of a Bench comprising himself and A.P.Sen,J., in S.K.Konde v. Pigment Lakes and Chemical Manufacturing Co. Private Ltd. (1979 (4) SCC 12). That was a case arising from a suit instituted by the workman for a declaration that termination of his service is illegal and for reinstatement. In the alternative, he claimed compensation for wrongful termination. The jurisdiction of the Civil Court was sustained by this Court on the ground that he has made out a case for awarding compensation though the Civil Court could not decree reinstatement. Though the report does not indicate the basis put forward by the workman-plaintiff therein, the Court found on an examination of all the facts and circumstances of the case that "it is

not quite correct to say that the suit filed by the appellant is not maintainable at all in a civil court." Obviously it was a case where the dispute related to enforcement of rights flowing from general law of contract and not from certified Standing Orders. This decision cannot also be read as laying down a different proposition from Premier Automobiles.

The learned counsel for the respondents invited our attention to certain decisions of the High Courts to indicate how the dicta in Premier Automobiles has been understood. It may not be necessary to refer to them in view of the preceding discussion.

We may now summarise the principles flowing from the above discussion:

(1) Where the dispute arises from general law of contract, i.e., where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute" within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act. (3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946 - which can be called 'sister enactments' to Industrial Disputes Act - and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to Civil Court is open.

(4) It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate government. The power to make a reference conferred upon the government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one ex-facie. The power conferred is the power to refer and not the power to decide, though it may be that the government is entitled to examine whether the dispute is ex-facie frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we commend to the Parliament and the State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly - i.e., without the requirement of a reference by the government - in case of industrial disputes covered by Section 2-A of the Industrial Disputes Act. This would go a long way in removing the misgivings

with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Order) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the Civil Court where recourse to Civil Court is open according to the principles indicated herein. (7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and un-encumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil courts. Indeed, the powers of the Courts and Tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute.

Applying the above principles, we must hold that the suits filed by the respondents in these appeals were not maintainable in law. Even so, the question is whether we should set aside the decrees passed in their favour by the Civil Courts. So far as Civil Appeal No.3100 of 1991 is concerned, this Court had, while granting leave (in S.L.P.(C) No.194 of 1991) ordered on January 29, 1991 that "insofar as respondent is concerned, he (appellants' counsel) states that he will abide by the decree. Application for stay is rejected". Therefore, there is no question of setting aside the decree concerned in this appeal. However, so far as the other appeals are concerned, the position is slightly different. In Civil Appeal No.4948 of 1991 and in civil appeals 5386,5387/95 arising out of S.L.P.(C) Nos.10902 of 1992, 13152 of 1993 and 10263 of 1993, not only there is no such condition but this Court had granted stay as prayed for by the appellant-Corporation. In two other matters viz., in Civil Appeal No.9314 of 1994 and civil appeal 5389/95 arising out of S.L.P.(C) No.14169 of 1993 the only order is to issue notice. Having regard to the facts and circumstances of these matters, we modify the decrees in these matters (except the decree concerned in Civil Appeal No.3100 of 1991) by reducing the backwages to half. The decrees in all other respects are left undisturbed. These orders are made in view of the fact that the position of law was not clear until now and it cannot be said that the respondents had not acted bonafide in instituting the suits. Appeals disposed of accordingly.

It is directed that the principles enunciated in this judgment shall apply to all pending matters except where decrees have been passed by the Trial Court and the matters are pending in appeal or second appeal, as the case may be. All suits pending in the Trial Court shall be governed by the principles enunciated herein - as also the suits and proceedings to be instituted hereinafter.

There shall be no order as to costs in these appeals. Proceedings which have become final shall not be reopened by virtue of this Judgment.