1973 *Present :* **Pathirana, J., and Rajaratnam, J.**

AISLABY ESTATE LTD., Petitioner, *and* C. J. WEERASEKERA (President, Labour Tribunal, Badulla) and others, Respondents

S. C. 231/69—Application for Mandates in the nature of a Writ of Certiorari and a Writ of Prohibition

Industrial dispute—Refusal by Minister to refer the dispute to a Labour Tribunal—An administrative act—Right of the Minister to change his mind subsequently—Collective agreement—Reference, thereunder, of a dispute for settlement by a Board of Arbitrators—Termination of the collective agreement pending the arbitration proceedings—Subsequent reference by Minister for compulsory arbitration—Validity of such reference—Amplitude of the Minister's power—Industrial Disputes Act (Cap. 131), ss. 3 to 9.

When there is an industrial dispute within the meaning of section 48 of the Industrial Disputes Act, a decision of the Minister not to refer the dispute for settlement by arbitration to a Labour Tribunal under section 4 (1) of the Act is an administrative act and not a judicial or quasi-judicial act. The Minister can therefore re-examine the question and make a reference under section 4 (1) if he is of the opinion on a later date that the dispute should be referred to a Labour Tribunal for settlement by arbitration. The mere fact that on one occasion he refused to exercise his power under section 4 (1) does not mean that he has exhausted his power and is *functus officio.*

When an industrial dispute concerning the termination of the services of a workman is referred, in terms of a Collective Agreement between an Employers' Federation and a trade union, to a Board of Arbitrators for adjudication, and, pending the proceedings before the Board of Arbitrators, the Employers' Federation terminates the said Collective Agreement under the provisions of section 9 of the Industrial Disputes Act, section 4 (1) of the Act enables the Minister, thereafter, to refer the same dispute to a Labour Tribunal for compulsory arbitration, even if the two parties to the Collective Agreement do not want the matter referred to arbitration. In such a case, even if the Board of Arbitrators continue their sittings, with the acquiescence of the parties, after the day on which the Collective Agreement stands repudiated, it cannot make a legally enforceable and valid award.

APPLICATION for a Writ of *Certiorari* and a Writ of Prohibition.

S. J. Kadirgamar, with *S. C. Crossette-Thambiah, N. S. A. Goonetilleke* and *V. R. M. Perera,* for the petitioner.

N. Satyendra, for the 2nd respondent.

S. Sivarasa, State Counsel, for the 3rd respondent.

Cur. adv. vult.

1*——A 08995—3,000 (74/09)

August 31, 1973. PATHIRANA, J.—

This is an application for a grant and issue of a Mandate in the nature of a Writ of Certiorari to quash the order of the 1st respondent, the President of the Labour Tribunal (V), Badulla, dated 12th March 1969 and also for the grant and issue of a Writ of Prohibition prohibiting the 1st respondent from entertaining and hearing or making any inquiries or making any award upon the reference made to him by the 3rd respondent, the Minister of Labour and Employment, under Section 4 (1) of the Industrial Dispute Act for a settlement by arbitration of an industrial dispute between the Petitioner, Aislaby Estate Limited, and the 2nd respondent, the Ceylon Estates Staff Union, regarding the termination of the services of the 4th respondent W. K. Seneviratne, who was the Chief Clerk of the said estate. The 1st respondent had held, on a preliminary point of jurisdiction that the order of reference made by the 3rd respondent, the Minister, was not bad in law and that it was a valid reference.

Before I deal with the submissions of Counsel regarding the two points raised before us, it will be useful to recite the facts leading to the order of the Minister, the 3rd respondent, the legality of which has been challenged in these proceedings.

On the 24th of December 1965, the Superintendent of Aislaby Estate, which belonged to the Petitioner, terminated the services of the 4th respondent, the Chief Clerk of the said estate. The Petitioner and the 2nd respondent, the Ceylon Estate Staff Union, which is a trade union registered under the provisions of the Trade Union Ordinance—Chapter 138, were bound by the terms of the Collective Agreement No. 1 of 1965, dated 9th March, 1965, entered into between the Ceylon Estate Employers Federation and the 2nd respondent and published in the Government Gazette No. 14375 of 9th April 1965. The question of the said termination was upon a joint application of the Federation and the 2nd respondent referred for adjudication under clause 7 (*a*) of the said Collective Agreement to a Board of Arbitrators for adjudication on 23.6.1966. The Board of Arbitrators had commenced its adjudication on 3.10.1966 and thereafter continued its adjudication at ten sittings up to and including the 22nd of September 1967. By a letter dated 30.10.1966 the Federation gave notice to the Commissioner of Labour in terms of Section 9 of the Industrial Disputes Act of its decision to repudiate the said Collective Agreement, and accordingly the said Collective Agreement stood terminated and ceased to have effect on 30.11.1966 in terms of Section 9 (2) (*a*) of the said Act. The Petitioners, however, had stated in the said notice of repudiation that the Federation acting for/and behalf of its members, including the Petitioner,

undertook that even if the said Collective Agreement ceased to have effect, to proceed with the adjudication already pending before the Board of Arbitrators constituted under the said Agreement in the same manner as if the said Collective Agreement had full force and effect. The 2nd respondent to whom a copy of the said notice of repudiation had been sent, however, participated in the proceedings which had already commenced in spite of the said repudiation by the Petitioner of the said Collective Agreement and continued to participate in the proceedings before the Board of Arbitrators till 22.3.1967, according to the Petitioner, "even if the said Collective Agreement ceased to have effect and thus accepted or is deemed to have been accepted the said undertaking."

On 22.3.1967 the 2nd and 4th respondents withdrew from the proceedings before the Board of Arbitrators and did not take any further part in the proceedings. According to a letter sent by the 2nd respondent, the Union, to the 3rd respondent, the Minister, dated 23rd April 1967, the Union referred to the repudiation of the Agreement with effect from 30th November 1966, and remarked that although the Federation offered that the cases of all disputes which were time barred from reference to the Labour Tribunals shall be continued to the settlement in the manner outlined in the Collective Agreement, the Union did not, however, view this offer favourably because the Board of Arbitrators and their award now stood devoid of legality as a result of the repudiation of the Agreement.

An application was made to the 3rd respondent by the 2nd respondent to refer the matter in dispute between the Petitioner and the 2nd and 4th respondents in regard to the termination of the services of the 4th respondent for arbitration under Section 4 of the Act. The 3rd respondent, the Minister, through his Permanent Secretary, informed the Union that the Minister did not intend to refer under the provisions of Section 4 of the Industrial Disputes Act the dispute in question for compulsory arbitration. Subsequently, on the 15th of April 1968, the Minister, the 3rd respondent, purporting to act under Section 4(1) of the Act referred the industrial dispute between the Petitioner and the 2nd respondent concerning the termination of the services of the 4th respondent for settlement by arbitration to Labour Tribunal (V). The dispute was whether the termination of the employment of the 4th respondent by the Management of the said Aislaby Estate was justified and to what relief he is entitled to. The President, Labour Tribunal, the 1st respondent, commenced inquiries under Section 17 of the Industrial Disputes Act on the 20th of August 1968. The Petitioner raised objections

to the jurisdiction of the 1st respondent to hear the inquiry or to make any award in terms of the order of reference made by the Minister under Section 4 (1) of the Act.

The two main grounds urged by the Petitioner were as follows :—

Firstly, the 1st respondent had no jurisdiction to hear the matter referred to him by the 3rd respondent, the Minister, under Section 4 (1) of the Industrial Disputes Act in that the 3rd respondent having once decided that he would not refer the said matter under Section 4 (1) exhausted his power and could not thereafter in law alter or revoke his previous decision in the absence of express statutory provision and/or in the absence of fresh material brought to his attention and warranting a further decision thereon.

Secondly, the dispute between the parties was referred, in terms of the Collective Agreement, to a Board of Arbitrators, and once this Board commenced to function, it was vested with exclusive jurisdiction over the dispute. The subsequent repudiation of the Collective Agreement did not in any way invalidate the pending arbitration proceedings or terminate the jurisdiction of the Board of Arbitrators and the said Board being thus still lawfully seized of the 'dispute' there was no 'dispute' existing within the meaning of that expression in Section 3 or 4 of the Industrial Dispute Act, enabling the Minister to make a compulsory reference to arbitration under Section 4 (1) of the Act.

The 1st respondent held on 12th March 1969, that the Minister's order was valid. The present application challenges this order of the 1st respondent.

I shall now deal with the first ground, namely, that the 3rd respondent, the Minister, having firstly declined to exercise his power under Section 4 (1) of the Industrial Disputes Act not to refer the matter under Section 4 (1) that he had exhausted his power and he could not therefore in law alter or revoke his said previous decision in the absence of the express statutory provision and in the absence of fresh material brought to his notice and warranting a further decision thereon.

Section 4 (1) of the Industrial Dispute Act reads as follows :—

> "The Minister may, if he is of the opinion that an industrial dispute is a minor dispute, refer it, by an order in wrtiing, for settlement by arbitration to an arbitrator

appointed by the Minister or to a labour tribunal, notwithstanding that the parties to such dispute or their representative do not consent to such reference."

Mr. Kadirgamar, learned Counsel for the Petitioner, relied strongly in support of his argument on the case of *Gondhara Transport Co. Ltd. v. State of Punjab and others* [1]—1966 A. I. R. Punjab, 354, where the Indian Court had interpreted a section almost similar to Section 4 of the Industrial Disputes Act, but worded differently. Section 10 (1) of the Indian Industrial Disputes Act (1947), is worded as follows :—

"Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended it may *at any time* by order in writing, (*d*) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second schedule or the third schedule, to a Tribunal for adjudication."

In this case, it was conceded that it is settled law that once the appropriate Government had exercised its power under Section 10 (1) of the Industrial Disputes Act 1947 and made a reference of an Industrial Dispute, it becomes *functus officio* and has no jurisdiction to subsequently amend, cancel or supersede the reference. By a parity of reasoning, it was argued whether the same principle did not apply to a case where the Government once having declared that the industrial dispute did not exist the Government becomes *functus officio,* and therefore it did not have the power to refer the dispute to a tribunal for adjudication. Narula J., dealt specially with the use of the word "at any time" in Section 10 as a fetter to the power to refer the dispute to adjudication.

At page 360 he observed :—

"Considering the scheme, objects and purposes of the relevant provisions of the Act as a whole it appears to be clear that words "at any time" in Section 10 (1) of the Act refer to a period which commences with the issue of demand notice or with any other legal steps by which the proceedings are initiated for making a reference to a Labour Court or Tribunal and which period terminates with an Order of the appropriate Government either making a reference or declining to make it for any valid reason. Once the Government has arrived at and given out its decision one way or the other, Section 10 (1) of the Act ceases to exist

[1] *(1966) A. I. R. Punjab 354.*

for that particular dispute or demand and with such a decision of the Government the words "at any time" contained in Section 10 (1) of the Act also cease to operate."

It is relevant to note at this stage that the words "at any time" do not occur in our Section 4 (1) of our Industrial Disputes Act. I am, therefore, of the view that, even if one grants that some sort of qualification is imposed by the use of the words "at any time" in the Indian Act, any such qualification cannot be imported into Section 4(1) of our Act.

Narula J., further held in this case that in deciding whether an industrial dispute exists between the parties or not, the appropriate Government does not appear to be exercising any judicial function. It is not adjudicating on any *res* or *lis*. It is only concerned with taking a preliminary step to enable adjudication of an industrial dispute. However, Narula J., cited the case of *Supreme Court in Newspapers Limited v. State Industrial Tribunal,*[1] U.P. A.I.R. 1957 S.C. 532 which is as follows :—

"In spite of the fact that the making of a reference by the Government under the Industrial Disputes Act is the exercise of its administrative powers, that is not destructive of the rights of an aggrieved party to show that what was referred was not an "industrial dispute" at all and therefore the jurisdiction of the Industrial Tribunal to make the award can be questioned, even though the factual existence of a dispute may not be subject to a party's challenge."

The decision of Narula J., in the Punjab case was not, however, followed in *Good Year India Ltd., Jaipur v. Industrial Tribunal Rajasthan*[2]—1969 A.I.R. Rajasthan 95, where it was held :—

"A decision under Section 12(5) not to make a reference is an administrative act and not a judicial or quasi judicial adjudication and such a decision not having been invested with stotutory finality by any provision of the Act, the Government can re-examine the question and make a reference under Section 10(1), if it is of the opinion that an industrial dispute exists or is apprehended. The earlier decision by the Government not to make a reference does not operate as *res judicata.*"

[1] *U.P.A.I.R. 1957 S.C. 532.* [2] *1969 A.I.R. Rajasthan 95.*

Bhandradi J., however, dealing with the question whether the words "at any time" in the Indian Section imposed the restriction or limitation as was held to be made out in the Punjab case stated at page 105 as follows:—

> "The words "at any time" only emphasise that there is no restriction on the power of the appropriate Government to refer the industrial dispute provided that it is of opinion that such dispute exists or is apprehended. There is no restriction or impediment for the appropriate Government to form one opinion which may be altogether contrary to its first opinion nor can a Court of law review the decision of the appropriate Government to refer a dispute even though it has material on record that earlier that very Government had refused to make a reference."

Bhandradi J., further held that:—

> "This power is of purely administrative nature. The exercise of this power depends entirely on the opinion of the Government and such opinion is subjective which cannot be challenged in a Court of law."

He further held that the power to make reference at any subsequent time remains in the appropriate Government and unless there is an expressed prohibition in the exercise of that power, it cannot be said that the power is exhausted.

At page 103 he said:—

> "Having carefully considered the matter, my view is that a decision under Section 12(5) not to make a reference is an administrative act and not a judicial or quasi judicial adjudication and such a decision not having been invested with statutory finality by any provision of the Act, the Government can re-examine the question and make a reference under Section 10(1) if it is of the opinion that an industrial dispute exists or is apprehended. The earlier decision by the Government not to make a reference does not operate as *res judicata*. The fact that the appropriate Government had refused to refer an industrial dispute for adjudication could not bar the Government from subsequently referring the same dispute for adjudication, provided the conditions mentioned in Section 10(1) are satisfied."

The Punjab case was also not followed in the *Western India Watch Co. Ltd. v. The Western India Watch Co. Workers' Union and others*[1]—A.I.R. 1970 S.C. 1205, Shelat J., observed that the legislature has left the question of making or refusing to make a reference for adjudication to the discretion of the Government. But the discretion is neither unfettered nor arbitrary for the section clearly provides that there must exist an industrial dispute as defined by the Act or such a dispute must be apprehended when the Government decides to refer it for adjudication.

At page 1209 Shelat J., after referring to several decided cases observed :—

> "The reason given in these decisions is that the function of the Government either under Section 10(1) of the Central Act or a similar provision in a State Act being administrative, principles such as *res judicata* applicable to judicial Acts do apply and such a principle cannot be imported for consideration when the Government first refuses to refer and later changes its mind. *In fact, when the Government refuses to make a reference it does not exercise its power and it is only when it decides to refer that it exercises its power. Consequently, the power to refer cannot be said to have been exhausted when it has declined to make a reference at an earlier stage.* There is thus a considerable body of judicial opinion according to which so long as an industrial dispute exists or is apprehended and the Government is of the opinion that it is so, the fact that it had earlier refused to exercise its power does not preclude it from exercising it at a later stage. In this view, the mere fact that there has been a lapse of time or that a party to the dispute was, by the earlier refusal, led to believe that there would be no reference and acts upon such belief, does not affect the jurisdiction of the Government to make the reference."

Mr. Kadirgamar submitted that as in the *Western India Watch Co. Ltd., case,* there was no new material placed before the Minister for him to exercise his power under Section 4(1), after he had earlier declined to exercise his jurisdiction under the same section. In these circumstances, he submitted that the Minister's decision was wrong. He cited the following passage at page 1209 :—

> "In the light of the nature of the function of the Government and the object for which the power is conferred on it,

[1] *A.I.R. 1970. S.C. 1205.*

it would be difficult to hold that once the Government has refused to refer, it cannot change its mind on a reconsideration of the matter *either because new facts have come to light or because it had misunderstood the existing facts or for any other relevant consideration and decide to make the reference.*"

It appears to me that Mr. Kadirgamar toned down his earlier argument that there was an absolute bar for the Minister to refer the matter under Section 4 (1) for compulsory arbitration to the Labour Tribunal, after he declined to exercise the power once, by suggesting that even if the Minister had such a power, he could only do so if new facts had come to his mind or if he had misunderstood the existing facts or for other relevant consideration.

It is quite clear that on a reading of the Act, nowhere is it stated that under Section 4 (1) the Minister has to give his reasons in making a reference or in refusing to make a reference. The discretion is entirely in the Minister whether or not to refer the dispute for settlement by arbitration. The Minister may have his own reasons as to why he decided to change his mind. It may be a question of policy, it may be the immediate exigencies of the situation, which demand industrial peace or any such similar circumstances which necessitate the reversal of his earlier decision. However, in this connection, I might refer to the Judgment of Mehta J., in *Good Year India Ltd., Jaipur v. Industrial Tribunal (Supra)* at page 102 where he states :—

"It has further been observed that it is hardly open to doubt that, as the power under Section 10 (1) has been conferred upon the Government in the interests of industrial peace, the amplitude of the power cannot be curtailed by the importation of other principles unless there is any warrant for them in the statute itself and that even if at one stage Government had come to the conclusion that no reference is called for in the interests of industrial peace, it may re-examine the matter, whether in the light of fresh material or *otherwise,* and make a reference if it comes to the conclusion that a reference is justified, in the interest of industrial peace."

He further observed at page 103 after citing a number of cases :—

"In 1963 2 Lab. L.J. 717 (Mys.) it has been held that the earlier decision refusing to refer the matter for adjudication could be re-examined in the light of fresh material or

otherwise. According to this authority, re-examination of the matter was not solely dependent on fresh material. It was permissible otherwise also."

The Minister, therefore, being under no obligation to give reasons for his decision when he acts under Section 4 (1) and his decision being an administrative act, he is the sole judge whether the industrial dispute is one that should be referred for settlement by arbitration to the Labour Tribunal and this Court cannot objectively review that decision.

I, therefore, hold that subject to the requirement that there is an industrial dispute within the meaning of the Act and as defined in Section 48, the decision of the 3rd respondent, the Minister, not to refer the dispute for settlement by arbitration to a Labour Tribunal under Section 4 (1) of the Act, is an administrative act and not judicial or quasi judicial act, and such decision not having been invested with statutory finality by any provisions of the Act, the Minister can re-examine the question and make a reference under Section 4 (1) of the Act, if he is later of the opinion that the dispute should be referred for settlement by arbitration to a Labour Tribunal. The mere fact that on one occasion he refused to exercise his power under Section 4 (1) did not mean that he had exhausted his power and was therefore *functus officio.*

Mr. Kadirgamar's second submission, briefly, is that once the Board of Arbitration was appointed in terms of the Collective Agreement, it was seized of the "dispute", there was therefore no "dispute" existing enabling the Minister to make a compulsory reference for arbitration under Section 4 (1) of the Act.

In support of his argument Mr. Kadirgamar submitted, firstly, that once the Board of arbitrators commenced the function to hear the dispute, it was vested with an exclusive jurisdiction over the dispute. The answer to this is that there is nothing in the Act or in the Collective Agreement which states that once the Board commenced to function, it was vested with an exclusive jurisdiction over the dispute. The Collective agreement, no doubt, has to all intents and purposes statutory force by reason of the provisions of Sections 5, 6, 7 and 8 of the Act. There is nothing in the Act which states that if the matter is referred to arbitration, the jurisdiction of the Minister to refer the matter to the Labour Tribunal is thereby ousted. In fact Section 4 (1) was introduced into the Act by an amendment in 1957.

Secondly, it was submitted that the subsequent repudiation of the Collective Agreement did not in any way invalidate the pending arbitratory proceedings or terminate the jurisdiction of the Board of Arbitrators. It was submitted that Section 9 of the Act only dealt with the termination of the Collective Agreement; it says nothing about the effect of such a termination on matters affected by the termination such as in the instant case of the pending arbitration. It will be relevant at this stage to refer to the scope, nature and effect of the Collective Agreement in the light of the Industrial Disputes Act.

The Collective Agreement referred to in these proceedings has been published in the Government Gazette No. 14,375 of 9th April 1965 and has been entered into between the Ceylon Estate Employers' Federation on the one part and the Ceylon Estate Staffs Union on the other on the 5th of March 1965 in terms of Section 6 of the Act and lays down the procedure for the resolution of disputes. The agreement came into force on the 15th of April 1965. Clause 7 (*a*) of the Agreement enables the two parties on a joint application to refer the dispute to a Board of Arbitration for adjudication. Clause 7 (*b*) states that it shall be the duty of the Board of Arbitrators upon such reference being made to make such inquiries and hear such evidence as it may consider necessary and thereafter make an award which shall be binding on all parties. Clause 7 (*e*) states that the Chairman of the Board shall communicate the award of the Board to the Secretaries of the Federation and the Unions respectively within 30 days of the date of which the dispute is referred to the Board for adjudication. Section 7 (3) of the Act says where no period or date is specified in any Collective Agreement as the period during which or the date until which the Agreement shall have effect, the Agreement shall continue in force with effect from the date on which it comes into force as provided in sub-section (1) until it ceases to have effect as provided in Section 9. Section 9 (1) enables any party to repudiate the Agreement by written notice in the prescribed form sent to the Commissioner and to every other party bound by the Agreement. Section 9 (2) says where a valid notice of repudiation of the Collective Agreement is received by the Commissioner, the Agreement to which such notice relates shall terminate and ceases to have effect upon the expiration of the month immediately succeeding the month in which the notice is so received by the Commissioner. The Collective Agreement in question contains no provisions specifying the period or date until which it shall continue to be in force. Therefore, in terms of Section 7 (3)

read with Section 9 (2), it is agreed that the Collective Agreement in question terminated and ceased to have effect on the 30th of November 1966.

Section 8 (1) of the Act reads as follows :—

> " Every Collective Agreement *which is for the time being in force* shall, for the purpose of this Act be binding on the parties, Trade Unions, employers and workmen referred to in that agreement in accordance with the provisions of Section 5 (2) ; and the terms of the Agreement shall be implied terms in the contract of employment between the employers and workmen bound by the agreement. "

As a result of the repudiation of the Collective Agreement by the Federation in terms of Section 9 (2) (*a*) of the Act the agreement terminated and ceased to have effect upon the expiration of the month immediately succeeding the month in which the notice is received by the Commissioner—in this case, on 30.11.1966. The sittings of the Board of Arbitration commenced on 3.10.1966 and continued till 22.3.1967 on which date, according to the Petitioner the Union withdrew from the proceedings and did not take any part thereafter. The resulting position, therefore, is that after 30.11.1966 the Board had not made an award in terms of clause 7 (*b*) of the Collective Agreement.

If one takes one's mind back to Section 8 (1) of the Act the binding effect of the Collective Agreement on the parties whereby the terms of the agreement shall be the implied terms of the contract of employment between the employers and workmen, lasts only so long as the Collective Agreement is " for the time being in force ". After 30.11.1966 the Collective Agreement terminated and ceased to have effect so that any award made in terms of clause 7 (*b*) by the Board of Directors is not an award which is binding on the parties under clause 7 (*b*). Once the Collective Agreement had ceased to have effect from 30.11.1966, its binding effect had no legal sanction. The honouring of the award by either party was purely on the voluntary basis and was left to the good sense of the parties.

The 2nd respondent, the Union, was therefore correct in stating by its letter dated 27.4.1967 to the Minister that because the Federation unilaterally repudiated the agreement with effect from 30.11.1966, " the undertaking given by the Union to proceed with the pending arbitration was not favourably viewed by the Union because the Board of Directors and their award " now stand devoid of legality as a result of the repudiation of the

agreement ". The circumstance that the Union, the 2nd respondent, did participate in the proceedings before the Board of Arbitrators till 22.3.1967 is, therefore, irrelevant.

In the result, even if the Board of Directors could have continued the sittings after the day the Collective Agreement stood repudiated, viz., 30.11.1966, it could not make a legally enforceable and valid award.

Thirdly, it is submitted that the Board being lawfully seized of the "dispute", there was no dispute existing within the meaning of the expression in Section 4 of the Act enabling the Minister to make a compulsory reference to arbitration under Section 4 (1). Even assuming the correctness of this argument all that can be said in its favour is that the Board was only seized of the dispute up to the 30th of November 1966, that is the day on which the agreement stood terminated and ceased to have effect. The Board, therefore, had no power to make an award which was binding on the parties in terms of Section 8 (1) of the Act and clause 7 (*b*) of the Agreement, as the agreement ceased to have all force on this date.

I, therefore, hold that the Minister acted *intra vires* his power under Section 4 (1) of the Act in referring the dispute to the Labour Tribunal on 15.4.1968 for settlement by arbitration in spite of the fact that the Board of Arbitrators was technically seized of the "dispute" up to the 30th November 1966.

I go still further and take the view that Section 4 (1) of the Act vests the Minister with an amplitude of power (subject only to the fetter that he is referring an industrial dispute within the meaning of the Act) to order in writing once he is of opinion, that the Industrial dispute is a minor dispute for settlement by arbitration to the Labour Tribunal. His opinion, once it has been formed and his reference of the dispute to the Labour Tribunal cannot be questioned by this Court, as the Minister is acting solely in an administrative capacity and not judicially or quasi-judicially. The concluding words in Section 4 (1) :— "notwithstanding that the parties to such dispute or their representatives do not consent to such a reference", in fact, highlight the amplitude of power vested by Section 4 in the Minister to refer a dispute to a Labour Tribunal for adjudication. Even if the two parties to the Collective Agreement do not want the matter referred to arbitration, the Minister, nevertheless, under Section 4 (1) is vested with the power to refer the matter for arbitration. To my mind, the legislature has prudently and advisedly intrusted an amplitude of power in the Minister in the larger interests of industrial peace. To take an extreme example,

what if some dishonest set of office bearers of a Trade Union come to terms with the employers and team up with them in order to defeat the legitimate interests of the workmen. In such a case, industrial peace demands that the Minister must be vested with the power to afford an opportunity to the workmen to have their demands referred to another tribunal, in this case, either the Labour Tribunal or an Industrial Court or an arbitrator as contemplated in Section 4. Section 4 therefore provides the necessary machinery for such an eventuality.

I, therefore, hold that the Minister's decision under Section 4 (1), in the circumstances of this case and his reference dated 15th April 1968 to the Labour Tribunal (V) for settlement by arbitration cannot be questioned by the Court, and is a valid decision. In dealing with the power of the Minister to act under Section 4 (1) it will be relevant to quote the observations of Lord Esher in *Queen v. The Commissioner for Special Purposes of Income Tax*[1]—(1888) 21 Q.B.D. 313 at 319 :—

> "When an inferior Court or tribunal or body, which has to exercise the power of deciding facts, is first established by Act of Parliament, the legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There is not for them exclusively to decide whether that state of facts exists, and if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The Legislature may intrust the tribunal or body with a jurisdiction, which includes the jurisdiction, to determine whether the preliminary state of facts exists as well as jurisdiction, on finding that it does exist, to proceed further or do something more. When the legislature is establishing such a tribunal or body with limited jurisdiction they also have to consider whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. In the second of the two cases I have mentioned it is an erroneous application of formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends."

[1] *(1888) 21 Q.B.D. 313 at 319.*

Mr. Kadirgamar has also cited the *Western India Watch Co. Ltd. v. The Western India Watch Co. Workers' Union and others*[1] in 1970 A.I.R. 1205 at 1209 (Supra) in support of the proposition that where there is an agreement or settlement under the corresponding Indian Act reference cannot be made to a Tribunal for adjudication. The relevant passage quoted is at page 1209 :—

> "No reference is contemplated by the Section when the dispute is not an industrial dispute, or even if it is so, it no longer exists, or is not apprehended, for instance, where it is already adjudicated *or in respect of which there is an agreement or settlement* between the parties or where the industry in question is no longer in existence."

He submitted that in the instant case the parties under the Collective Agreement had referred the matter for adjudication to a Board of arbitrators. Our Section 4, in my opinion, is wider than the corresponding Indian Section and as I pointed out, even if the parties do not consent to such reference, the Minister is empowered to such a reference. The Indian case therefore has no application to our Section 4 (1) of the Act.

Before I conclude, I will be failing in my duty if I do not refer to the inordinate delay this case has taken to dispose of a preliminary point of jurisdiction. The workman was dismissed from employment on 21st December 1965; the Board of Arbitrators commenced their proceedings on the 3rd of October 1966, and prematurely ended their sittings on the 22nd of March 1967. The Collective Agreement was terminated on the 30th of November 1966. The Minister referred the dispute for the Labour Tribunal for arbitration on the 15th of April 1968; and the President of the Labour Tribunal decided the preliminary point of jurisdiction on 12th March 1969. The application to this Court praying for a writ was made on the 20th of April 1969. Our order today is merely disposing of the preliminary point of jurisdiction in favour of the workman, the 4th respondent, and the Union, the 2nd respondent.

Industrial legislation in this country has been enacted in the interest of both the workers and the employers for the speedy, just and equitable disposal of their grievances. It is a sad comment that I have to make, that the machinery of the law far from adapting itself to the minimum standard of efficiency in regard to the expeditious disposal of these matters, the speed of disposal of these cases has been slower than the proverbial

[1] *A.I.R. 1970 S.C. 1205 at 1209.*

snail's pace. This case stands as a monument to this unsatisfactory state of affairs. I do hope that the proper authorities will look into these matters and see that the necessary legal machinery is provided so that the workers and the employers will be able to reap the benefits of Industrial Legislation without too much insistence on formalized procedure.

The resort to technical objections in a jurisdiction where the tribunal is expected to make all such inquiries and hear evidence as may be tendered and thereafter make an award which appears to the tribunal to be just and equitable, far from promoting industrial peace only serves to perpetuate a state of cold war between the worker and his employer. I can, in the circumstances of this case, only offer the worker, who has yet to go a long way to get his grievances adjusted, the hope that this matter will be disposed of expeditiously, and I do hope that he can look forward to the charity of his employer to co-operate with the administration of justice so that no further technicalities will be placed in the way of the Labour Tribunal in making a just, equitable and expeditious decision.

We are much obliged to Mr. Kadirgamar for the able assistance he gave us by his exhaustive and useful written submissions.

I dismiss the Petitioner's application with costs payable in a sum of Rs. 525 to the 2nd respondent and a sum of Rs. 525 to the 3rd respondent.

RAJARATNAM, J.—I agree.

Application dismissed.