the decision now under challenge. It is sufficient answer to this contention that the Federal Court had power under s. 3(a) (ii) to grant leave only when the proposed appeal was against a judgment, and that, under the definition in s. 2(b), meant a judgment, decree or order of a High Court in a civil case; and that on our conclusion that the decision in the appeal under s. 19(1) (f) is not a judgment, decree or order but an award, no order could have been passed granting special leave under s. 3(a) (ii).

In the result, we dismiss both the appeals as incompetent. The parties will bear their own costs in this Court.

Appeals dismissed.

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August 22.

THE STATE OF BIHAR

v.

D. N. GANGULY & OTHERS

(VENKATARAMA AIYAR, GAJENDRAGADKAR and A. K. SARKAR JJ.)

Industrial Dispute—Supersession of adjudication pending before industrial tribunal—Validity—Power of appropriate Government—Industrial Disputes Act, 1947 (XIV of 1947), s. 10(1)—General Clauses Act, 1897 (10 of 1897), s. 21.

Section 10(1) of the Industrial Disputes Act, 1947, does not confer on the appropriate Government the power to cancel or supersede a reference made thereunder in respect of an industrial dispute pending adjudication by the tribunal constituted for that purpose. Nor can s. 21 of the General Clauses Act, 1897, vest such a power by necessary implication.

It is well settled that the rule of construction embodied in s. 21 of the General Clauses Act can apply to the provisions of a statute only where the subject matter, context and effect of such provisions are in no way inconsistent with such application. So judged it is clear that that section cannot apply to s. 10(1) of the Industrial Disputes Act.

Minerva Mills Ltd. v. *Their Workmen*, [1954] S. C. R. 465, held inapplicable.

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Strawboard Manufacturing Co. Ltd. v. *Gutta Mill Workers' Union*, [1953] S. C. R. 439, explained.

The Textile Workers' Union, Amritsar v. *The State of Punjab and others*, A. I. R. 1957 Pun. 255 and *Harendranath Bose* v. *Second Industrial Tribunal*, [1958] 2 L.L.J. 198, overruled.

South Indian Estate Labour Relations Organisation v. *The State of Madras*, A.I.R. 1955 Mad. 45, distinguished.

Consequently, where the appropriate Government by two notifications, issued one after the other, referred two industrial disputes between two batches of workmen and their employer for adjudication to the industrial tribunal constituted for that purpose and, thereafter, by a third notification superseded the two earlier notifications and the High Court, on the applications of both the workmen and the employer under Arts. 226 and 227 of the Constitution, issued a writ of certiorari quashing that notification and by a writ of mandamus required the tribunal to proceed expeditiously with the two references and the State Government appealed:

Held, that the impugned notification was invalid and ultra vires and the finding of the High Court must be affirmed.

Held, further, that since a reference under s. 10(1) of the Industrial Disputes Act was in the nature of an administrative act, the more appropriate writ to issue would be one of mandamus and not one in the nature of certiorari.

The State of Madras v. *C. P. Sarathy*, [1953] S. C. R. 334, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 358 and 359 of 1957.

Appeals by special leave from the judgment and decree dated April 4, 1956, of the Patna High Court in M. J. C. Nos. 546 and 590 of 1955.

J. N. Banerjee and *R. C. Prasad*, for the appellant (In both appeals).

Basanta Chandra Ghose and *P. K. Chatterjee*, for respondents Nos. 1-10 & 12-57 in C. A. No. 358/57.

M. C. Setalvad, Attorney-General of India, Nooni Chakravertty and *B. P. Maheshwari*, for respondent No. 59 in C. A. No. 358/57 and Respdt. No. 1 in C. A. No. 359/57.

R. Patnaik, for respondent No. 63 in C. A. No. 359/57.

1958. August 22. The Judgment of the Court was delivered by

GAJENDRAGADKAR J.—Where an industrial dispute has been referred to a tribunal for adjudication by the appropriate government under s. 10 (1) (d) of the Industrial Disputes Act, 1947, (XIV of 1947), can the said government supersede the said reference pending adjudication before the tribunal constituted for that purpose? That is the short question which falls to be considered in these two appeals by special leave. The question arises in this way: On October 8, 1954, by Notification No. III/DI-1602/54-L-15225, the government of Bihar referred an industrial dispute between the management of the Bata Shoe Co. Ltd., Dighaghat (Patna), and their 31 workmen, mentioned in annexure 'A', in exercise of the powers conferred on the said government by s. 7 read with s. 10(1) of the Act. The dispute was whether the dismissal of the workmen in question was justified; if not, whether they were entitled to reinstatement or any other relief. For the adjudication of this dispute, an industrial tribunal with Mr. Ali Hassan as the sole member was constituted. This was reference No. 10 of 1954. Then, on January 15, 1955, by Notification No. III/DI-1601/55 L. 696, a similar industrial dispute between the same Bata Company and its 29 other workmen was referred by the government of Bihar to the same tribunal. This was reference No. 1 of 1955. While the proceedings in respect of the two references, which had been consolidated by the tribunal, were pending before it and had made some progress, the government of Bihar issued a third Notification No. III/Di-1601/55-L-13028 on September 17, 1955, by which it purported to supersede the two earlier notifications, to combine the said two disputes into one dispute, to implead the two sets of workmen involved in the two said disputes together, to add the Bata Mazdoor Union to the dispute, and to refer it to the adjudication of the industrial tribunal of Mr. Ali Hassan as the sole member. The dispute thus referred to the tribunal was, "Whether the dismissal of the 60 workmen, mentioned in annexure 'B', was justified or unjustified; and to what relief, if any, those workmen are entitled?" On receipt of this notification, the tribunal passed an

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order on September 19, 1955, cancelling the hearing of the two prior references which had been fixed for October 3, 1955, and directing that the files of the said references should be closed.

The Bata Company and its workmen then filed two separate applications before the High Court of Judicature at Patna under articles 226 and 227 of the Constitution and prayed that the last notification should be quashed as being illegal and *ultra vires*. These two applications were numbered as M. J. C. Nos. 546 and 590 of 1955 respectively. On April 4, 1956, the High Court held that the government of Bihar had no power or authority to supersede the earlier notifications, allowed both the applications and issued a writ in the nature of *certiorai* quashing the impugned notification of September 17, 1955, and also a writ in the nature of *mandamus* requiring the industrial tribunal to proceed expeditiously with reference-cases Nos. 10 of 1954 and 1 of 1955 and to bring them to a conclusion in accordance with law. Against this order the government of Bihar applied for and obtained leave from this court on June 26, 1956. That is how the two present appeals have come for disposal before us.

In both the appeals, the appellant is the State of Bihar and the respondents are the Bata Company and its workmen respectively. On behalf of the appellant, it is urged before us that the High Court at Patna was in error in holding that the government of Bihar had no power or authority to set aside the two earlier notifications and to refer the dispute in question for adjudication to the industrial tribunal under s. 10(1) of the Act.

In order to appreciate the background of the impugned notification, it would be relevant to mention some material facts. It appears that the workmen of the company's factory at Digha formed a union at the close of the last World War. The president of the said union was Mr. John and its general secretary was Mr. Fateh Narain Singh. On June 22, 1947, the company entered into a collective agreement with the said union and by mutual consent the Standing Orders and

Rules, certified under the Industrial Employment (Standing Orders) Act of 1946, were settled. The union was recognised as the sole and exclusive collective bargaining agency for the workmen of the company. Towards the end of 1954, two groups of the union were formed and rivalry grew between them. One group was led by Mr. Fateh Narain Singh and other by Mr. Bari. On January 22, 1954, the union through its general secretary Mr. Fateh Narain Singh served on the company a "slow down notice" with effect from February 24, 1954, and on February 6, 1954, Mr. Bari purporting to act as the president of the union asked his followers to go on strike as from February 23, 1954. The demands made by Mr. Fateh Narain Singh gave rise to conciliation proceedings under the Act and ended in the settlement which was duly recorded on February 8, 1954. In spite of the said settlement some workmen, including the sixty workmen in question who supported Mr. Bari, went on an illegal strike on February 23, 1954, although as members of the union they were bound by the settlement. The majority of the workmen were opposed to the strike and in fact on February 16, 1954, a letter signed by 500 workmen who disassociated themselves from the strike, was received by the company. The company was requested to make suitable arrangements to enable these workmen to attend their duties. The strike succeeded only partially because out of 854 workmen employed in the company's factory at Digha nearly 500 workmen attended the factory in spite of the threats of the strikers. The strike was declared illegal by the appellant under s. 23 (c) of the Act. Subsequently, the company served the strikers with charge-sheets and in the end, 274 workmen, including the sixty workmen in question, were dismissed from service by the company. Thereafter the union entered into negotiations with the company, as a result of which it was agreed that 110 strikers would be employed by the company in the same manner in which 76 strikers had already been employed by it. It was further

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agreed that 30 strikers were to remain dismissed and not considered eligible for employment or for any benefits. In regard to the remaining 30 strikers, the company agreed to consider their cases later on for re-employment. During these negotiations, the sixty workmen in question did not make any demand to the management for re-instatement either individually or collectively, nor was their case raised by any other organisation or body of workmen. In the result, so far as the union was concerned the dispute regarding the whole body of strikers who had been dismissed by the company came to an end by virtue of the agreement between the company and the union.

Notwithstanding this agreement, Mr. Sinha, the conciliation officer, wrote to the company on September 3, 1954, that he desired to hold conciliation proceedings in respect of some of the dismissed workmen. The dispute raised by the sixty workmen was not sponsored by any organisation or body of workmen. In fact the secretary of the union wrote to the Commissioner of Labour on September 22, 1954, that he strongly objected to the alleged dispute of sixty workmen being referred to adjudication. It was under these circumstances that the appellant issued the first two notifications on October 8, 1954 and January 15, 1955.

On May 30, 1955, the union made an application before the tribunal alleging that the majority of the workmen were opposed to the re-instatement of the sixty workmen in question and consequently it had interest in the proceedings before the tribunal. Two applications were made before the tribunal by other workmen to be joined to the proceedings on the ground that they were opposed to the re-instatement of the workmen whose cases were pending before the tribunal. All these applications were rejected by the tribunal.

It would appear that Mr. Fateh Narain Singh then moved the Department of Labour, Government of Bihar, and it was apparently pursuant to the representation made by him that the third notification was issued by the appellant superseding the first two notifications and referring the whole dispute afresh to the

industrial tribunal with the union of Mr. Fateh Narain Singh added as a party to the proceedings. That in brief is the genesis of the impugned notification in the present case.

Dr. Bannerjee for the appellant has urged before us that in dealing with the question about the powers of the appropriate government under s. 10(1) of the Act, it would be necessary to bear in mind the facts which led to the cancellation of the first two notifications and the issue of the third impugned notification. He contends that in issuing the third notification the appellant has acted *bona fide* and solely in the interests of fair-play and justice; it came to the conclusion that it was necessary that the union should be heard before the disputes in question are adjudicated upon by the Industrial Tribunal and that it would be more convenient and in the interest of industrial peace and harmony that the dispute should be referred to the tribunal in a more comprehensive and consolidated form bringing before the tribunal all the parties interested in it. In our opinion, the *bona fides* of the appellant on which reliance is placed by Dr. Bannerjee are really not relevant for determining the appellant's powers under s. 10(1) of the Act. If the appellant has authority to cancel the notification issued under s. 10(1), and if the validity of the cancelling notification is challenged on the ground of *mala fides*, it may be relevant and material to inquire into the motives of the appellant. But if the appellant has no authority to cancel or revoke a notification issued under s. 10(1), the *bona fides* of the appellant can hardly validate the impugned cancellation. That is why, we think, the appellant cannot base its arguments on the alleged *bona fides* of its conduct.

It is conceded by Dr. Bannerjee that the Act does not expressly confer any power on the appropriate government to cancel or supersede a reference made under s. 10(1) of the Act. He, however, argues that the power to cancel or supersede such a reference must be held to be implied, and in support of his argument he relies on the provisions of s. 21 of the General Clauses Act, 1897 (X of 1897). Section 21 provides

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that "where, by any Central Act or Regulation, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued". It is well settled that this section embodies a rule of construction and the question whether or not it applies to the provisions of a particular statute would depend on the subject-matter, context, and the effect, of the relevant provisions of the said statute. In other words it would be necessary to examine carefully the scheme of the Act, its object and all its relevant and material provisions before deciding whether by the application of the rule of construction enunciated by s. 21, the appellant's contention is justified that the power to cancel the reference made under s. 10(1) can be said to vest in the appropriate government by necessary implication. If we come to the conclusion that the context and effect of the relevant provisions is repugnant to the application of the said rule of construction, the appellant would not be entitled to invoke the assistance of the said section. We must, therefore, proceed to examine the relevant provisions of the Act itself.

It is clear that the policy of the Act is to secure and preserve good relations between the employers and their workmen and to maintain industrial peace and harmony. It is with this object that s. 3 of the Act contemplates the establishment of the Works Committees whose duty it is to promote measures for securing and preserving amity and good relations between the employers and the workmen. If the Works Committee is unable to settle the disputes arising between the employer and his workmen, conciliation officers and the boards of conciliation offer assistance to the parties to settle their disputes. Sections 3, 4, 5, 12 and 13 refer to the working of this machinery contemplated by the Act. It is only where the conciliation machinery fails to bring about settlement between the parties that the Act contemplates compulsory adjudication of the industrial disputes by labour courts and

tribunals as the last alternative. The appropriate government is authorised to constitute labour courts and tribunals under and subject to the provisions of s. 7 and s. 7A respectively. It is in respect of the compulsory adjudication that under s. 10, the appropriate government is given wide discretion to decide whether or not the dispute between the employer and his employees should be referred to the board, court or tribunal. Section 10(1)(d) provides *inter alia* that where the appropriate government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing refer the dispute to a tribunal for adjudication. The condition precedent for the reference to the industrial tribunal is that the appropriate government must be satisfied that an industrial dispute exists or is apprehended. It is not in every case where the parties allege the existence of an industrial dispute that a reference would be made under s. 10(1); it is only where the test of subjective satisfaction of the appropriate government is satisfied that the reference can be made. Thus it is clear that the appropriate government is given an important voice in the matter of permitting industrial disputes to seek adjudication by reference to the industrial tribunal. But once an order in writing is made by the appropriate government referring an industrial dispute to the tribunal for adjudication under s. 10(1), proceedings before the tribunal are deemed to have commenced and they are deemed to have concluded on the day on which the award made by the tribunal becomes enforceable under s. 17A. This is the effect of s. 20(3) of the Act. This provision shows that after the dispute is referred to the tribunal, during the continuance of the reference proceedings, it is the tribunal which is seized of the dispute and which can exercise jurisdiction in respect of it. The appropriate government can act in respect of a reference pending adjudication before a tribunal only under s. 10(5) of the Act, which authorises it to add other parties to the pending dispute subject to the conditions mentioned in the said provision. It would therefore be reasonable to hold that except for cases

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falling under s. 10(5) the appropriate government stands outside the reference proceedings, which are under the control and jurisdiction of the tribunal itself. Even after the award is made it is obligatory on the appropriate government under s. 17(1) to publish the said award within a period of thirty days from the date of its receipt by the appropriate government. Sub-section (2) of s. 17 says that subject to the provisions of s. 17A, the award published under sub-s. (1) of s. 17 shall be final and shall not be called in question by any court in any manner whatsoever. Section 19(3) provides that an award shall, subject to the other provisions of s. 19, remain in operation for a period of one year from the date on which it becomes enforceable under s. 17A. It is true that ss. 17A and 19 confer on the appropriate government powers to modify the provisions of the award or limit the period of its operation but it is unnecessary to refer to these provisions in detail. The scheme of the provisions in Chapters III and IV of the Act would thus appear to be to leave the reference proceedings exclusively within the jurisdiction of the tribunals constituted under the Act and to make the awards of such tribunals binding between the parties, subject to the special powers conferred on the appropriate government under ss. 17A and 19. The appropriate government undoubtedly has the initiative in the matter. It is only where it makes an order in writing referring an industrial dispute to the adjudication of the tribunal that the reference proceedings can commence; but the scheme of the relevant provisions would *prima facie* seem to be inconsistent with any power in the appropriate government to cancel the reference made under s. 10(1).

The power claimed by the appellant to cancel a reference made under s. 10(1) seems also to be inconsistent with some other provisions of the Act. The proviso to s. 10 lays down that the appropriate government shall refer a dispute relating to the public utility service when a notice under s. 22 has been given, unless it considers that the notice has been frivolously or vexatiously given, or that it would be inexpedient so to refer the dispute. This proviso indicates that in regard

to a dispute relating to public utility concerns normally the government is expected to refer it for adjudication. In such a case if the government makes the reference it is difficult to appreciate that it would be open to the government pending the proceedings of the said reference before the Industrial Tribunal to cancel the reference and supersede its original order in that behalf. Section 10, sub-s. (2) deals with the case where the parties to an industrial dispute apply to the appropriate government in the prescribed manner, either jointly or separately, for a reference of the dispute to the appropriate authority, and it provides that in such a case if the appropriate government is satisfied that the persons applying represent the majority of each party it shall make the reference accordingly. In such a case all that the government has to satisfy itself about is the fact that the demand for reference is made by the majority of each party, and once this condition is satisfied, the government is under obligation to refer the dispute for industrial adjudication. It is inconceivable that in such a case the government can claim power to cancel a reference made under s. 10(2). Indeed in the course of his arguments, Dr. Bannerjee fairly conceded that it would be difficult to sustain a claim for an implied power of cancellation in respect of a reference made under s. 10(2).

There is another consideration which is relevant in dealing with this question. Section 12 which deals with the duties of the conciliation officer provides in substance that the conciliation officer should try his best to bring about settlement between the parties. If no settlement is arrived at, the conciliation officer has to make a report to the appropriate government, as provided in sub-s. (4) of s. 12. This report must contain a full statement of the relevant facts and circumstances and the reasons on account of which in the opinion of the officer the settlement could not be arrived at. Sub-section (5) then lays down that if, on a consideration of the report, the appropriate government is satisfied that there is a case for reference to a board, labour court, tribunal or national tribunal, it may make such a reference. Where the appropriate

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government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor. This provision imposes on the appropriate government an obligation to record its reasons for not making a reference after receiving a report from the conciliation officer and to communicate the said reasons to the parties concerned. It would show that when the efforts of the conciliation officer fail to settle a dispute, on receipt of the conciliation officer's report by the appropriate government, the government would normally refer the dispute for adjudication; but if the government is not satisfied that a reference should be made, it is required to communicate its reasons for its decision to the parties concerned. If the appellant's argument is accepted, it would mean that even after the order is made by the appropriate government under s. 10(1), the said government can cancel the said order without giving any reasons. This position is clearly inconsistent with the policy underlying the provisions of s. 12(5) of the Act. In our opinion, if the legislature had intended to confer on the appropriate government the power to cancel an order made under s. 10(1), the legislature would have made a specific provision in that behalf and would have prescribed appropriate limitations on the exercise of the said power.

It is, however, urged that if a dispute referred to the industrial tribunal under s. 10(1) is settled between the parties, the only remedy for giving effect to such a compromise would be to cancel the reference and to take the proceedings out of the jurisdiction of the industrial tribunal. This argument is based on the assumption that the industrial tribunal would have to ignore the settlement by the parties of their dispute pending before it and would have to make an award on the merits in spite of the said settlement. We are not satisfied that this argument is well-founded. It is true that the Act does not contain any provision specifically authorising the industrial tribunal to record a compromise and pass an award in its terms corresponding to the provisions of O. XXIII, r. 3 of the Code of Civil Procedure. But it would be very

unreasonable to assume that the industrial tribunal would insist upon dealing with the dispute on the merits even after it is informed that the dispute has been amicably settled between the parties. We have already indicated that amicable settlements of industrial disputes which generally lead to industrial peace and harmony are the primary object of this Act. Settlements reached before the conciliation officers or boards are specifically dealt with by ss. 12(2) and 13(3) and the same are made binding under s. 18. There can, therefore, be no doubt that if an industrial dispute before a tribunal is amicably settled, the tribunal would immediately agree to make an award in terms of the settlement between the parties. It was stated before us at the bar that innumerable awards had been made by industrial tribunals in terms of the settlements between the parties. In this connexion we may incidentally refer to the provisions of s. 7 (2)(b) of the Industrial Disputes (Appellate Tribunal) Act, 1950 (XLVIII of 1950), which expressly refer to an award or decision of an industrial tribunal made with the consent of the parties. It is true that this Act is no longer in force; but when it was in force, in providing for appeals to the Appellate Tribunal set up under the said Act, the legislature had recognised the making of awards by the industrial tribunals with the consent of the parties. Therefore, we cannot accept the argument that cancellation of reference would be necessary in order to give effect to the amicable settlement of the dispute reached by the parties pending proceedings before the industrial tribunal.

In this connexion it may be relevant to refer to some other provisions of the Act, which impose restrictions on the parties during the pendency of the reference proceedings. Under s. 10(3), where an industrial dispute has been referred to an industrial tribunal, the appropriate government may by order prohibit the continuance of any strike or lock-out in connexion with such dispute which may be in existence on the date of the reference. Similarly, under s. 33, during the pendency of the proceedings before an industrial tribunal, no employer shall (a) in regard to any matter connected with the dispute, alter, to the prejudice

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of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings or (b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending. Failure to comply with the provisions of s. 33(1) is made punishable under s. 31 of the Act. These provisions show that during the pendency of the proceedings before the industrial tribunal the parties to the dispute are expected to maintain *status quo* and not to take any action which would disturb industrial peace or prejudice a fair trial before the industrial tribunal. If the power to cancel a reference made under s. 10 (1) is held to be implied, the proceedings before the industrial tribunal can be terminated and superseded at any stage and obligations and liabilities incurred by the parties during the pendency of the proceedings would be materially affected. It is because all these provisions are intended to operate as a self-contained Code governing the compulsory adjudication of industrial disputes under the Act, that s. 15 enjoins upon the industrial tribunals to hold their proceedings expeditiously and to submit their awards as soon as it is practicable on the conclusion of the proceedings to the appropriate government. Thus time is usually of essential importance in industrial adjudications and so the Act imposes an obligation on the industrial tribunals to deal with their proceedings as expeditiously as possible. If the appropriate government has by implication the power to cancel its order passed under s. 10(1), the proceedings before the industrial tribunal would be rendered wholly ineffective by the exercise of such power.

Apart from these provisions of the Act, on general principles it seems rather difficult to accept the argument that the appropriate government should have an implied power to cancel its own order made under s. 10(1). If on the representation made by the employer or his workmen the appropriate government considers the matter fully and reaches the conclusion that an

industrial dispute exists or is apprehended and then makes the reference under s. 10(1), there appears to be no reason or principle to support the contention that it has an implied power to cancel its order and put an end to the reference proceedings initiated by itself. In dealing with this question it is important to bear in mind that power to cancel its order made under s. 10(1), which the appellant claims, is an absolute power; it is not as if the power to cancel implies the obligation to make another reference in respect of the dispute in question; it is not as if the exercise of the power is subject to the condition that reasons for cancellation of the order should be set out. If the power claimed by the appellant is conceded to the appropriate government it would be open to the appropriate government to terminate the proceedings before the tribunal at any stage and not to refer the industrial dispute to any other industrial tribunal at all. The discretion given to the appropriate government under s. 10(1) in the matter of referring industrial disputes to industrial tribunals is very wide; but it seems the power to cancel which is claimed is wider still; and it is claimed by implication on the strength of s. 21 of the General Clauses Act. We have no hesitation in holding that the rule of construction enunciated by s. 21 of the General Clauses Act in so far as it refers to the power of rescinding or cancelling the original order cannot be invoked in respect of the provisions of s. 10(1) of the Industrial Disputes Act.

It would now be necessary to refer to the decisions to which our attention was invited in the course of arguments. For the appellant Dr. Bannerjee has strongly relied on the decision of this court in *Minerva Mills Ltd.* v. *Their Workmen* (1). He contends that Mahajan J. who delivered the judgment of the court, has expressly observed in his judgment that from the relevant provisions of the Act "It could not be held that it was implicit in s. 7 that the government could not withdraw a dispute referred to a tribunal or make the appointment of a tribunal for a limited period of time." The argument is that this observation shows that the government can withdraw a pending reference from one tribunal and refer it to another tribunal, and,

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according to the appellant, that is exactly what has been done by it in the present case. In the case of *Minerva Mills Ltd.* (1), however, the question about the implied power of the appropriate government to cancel its order made under s. 10 did not arise for consideration. The point which was raised by the appellant was that the government had no power to appoint a tribunal for a limited duration; and the argument was that if industrial disputes are referred to a tribunal, all the said disputes must be determined by the said tribunal and not by any other tribunal, notwithstanding that the appointment of the original tribunal was for a limited duration. The first tribunal in the said case had been appointed on June 15, 1952, and some industrial disputes had been referred to it. The tribunal was appointed for one year. During its tenure the tribunal disposed of some of the disputes referred to it, but four disputes still remained undisposed of. For disposing of these references, a second tribunal was appointed on June 27, 1952. The validity of the constitution of the second tribunal was impugned by the appellant and it was urged that it is the first tribunal alone which can and must try the remaining disputes. This argument was rejected by this court, and it was held that it was perfectly competent to the appropriate government to appoint a tribunal for a limited duration. It would be noticed that in this case there was no question of cancelling an order made under s. 10(1). The said order remained in force, and the only step which the government took was to make an order constituting a fresh tribunal to dispose of the references which had not been adjudicated upon by the first tribunal. It was on these facts that this court took the view that it was competent to the government to refer the said remaining disputes for adjudication to the second tribunal. Strictly speaking there was no occasion to withdraw any dispute from the first tribunal; the first tribunal had ceased to exist; and so there was no tribunal which could deal with the remaining disputes already referred under s. 10(1). That is why the government purported to appoint a second tribunal to deal with the said dispute. In our opinion, the decision in the *Minerva Mills Ltd.* (1) cannot be

(1) [1954] S.C.R. 465.

cited in support of the proposition that the appellant has power to cancel the order of reference made by it under s. 10(1).

The decision of this court in *Strawboard Manufacturing Co. Ltd. v. Gutta Mill Workers' Union* (1), is then cited in support of the proposition that the appellant has implied power to cancel its order made under s. 10(1). In this case, the government of the State of Uttar Pradesh had referred an industrial dispute to the Labour Commissioner on February 18, 1950, and had directed the Commissioner to make his award not later than April 5, 1950. While the proceedings were pending before the Commissioner, two additional issues were referred to him. Ultimately, the award was made on April 13, and it was sought to be validated by the issue of a notification by the Governor of Uttar Pradesh on April 26, by which the time for making the award was retrospectively extended up to April 30, 1950. This court held that the notification retrospectively extending the period to make the award was invalid. Since the award had been made beyond the period prescribed by the original notification, it was void. It is, however, argued that in dealing with the question of the validity of the award it was observed by Das J. (as he then was), "In the circumstances, if the State Government took the view that the addition of those two issues would render the time specified in the original order inadequate for the purpose it should have cancelled the previous notification and issued a fresh notification referring all the issues to the adjudicator and specifying a fresh period of time within which he was to make his award. The State Government did not adopt that course." As we read the judgment, we are not inclined to accept the appellant's assumption that the passage just cited expresses the view accepted by this court. Read in its context the said passage appears to state the argument urged by Dr. Tek Chand on behalf of the appellant. The appellant appears to have urged in substance that if the State Government thought that the addition of new issues referred to the Commissioner by subsequent notification made it difficult for him to submit his award

(1) [1953] S.C.R. 439.

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within the specified time, the local government should have cancelled the original reference, made a fresh comprehensive reference and given him requisite time for making his award. Since that was not done, the position could not be rectified by the issue of the impugned notification retrospectively extending the time originally fixed. It is in connexion with this argument that the statement on which reliance is placed was apparently made by the learned counsel for the appellant. If that be the true position, no argument can be based on these observations. It is conceded that the question about the power of the appropriate government to cancel an order of reference made under s. 10(1) did not arise for discussion or decision in this case.

The third decision to which reference has been made in support of the appellant's case is the decision of Bishan Narain J. in *The Textile Workers' Union, Amritsar* v. *The State of Punjab and others* (1). Bishan Narain J. appears to have taken the view that the power to cancel an order of reference made under s. 10(1) can be implied by invoking s. 21 of the General Clauses Act, because he thought that by the exercise of such a power, the appropriate government may be able to achieve the object of preserving industrial peace and harmony. The judgment shows that the learned judge was conscious of the fact that "this conclusion may have the effect of weakening a trade union's power of negotiation and may encourage the individual firms to deal directly with its (their) own workmen but it is a matter of policy with which I have nothing to do in these proceedings." In dealing with the present question, we would not be concerned with any questions of policy. Nevertheless, it may be pertinent to state that on the conclusion which we have reached in the present case there would be no scope for entertaining the apprehensions mentioned by the learned judge. As we have already indicated, the scheme of the Act plainly appears to be to leave the conduct and final decision of the industrial dispute to the industrial tribunal once an order of reference is made under s. 10(1) by the appropriate government. We must accordingly hold that Bishan Narain J. was

(1) A.I.R. 1957 Pun. 355

in error in taking the view that the appropriate government has power to cancel its own order made under s. 10(1) of the Act.

The decision of the Kerala High Court in *Iyyappen Mills (Private) Ltd., Trichur* v. *State of Travancore-Cochin* (1), is not of much assistance because in this case the learned judges appear to have taken the view that the first tribunal before which the industrial dispute was pending had ceased to exist at the material time when the dispute was referred by the local government for adjudication to the second tribunal. If that be the true position, the conclusion of the learned judges would be supported by the decision of this court in *Minerva Mills Ltd.* (2).

Then, in regard to the observations made by Sinha J. in *Harendranath Bose* v. *Second Industrial Tribunal* (3), it is clear that the learned judge was in error in seeking to support his view that the appropriate government can cancel its order made under s. 10(1) by the observations found in the judgment of this court in *Strawboard Manufacturing Co. Ltd.* (4). We have already stated that the said observations are really a part of the arguments urged by the appellant before this court in that case and are not obiter observations made by the learned judge.

The last case to which reference must be made is the decision of Rajamannar C. J. and Venkatarama Aiyar J. in *South India Estate Labour Relations Organisation* v. *The State of Madras* (5). In this case the Madras Government had purported to amend the reference made by it under s. 10 of the Act and the validity of this amendment was challenged before the court. This objection was repelled on the ground that it would be open to the government to make an independent reference concerning any matter not covered by the previous reference. That it took the form of an amendment to the existing reference and not an additional reference is a mere technicality which does not merit any interference in the writ proceedings. The objection was one of form and was without substance. It would thus appear that the question before

(1) [1958] I L.L.J. 50. (2) [1954] S.C.R. 465. (3) [1958] II L.L.J. 198.
(4) [1953] S.C.R. 439. (5) A.I.R. 1955 Mad. 45.

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the court was whether the appropriate government can amend the reference originally made under s. 10 so far as the new matters not covered by the original reference are concerned, and the court held that what the appropriate government could have achieved by making an independent reference, it sought to do by amending the original reference itself. This decision would not assist the appellant because in the present case we are not considering the power of the government to amend, or add to, a reference made under s. 10(1). Our present decision is confined to the narrow question as to whether an order of reference made by the appropriate government under s. 10(1) can be subsequently cancelled or superseded by it.

We must, therefore, confirm the finding made by the learned judges of the High Court at Patna, that the notification issued by the appellant cancelling the first two notifications is invalid and *ultra vires*.

That takes us to the question as to the form in which the final order should be passed in the present appeals. The High Court has purported to issue a writ of *certiorari* against the State Government quashing the impugned notification. It has, however, been held by this court in *The State of Madras* v. *C. P. Sarathy* (1) that in making a reference under s. 10(1) the appropriate government is doing an administrative Act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. That being so, we think it would be more appropriate to issue a writ of *mandamus* against the appellant in respect of the impugned notification. We would also like to add that since the first two industrial disputes referred by the appellant under the first two notifications have remained pending before the tribunal for a fairly long time, it is desirable that the tribunal should take up these references on its file and dispose of them as expeditiously as possible.

In the result, the appeals fail and must be dismissed with costs.

Appeals dismissed.

(1) [1953] S.C.R. 334