making this suggestion which we hope Government will seriously consider we do not think that in either of these two petitions we can give any relief either to the litigant who is appearing before the arbitrators or the lawyer who is prevented from appearing on behalf of his client.

Rule in both the petitions discharged; no order as to costs.

Rule discharged.

M. W. P.

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MULCHAND GULABCHAND v. MUKUND SHIVRAM

Chagla C. J.

APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice, and Mr. Justice Gajendragadkar.

RAMCHANDRA ABAJI PAWAR *v.* THE STATE OF BOMBAY.*

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Industrial Disputes Act (XIV of 1947), ss. 10 (1), 12 (5)—Industrial dispute relating to public utility service—Notice of strike properly given by employees—Refusal by Government to refer dispute to Tribunal for adjudication—Application by employees for writ of mandamus—Whether Government can be compelled to make reference—Discretion of Government.

The Government cannot be compelled by a writ of mandamus to refer an industrial dispute relating to public utility service to a Tribunal for adjudication under the proviso to s. 10 (*1*) of the Industrial Disputes Act, 1947, where it is satisfied that the obligation imposed upon it by the proviso need not be discharged either because the notice of the strike given by the employees under s. 22 of the Act is frivolous or vexatious, or it would be inexpedient to make the reference. It is left to the consideration of the Government as to whether the notice has been frivolously or vexatiously given or as to whether it is expedient or inexpedient to make a reference. If Government comes to a conclusion and forms an opinion which is not vitiated by any extraneous consideration, then the Court is bound by the conclusion arrived at and the opinion formed by Government on these matters.

The proviso to sub-s. (*1*) of s. 10 of the Industrial Disputes Act, 1947, no doubt casts an obligation upon the Government to make a reference in the case of an industrial dispute relating to a public utility service, but that obligation is qualified in the proviso itself. Whereas in the case of disputes relating to non-public utility services the discretion is whether to refer or not to refer, in the case of a dispute relating to a public utility service the discretion vested in the Government is to consider and to decide whether the notice mentioned in the proviso has been frivolously or vexatiously given or whether it is expedient or inexpedient to make a reference. The two discretions are of entirely different character. When the Government deals with a dispute relating to a public utility service it must start with this consideration that

* Civil Application No. 622 of 1951.

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there is an obligation upon it to refer it to one of the authorities mentioned in the section. Being conscious of that obligation it must then go on to consider the nature of the notice and, further, the expediency of the reference. The discretion to refer or not to refer is a much wider discretion than the discretion to come to a particular decision bearing in mind certain factors laid down in the proviso.

The obligation to refer a dispute relating to a public utility service under the proviso to s. 10 (*1*) is independent of the duty of Government to refer a dispute under s. 12 (5) of the Act, because under the proviso a reference may be made notwithstanding that any other proceedings under the Act in respect of the dispute may have commenced.

Petition for a writ of mandamus.

Ramchandra Abaji Pawar (petitioner) was employed as omnibus driver by the Bombay State Road Transport Corporation. He was also the Vice-President of the State Road Transport Kamgar Sabha, a Trade Union of workmen in the employment of the said Corporation registered under the Indian Trade Unions Act, 1926.

On September 27, 1950, the Union presented certain demands of the workmen to the Chairman of the said Corporation (opponent No. 2) for consideration. These demands were not met and on January 16, 1951, the State of Bombay (opponent No. 1) declared the transport service of the said Corporation to be a public utility service for the purposes of the Industrial Disputes Act, 1947. On January 25, 1951, the Union gave a notice of strike to the opponent No. 2 in accordance with the provisions of s. 22 (*1*) of the Act. Conciliation proceedings which had been started in the meantime finally failed on January 29, 1951. On March 8, 1951, the opponent No. 1 wrote a letter to the Union rejecting its demand for reference of the dispute to a Tribunal for adjudication under the Industrial Disputes Act. The relevant portion of the letter ran as follows:-

"The Government has carefully considered the dispute arising out of the demand made by the State Transport Kamgar Sabha on the State Transport Corporation and has found that of the 28 demands of the Sabha, some have been already substantially met by the State Transport Board by extending the benefit of the award pertaining to Ahmedabad and Kheda divisions to the other divisions, and that the remaining demands are frivolous, exaggerated or impracticable. The Ahmedabad and Kheda awards were given in the year 1950.

The Government has, therefore, decided not to grant adjudication in case of this dispute as it is satisfied that no grounds for dispute exist....."

On April 10, 1951, the petitioner applied for issue of a writ of mandamus calling upon the opponent No. 1 to refer the

industrial dispute to a competent Industrial Tribunal under s. 10 of the Industrial Disputes Act, 1947.

The petition was heard.

N. V. Phadke and *M. V. Paranjape*, for the Petitioner.

N. A. Palkhivala with *Messrs. Little and Co.*, *B. G. Thakore*, Additional Assistant Government Pleader, for opponent No. 1.

CHAGLA C. J. The petitioner is employed as an omnibus driver by the Bombay State Road Transport Corporation. He is also the Vice-President of the State Road Transport Kamgar Sabha, and his application is that the State of Bombay should be compelled by a writ of mandamus to refer an existing industrial dispute to a tribunal for adjudication under s. 10 of the Industrial Disputes Act, XIV of 1947. It would appear that a strike notice was given by some of the workers of the Bombay State Road Transport Corporation and consequent upon the notice conciliation proceedings started under s. 12. A report was made by the Conciliation Officer under s. 12 (*4*) and Government communicated to the parties concerned their reasons for not making a reference to a Board or a Tribunal under sub-s. (*5*). The allegation now in the petition is that there is an obligation upon the State to refer this dispute to a Tribunal for adjudication and it is also contended that Government were actuated by *mala fides* in not making the reference as they were bound to do in law.

The Bombay State Road Transport Corporation has been declared to be a public utility service and the scheme of the Act must be looked at from the point of view of the dispute relating to a public utility service. Turning to s. 10 (*1*) it provides that if any industrial dispute exists or is apprehended, the appropriate Government may, by order in writing, refer the dispute to any of the three authorities under the Act. It may refer the dispute to a Board for promoting a settlement thereof, it may refer it to a Court for inquiry or it may refer it to a Tribunal for adjudication. Then there is a proviso to this sub-section and that lays down that, where the dispute relates to a public utility service and a notice under s. 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced. Now, it would be

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immediately noticed that in the case of industrial disputes relating to non-public utility services a discretion is given to Government to make a reference; that discretion is indicated by the use of the word "may" by the Legislature. Now, it is well settled that the mere use of the word "may" is not conclusive of the question as to whether power was given coupled with a duty or whether the expression "may" indicated an absolute discretion vested in the authority. But in this case there can be no doubt as to what the Legislature intended by the use of the expression "may", because in the proviso the Legislature has used the expression "shall". The Legislature wanted to draw a distinction between "may" and "shall". Therefore, in one case an absolute discretion was given to Government whether to refer or not to refer a dispute to one of the authorities mentioned in the section; in the other case no such discretion was given to the State. Therefore, when we are dealing with disputes relating to public utility services, Mr. Phadke, who has advanced before us a very able argument on the construction of this section, is quite right when he says that there is an obligation upon Government to refer a dispute relating to a public utility service. But that obligation is qualified in the proviso itself, and the qualification is that if Government considers that the notice has been frivolously or vexatiously given or that it would be inexpedient to make a reference, then a reference need not be made although the dispute relates to a public utility service. Now, it is left to the consideration of the Government as to whether a notice has been frivolously or vexatiously given. It is equally left to the consideration of Government whether it is expedient or inexpedient to make a reference. These are not objective facts which can be determined by a Court of law. If Government comes to a conclusion and forms an opinion which is not vitiated by any extraneous consideration, then the Court would be bound by the conclusion arrived at and the opinion formed by Government on these matters. Now, it has been contended by Mr. Phadke that what has got to be considered is not the nature of the dispute or the merits of the demands put forward by the workers, but what has got to be considered is the nature of the notice given under s. 22, and that is a notice of strike, and if the Government considers that the notice of strike is frivolous or vexatious, then only it should not refer a dispute relating to a public utility service to one of the authorities mentioned in s. 10 (*1*). Mr. Phadke says that a notice may be frivolous or vexatious if it is backed up by a handful of

workers, it may be frivolous or vexatious if in the notice itself no demands are set out by the workers. But, according to Mr. Phadke, if demands are mentioned in the notice, then it is not open to the Government to consider the merits of the demands, because the merits of the demands can only be considered when the matter is referred to adjudication and those merits should only be determined upon by the Tribunal set up under the Act. Now, there would be considerable force in Mr. Phadke's argument if in the proviso the only qualification that was laid down was that "it considers that the notice has been frivolously or vexatiously given"; but there is a further qualification in the proviso and that is "or that it would be inexpedient so to do." Faced with this difficulty Mr. Phadke wants us to construe this part of the qualification as *ejusdem generis* with the first part; in other words, Mr. Phadke wants us to read "or" as if it meant "and", and he wants us to hold that it is only when a notice has been frivolously or vexatiously given and with regard to that notice the Government comes to the conclusion that it is inexpedient to refer the dispute to one of the authorities, then only the Government is exempted from the obligation to make the reference. Now, it is obvious that this interpretation is untenable. If that were the correct interpretation, then it would mean that it is not in the case of every frivolous or vexatious notice that the Government may not make a reference, but even though a notice may be frivolous or vexatious it would be the further duty of Government to consider whether it is inexpedient to make the reference; therefore, with regard to some notices which are frivolous or vexatious it would be incumbent upon the Government to refer the dispute to the authorities. If, on the other hand, we were to read the expression "that it would be inexpedient so to do" as co-extensive with "that the notice has been frivolously or vexatiously given," then this expression is entirely tautologous and there was no necessity for the Legislature to have enacted this further provision. There seems to be no reason whatever why in this particular context "or" should be read as "and". The two qualifications and limitations clearly are, one with regard to the notice and the other a much wider one and which is with regard to the expediency of making a reference or not, an expediency which the State is in the best position to decide. Now, to this Mr. Phadke's answer is—and it is a very ingenious answer—that if we were to give this wide interpretation to the power of the Government not to refer disputes relating to public utility services, it would mean that the proviso, which makes

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it mandatory upon Government to refer disputes relating to a public utility service in contradistinction to disputes which do not relate to public utility services, has been made infructuous and illusory by the limitations placed upon that proviso. Mr. Phadke further says that, that interpretation would mean that whereas in one breath we hold that it is incumbent upon Government to refer a dispute relating to a public utility service, in another breath we say that it is entirely left to the discretion of the Government whether to refer that dispute or not, because, as Mr. Phadke rightly says, "expediency" is a word of very wide connotation and it is difficult to imagine what factors will not come within the ambit of that expression. Now, we do not think that in putting that interpretation upon the power of Government not to refer certain disputes relating to public utility services we are making the proviso entirely infructuous and illusory, because the difference between sub-s. (*1*) of s. 10 and the proviso is mainly a difference of approach, and we must always assume that we are dealing with an honest State, *bona fide* applying its mind to its duties and obligations. In the case of an industrial dispute which does not relate to a public utility service, it is left entirely to the discretion of Government whether it should make a reference or not. When the Government deals with a dispute relating to a public utility service, it must start with this consideration that there is an obligation upon it to refer it to one of the authorities. Being conscious of that obligation it must then go on to consider the nature of the notice and, further, the expediency of the reference. Therefore, the two approaches are entirely different and it cannot be said that the interpretation that we are putting upon the proviso does not make it incumbent upon the Government to refer a dispute relating to a public utility service. The obligation of Government is there; it is only if the Government is satisfied that that obligation need not be discharged by reason of the two considerations laid down in the proviso that the Government has the right not to make the reference.

Now, if this be the true interpretation of s. 10 (*1*) and its proviso, then we have it on the oath of Mr. Dravid, who is the Secretary to the Government of Bombay, Labour and Housing Department, that it was entirely in the absolute discretion of the Government of Bombay to consider whether the notice of strike in relation to a public utility service has been frivolously or vexatiously given or to consider whether it was

not inexpedient to refer the dispute under s. 10 (*1*), and he goes on to say that in the exercise of the said discretion the Government of Bombay decided not to refer the dispute mentioned in the petition to a tribunal for adjudication. Now, Mr. Dravid rightly says in his affidavit that the discretion that the Government has under the proviso is a discretion to consider the two factors to which attention has already been drawn. Whereas in the case of disputes relating to non-public utility services the discretion is whether to refer or not to refer, in the case of a dispute relating to a public utility service the discretion vested in the Government is to consider and to decide whether the notice has been frivolously or vexatiously given or whether it is expedient or inexpedient to make a reference. The two discretions are of entirely different character. The discretion to refer or not to refer is a much wider discretion than the discretion to come to a particular decision bearing in mind certain factors laid down in the proviso.

Our attention has been drawn to the reasons given by Government under s. 12 (*5*) as to why no reference was made to a Board or a Tribunal. Now, it is necessary to consider the scheme of s. 12 in relation to s. 10. Section 12 deals with duties of conciliation officers. Where any industrial dispute exists or is apprehended, the conciliation officer may hold conciliation proceedings in the prescribed manner; but where the dispute relates to a public utility service and a notice under s. 22 has been given, there is an obligation upon the officer to hold such conciliation proceedings. Therefore, in this case there was an obligation upon the officer to hold conciliation proceedings. That obligation the officer discharged, and under sub-s. (*4*) as no settlement was arrived at, he sent a full report to Government setting forth the various facts which are to be set forth under sub-s. (*4*). Having received this report it was the duty of the Government under sub-s. (*5*) to consider it, and having considered it if the Government was satisfied that there was a case for reference to a Board or Tribunal, discretion was given to the Government to refer the matter to a Board or a Tribunal. If the Government did not make such a reference, an obligation was again cast upon Government to record and communicate to the parties concerned its reasons for not making a reference. As I have said before, as in this case the Government did not make a reference under sub-s. (*5*) of s. 12, it has communicated to the parties its reasons therefor. Now, it will be noticed that the obligation to refer a dispute relating

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to a public utility service under the proviso to s. 10 (*1*) is independent of the duty of Government to refer a dispute under s. 12 (*5*), because under the proviso a reference may be made notwithstanding that any other proceedings under the Act in respect of the dispute may have commenced. So that on a notice being given under s. 22 with regard to a dispute relating to a public utility service, although conciliation proceedings may start before the conciliation officer and before the officer has made his report and before the Government has considered the report, the Government have the power to refer the industrial dispute to one of the authorities mentioned in s. 10 (*1*). Further, under the proviso to s. 10 (*1*) there is no obligation cast upon the Government to communicate its reasons as to why it has decided not to make a reference to one of the authorities referred to in s. 10 (*1*). Under s. 12 (*5*) an obligation is cast upon Government to communicate its reasons. Therefore, in one sense the reasons which Government had given under s. 12 (*5*) for not making a reference have no bearing on the question as to whether Government rightly refused to make a reference under the proviso to s. 10 (*1*). This petition requires the Government to make a reference not under s. 12 (*5*), but under the proviso to s. 10 (*1*). This petition further is not concerned with the reasons given by Government under s. 12 (*5*). No grievance is made that the reasons are not proper in the light of the language used in s. 12 (*5*). But these reasons may be considered when we are dealing with the question of *mala fides*. If on a perusal of these reasons we come to the conclusion that something extraneous has weighed upon the mind of Government in refusing to make a reference under the proviso to s. 10 (*1*), then undoubtedly we may come to the conclusion that Government have failed to discharge their statutory obligation under the proviso. It is from that point of view that we have considered the reasons given by Government to which our attention has been drawn by Mr. Phadke.

Now, these reasons deal with the substantial demands made by the workers and the opinion given by Government broadly speaking is that either the demands have been substantially met or where they have not been met they are frivolous, exaggerated or impracticable, and then they deal with most of the demands of the workers. Now, in going through this statement of reasons we do not find any consideration that has weighed with Government which can be considered to be extraneous or ulterior to what the Legislature laid down in the

proviso to s. 10 (*1*). It is perfectly open to Government to say that because the demands are substantially met or because other demands are frivolous it is inexpedient to refer the dispute. It is entirely for Government to decide the nature or extent of expediency which should regulate its labour policy. This Court cannot take upon itself to decide whether in a particular case it was or it was not expedient for Government to make the reference.

The other aspect of the plea of *mala fides* is that Government had referred to an industrial tribunal for adjudication certain demands of transport workers in two districts in Gujarat. An award was given which was largely based on consent between the employer and the employees and the Government has given effect to the provisions of the award even with regard to the workers with whom we are concerned although the award strictly did not apply to them. Now, Mr. Phadke says that in doing what Government has done it has shown its partiality for certain trade unions which flourish in these two districts in Gujarat by acceding to their request for adjudication and by refusing the application of the trade union in Bombay for adjudication with regard to similar matters. We fail to see how that averment makes out any case of *mala fides*. The Government, rightly or wrongly, having before it an award dealing with a similar dispute decides to apply it to similar workers, and having done so, the Government, again rightly or wrongly, takes the view that the application of the award should substantially meet the demands of labour in Bombay and that that having been done it was inexpedient again to reopen the controversy by making a reference at the instance of the Bombay workers. If that is the view that Government takes—and we express no opinion on the merits of that view—it is not a view which could be characterised as wanting in good faith, and on the affidavit made by Mr. Dravid the suggestion that there was any partiality shown to the trade unions in the two districts in Gujarat because of certain political complexion which they had has been stoutly denied.

Under the circumstances we are of the opinion that no case has been made out for the issue of a writ of mandamus upon the State of Bombay to refer this industrial dispute to a Tribunal for adjudication. Rule discharged. No order as to costs.

Rule discharged.

M. W. P.