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Order. The Chief Commissioner of Kutch under s. 1 of the Bombay Act, had the power to issue notifications making that Act operative in Kutch or any part of Kutch and those powers were not affected by Art. 239 of the Constitution particularly because of cl. 15 of the Adaptation of Laws Order, 1950, which preserved these powers of the Chief Commissioner. Therefore, the notification issued by the Chief Commissioner on November 28, 1950 was valid and issued under legal authority ; and the Act came into force in the parts to which the notification made it so applicable. We have therefore, come to the conclusion that the learned Judge was in error in holding that the notification was not a valid one and in so far as that was the basis of the acquittal of the accused, the judgment under appeal must be set aside.

In the result the appeal of the State is allowed, the judgment of the learned Judicial Commissioner acquitting the respondent is set aside and that of the learned Magistrate sentencing him to a fine of Rs. 50 and sentence in default and of forfeiture restored.

Appeal allowed.

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THE NEWSPAPERS LTD.

v.

THE STATE INDUSTRIAL TRIBUNAL, U.P.

(BHAGWATI, B. P. SINHA and J. L. KAPUR JJ.)

Industrial Dispute, Meaning of—Dispute between employer and a single workman—Whether industrial dispute—Government making reference on the assumption that a dispute exsits between the employer and his workmen—Whether validity of the reference can be questioned —U.P. Industrial Disputes Act, 1947 *(U.P. XXVIII of* 1947), *ss.*2, 3—*Industrial Disputes Act,* 1947 *(XIV of* 1947, *s.* 2 *(k)*.

A dispute between an employer and a single workman does not fall within the definition of "industrial dispute" under the U.P. Industrial Disputes Act, 1947. But though the applicability of the Act to an individual dispute as opposed to a dispute involving a group of workmen is excluded, if the workmen as a body or a considerable section of them make common cause with the individual workman then such a dispute would be an industrial dispute.

Central Provinces Transport Service Ltd. v. *Raghunath Gopal Patwardhan*, (1956) S. C. R. 956 and *D N. Banerji* v. *P. R. Mukherjee*, (1953) S.C.R. 302, referred to.

Swadeshi Cotton Mills Co. Ltd. v. *Their Workmen*, (1953) 1 L.L.J. 757, in so far as it decided that a dispute raised by an individual workman is within an industrial dispute, disapproved.

Case-law reviewed.

The third respondent was employed as a lino typist by the appellant company but on allegations of incompetence he was dismissed from service. His case was not taken up by any union of workers of the appellant company nor by any of the unions of workmen employed in similar or allied trades, but the U.P. Working Journalists Union, Lucknow, with which the third respondent had no connection took the matter to the Conciliation Board, Allahabad, and ultimately the Government made a reference to the Industrial Tribunal by a notification in which one of the points for determination referred was as to whether the services of the third respondent were wrongfully terminated by the management. The legality of the reference was challenged by the appellant and the question was raised as to whether a dispute between an employer and a single workman falls within the definition of "industrial dispute" under the U.P. Industrial Disputes Act, 1947.

Held, that the reference was bad because the dispute was not between the employer on the one hand and his workmen on the other, nor could the U.P. Working Journalists Union be called "his workmen", within the meaning of the U. P. Industrial Disputes Act, 1947.

Though the making of a reference by the Government under the Act is the exercise of its administrative powers, an aggrieved party can question the jurisdiction of the Industrial Tribunal to show that what was referred was not an industrial dispute.

State of Madras v. *C. P. Sarathy*, (1953) S.C.R. 334, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 213 of 1956.

Appeal from the judgment and decree dated September 22, 1954, of the Allaahbad High Court in Special Appeal No. 8 of 1954 arising out of the judgment and decree dated January 6, 1954 of the said High Court in Civil Miscellaneous Writ Petition No. 651 of 1953.

S. P. Sinha and *S. N. Mukherjee*, for the appellant.

G. C. Mathur and *C. P. Lal*, for respondent No. 2.

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1957. March 90. The Judgment of the Court was delivered by

KAPUR J.— The ground on which the appellant company seeks to have the order of the Industrial Tribunal set aside is that no industrial dispute existed within the meaning of the expression as used in the U.P. Industrial Disputes Act, 1947 (XXVIII of 1947) (hereinafter called the U.P. Act) and consequently the U.P. Government had no power to make the reference in question. 'Industrial Dispute' is defined in s. 2 of the U.P. Act as having the same meaning assigned to it as in s. 2 of the Industrial Disputes Act, 1947 (hereinafter termed the Central Act). There this expression has been defined in s. 2(k) to mean :

"any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

The controversy between the parties arose in the following circumstances :

Tajammul Hussain, respondent No. 3 was employed as a lino typist by the appellant company. He was dismissed on May 8, 1952, on allegations of incompetence under r. 12(ii) of the Standing Orders of the appellant company. It was alleged that the dismissal of Respondent No. 3 was welcomed by his co-workers and other workmen in the employ of the appellant company and they made no grievance of it, nor did they espouse his cause.

The case of respondent No. 3 was not taken up by any union of workers of the appellant company nor by any of the unions of workmen employed similar, or allied trades, but the U.P. Working Journalists Union, Lucknow, with which respondent No. 3 had no connection whatsoever, took the matter to the Conciliation Board, Allahabad. Ultimately, the U.P. Government made a reference to the Industrial Tribunal on June 3, 1953, by notification ; the prefatory words of which are :

"Whereas an industrial dispute in respect of the matters hereinafter specified exists between the concern known as Newspapers Ltd., Allahabad and its workmen; and whereas in the opinion of the Governor it is necessary so to do for the maintenance of public order and for mainteining employment....."

One of the questions referred was :—

"Whether the services of Sri Tajammul Hussain Lino Operator were wrongfully terminated by the Management....."

On February 13, 1953, the State Industrial Tribunal at Allahabad decided in favour of respondent No. 3 and ordered his reinstatement "without break of continuity of service" and also ordered the payment of his wages for the period during which he "remained dismissed" An appeal was taken by the appellant company to the Labour Appellate Tribunal, who by its order dated February 24, 1953, affirmed the order of the Tribunal with costs. The appellant company then moved a petition in the Allahabad High Court under Art. 226 of the Constitution but this was dismissed by Bhargava J. on January 6, 1954, and a Special appeal against this judgment was also dismissed. The appellant company has come up in appeal with a certificate under Art. 133(1) (c) of the Constitution.

The controversy which arises in this case is whether a dispute between an employer and a single workman falls within the definition of 'industrial dispute' as used in the U. P. Act. In order to resolve this controversy, it is necessary to refer to the scheme of the U.P. Act and the relevant rules made thereunder. The preamble of the Act runs : ".....to provide for powers to prevent strikes and lock-outs, and for the settlement of industrial disputes and other incidental matters". Section 3 of the Act confers certain powers on the State Government for the purpose of prevention of strikes, lock-outs, etc. The portion of this section relevant for the purpose of this appeal reads as follows :

"If in the opinion of the State Government, it is necessary or expedient so to do for securing the public safety or convenience, or the maintenance of public

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order or supplies and services essential to the life of the community, or for maintaining employment, it may, by general or special order, make provision—

(c) for appointing industrial courts ;

(d) for referring any industrial dispute for conciliation or adjudication in the manner provided in the order ;

(g) for any incidental or supplementary matters, which appear to the State Government necessary or expedient for the purpose of the order ;"

Under s. 23 of the Act, the State Government can make rules consistent with the Act for giving effect to the provisions of the Act.

Under clauses (b), (c), (d) and (g) of s. 3 and under s. 8 of the U. P. Act, rules governing Conciliation Boards and Industrial Tribunals in U. P. were promulgated by Notification No. 615 (LL) XVIII-7 (LL)-1951, dated Lucknow, March 15, 1951. Rule 4 deals with the reference of disputes to Conciliation Boards. The relevant portions of this rule are :

"Any workman or an employer or a registered association or trade union of employers or registered trade union of workmen or any federation of such associations or trade unions or where no registered trade union of workmen exists in any particular concern or industry, the representatives not more than 5 in number of the workmen in that concern or the industry, duly elected in this behalf by a majority of the workmen employed in that concern or industry, as the case may be, at a meeting held for the purpose, may by application in writing move a Conciliation Officer of the area for settlement of any industrial dispute by conciliation. The application shall clearly state the industrial dispute or disputes."

Rule 5 deals with proceedings and the power of inclusion of other undertakings. The proviso to this rule is :

"Provided that if the Board of its own motion or on an application made to it, is of the opinion that any question involved in any such dispute or matter affects or is likely to affect more than one workman in the same concern or industry or business or more

than one concern in the same industry or business, constituted within the jurisdiction of the Conciliation Board, it shall include in its proceedings relating to such dispute or order every such workman or concern or where there is a registered trade union covering the majority of such concerns of workmen, such trade unions."

Rules 7 to 11-A deal with Industrial Tribunals. Rule 10 gives power to the Government to make a reference of any dispute to the Industrial Tribunal either on its own motion or after considering the Report of the Conciliation Board made under r. 6.

Rule 15(1) which deals with the representation of parties to the dispute provides :

"The parties may in their discretion be represented before a Board or Tribunal or an Adjudicator—

(1) In the case of a workman by—

(a) an officer of a registered trade union of which he is a member ;

(b) an officer of a federation of trade unions to which the trade union referred to in sub-clause(a) is affiliated ;

(c) Where the workman is not a member of any registered trade union, by an officer of any registered trade union connected with, or by any other workman employed in the same industry or business, if so authorised in writing by the workman."

The language of section 36(1) of the Central Act is almost identical.

Rule 27 prohibits strikes and lock-outs ; and r. 28 gives finality and conclusiveness to the orders made or directions given.

The use of the word 'workmen' in the plural in the definition of 'industrial dispute' does not by itself exclude the applicability of the Act to an individual dispute because under s. 13(2) of the General Clauses Act ;

".....unless there is anything repugnant in the subject.....

(2) words in the singular shall include the plural and *vice versa*."

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But in order to get its true import it is necessary to view the enactment in retrospect, the reasons for enacting it, the evils it was to end and the objects it was to subserve. The Act has therefore to be viewed as a whole and its intention determined by construing all the constituent parts of the Act together and not by taking detached sections or to take one word here and another there. Exposition "*ex visceribus actus*" is applicable. *Lincoln College's Case*(1).

So construed the provisions of the U.P. Act show that the machinery of the Act has been devised with the object of maintaining industrial peace so as to prevent interference with public safety or public order or with the maintenance of supplies and services essential to the life of the community or of employment. The Act is based on the necessity of achieving collective amity between labour and capital by means of conciliation, mediation and adjudication. The object of the Act is the prevention of industrial strife, strikes and lock-outs and the promotion of industrial peace and not to take the place of the ordinary tribunals of the land for the enforcement of contracts between an employer and an individual workman. Thus viewed the provisions of the Act lead to the conclusion that its applicability to an individual dispute as opposed to dispute involving a group of workmen is excluded unless it acquires the general characteristics of an industrial dispute, *viz.*, the workmen as a body or a considerable section of them make common cause with the individual workman and thus create conditions contemplated by s. 3 of the U.P. Act which is the foundation of State Governmental action under that Act. The other provisions which follow that section only subserve the carrying out of the objects of the Acts specified therein.

The use of the word workman in the singular in rr. 4, 5 and 15 forms the basis of the argument for the inclusion of an individual dispute in the expression industrial dispute. But this suffers from more infirmities than one. Rule 4 authorises a workman to

(1) 3 Co. Rep. 58. 76 E. R. 764.

apply to a conciliation Officer for the settlement of an industrial dispute. The meaning sought to be given to this word is inconsistent with the language of the latter part of that rule ;

"or where no registered trade union of workmen exists in any concern or industry, the representatives not more than 5 in number of the workmen..... duly elected."

The first proviso to r. 5 is no surer foundation for the argument because in the context it can only be interpreted to mean that, should there be an industrial dispute then all workmen who may individually be the cause of the dispute or are to be affected by its decision should get notices of the proceedings. Similarly, r. 15 only provides for the representation of "a workman" even if he is only one by an officer of a trade union or other person mentioned in the rule. Besides, s. 13(2) of the General Clauses Act as to the interpretation of the singular and the plural considerably reduces the efficacy of the argument, which altogether loses its force in view of r. 26 which is as follows :

"During the pendency of any conciliation proceeding or proceedings before the Tribunal or an Adjudicator in respect of any dispute an employer shall not (a) alter to the prejudice of the workmen concerned in such dispute the conditions of service applicable to them immediately before the commencement of such proceedings or (b) discharge or punish, whether such punishment is by dismissal or otherwise, any workman concerned in such dispute save with the express permission in writing of a Conciliation Officer of the area concerned irrespective of the fact whether the dispute is pending before a Board or the Tribunal or an Adjudicator."

The use of the words "workmen" and "workman" in the above rule is indicative of the intention of the Act being applicable to collective disputes and not to individual ones, and this is fortified by the finality and the binding effect to awards by r. 28 and more specially by s. 18 of the Central Act which makes

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awards binding not only on the individuals present or represented but on all the workmen employed in the establishment and even on future entrants.

Another objection to reading these rules in the manner above suggested is that it would be tantamount to enlarging the scope of the expression 'industrial dispute' and the powers conferred on the State Government under s, 3 of the U.P. Act. The executive cannot under the power of framing rules and regulations clothe itself with powers which the Statute itself does not give and which are inconsistent with the interpretation put on the expression 'industrial dispute.' The cardinal rule in regard to promulgation of bye-laws or making rules is that they must be *legi fidei rationi consona*, and therefore all regulations which are contrary or repugnant to statutes under which they are made are ineffective. If the expression 'industrial dispute' as ordinarily understood and, construed conveys a dispute between an employer on the one hand and the workmen acting collectively on the other, then the definition of those words cannot be widened by a statutory rule or regulation promulgated under the Statute or by Executive fiat.

The notification in the present case was under s.3. (c), (d) and (g) and under s. 8 which deal with (c) the appointment of industrial Courts, (d) referring any industrial disputes and (g) incidental or supplementary matters. The Executive may in the exercise of these powers make such regulations which are necessary but under that garb it cannot extend the definition of the term industrial disputes, nor is this extended meaning necessary to subserve the objects of the Act.

In our opinion therefore rules 4, 5 and 15 of the Rules cannot be a valid foundation for sustaining the argument raised that an individual dispute was within the definition of 'industrial dispute.' Ordinarily, an award of a tribunal binds or affects the rights of parties to the proceedings but awards of Industrial Tribunals have extended implications and may affect the rights of all workmen of a concern or undertaking and even the future entrants. This doctrine of

representation which enlarges the meaning of 'parties' in the U.P. & Central Acts is an essential idea associated with industrial disputes and supports collectiveness as opposed to & individualism. See Latham C.J. in *Metal Trades Employers Association* v. *Amalgamated Engineering Union* (1).

Then there is the prohibition under r. 26 of the U.P. Act and s. 33 of the Central Act against any change in conditions of service during the pendency of the proceedings the object of which is to ensure discipline and industrial truce during that period which also supports the basic idea of collectiveness in 'industrial disputes'.

In *Central Provinces Transport Services Ltd.*, v. *Raghunath Gopal Patwardhan* (2), this Court observed that decided cases in India disclose three views as to the meaning of 'industrial dispute'

(i) a dispute between an employer and a single workman cannot be an "industrial dispute";

(ii) it can be an industrial dispute ; and

(iii) it cannot *per se* be an industrial dispute but may become one if taken up by a trade union or a number of workmen.

This Court discussed the scope of industrial dispute as defined in s. 2(k) of the Central Act, and after referring to the conflict of judicial opinion as to its applicability to the case of a dispute between an employer and a single workman further observed :

"The preponderance of judicial opinion is clearly in favour of the last of the three views stated above, and there is considerable reason behind it. Notwithstanding that the language of s. 2(k) is wide enough to cover a dispute between an employer and a single employee, the scheme of the Industrial Disputes Act does appear to contemplate that the machinery provided therein should be set in motion, to settle only disputes which involve the rights of workmen as a class and that a dispute touching the individual rights of a workman was not intended to be the subject of an adjudication under the Act, when the same had not been taken up by the union or a number of workmen."

(1) [1935] 54 C.L.R. 387. (2) [1956] S.C.R. 956.

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Although the question did not directly arise, this Court in *D. N. Banerji* v. *P. R. Mukherjee and others*(1) discussed the meaning of the expression 'industrial dispute' and was of the opinion that it "conveys the meaning to the ordinary mind that the dispute must be such as would affect large groups of workmen and employers ranged on opposite sides.....But at the same time, having regard to the modern conditions of society were capital and labour have organised themselves into groups for the purpose of fighting their disputes and settling them on the basis of the theory that in union is strength, and collective bargaining has come to stay, a single employee's case might develop into an industrial dispute, when as often happens, it is taken up by the trade union of which he is a member and there is a concreted demand by the employees for redress".

This view is in consonance with the basic idea under lying modern industrial legislation. The interpretation given to the corresponding phrase "trade dispute" in English law and "industrial dispute" in Australian Law also accords with this view and in the absence of an express provision to the contrary or necessary intendment thre is no reason to give a different interpretation to the expression in the Indian Statute.

According to English decisions an individual dispute of a workman is not included in 'trade dispute' which corresponds to 'Industrial Dispute' in the Indian Act. In the English Trade Disputes Act of 1906 and 1919 as also in Reg. 58-AA of the Defence (General) Regulation, 1939, 'trade dispute' as defined in language very similar to 'industrial dispute' in the Indian Statute Dealing with a trade dispute, Lord Shaw in *Conway* v. *Wade* (2) said :

"But I cannot see may way to hold that "trade dispute" necessarily includes accordingly every case of personal difference between any one workman and one or more of his fellows. It is true that after a certain stage even such a dispute, although originally grounded,

(1) [1953] S.C.R. 302, 310.

(2) [1909] A.C. 506, 520.

it may be, upon personal animosity, may come t be a subject in which sides are taken, and may develop into a situation of a general aspect containing the characteristics of a trade dispute ; but until it reaches that stage I cannot hold that a trade dispute necessarily exists ."

Lord Wright observed in *National Association of Local Government Officers* v. *Bolton Corporation*(1).

"I think the same may be said of the Industrial Courts Act and of reg. 58-AA, in both of which the word 'trade' is used in the very wide connotation which it bears in the modern legislation dealing with conditions of employment, particularly in relation to matters of collective bargaining and the like."

Ex parte *Keable Press Ltd.* (2) was an instance of an individual dispute developing into a 'trade dispute' because of the strike by a union to enforce the reinstatement of dismissed workman. That was how this term (trade dispute) was interpreted by the Court of Appeal in *R.* v. *National Arbitration Tribunal*(3) after taking into consideration the definition of the word 'dispute,.

In Australian cases also, without specific reference to any definition of the phrase the courts have excluded individual disputes from the scope of industrial disputes. In *Jumbunna Coal Mine* v. *Victorian Coal Miners Association* (4), Griffths C. J. observed :

"An industrial dispute exists where a considerable number of employees engaged in some branch of industry make common cause in demanding from or refusing to their employers (whether one or more some change in the conditions of employment which is denied to them ....."

Similarly in *Federated Saw Mills & Co. Employees of Australasia* v. *Jemes Moore & Son Properietory Ltd.* (5), Griffths C. J. gave the characteristics of an industrial dispute as follows :

"It is necessary at the outset to consider the meaning which the term 'industrial dispute' conveyed

(1) [1943] A.C. 166, 185.
(2) [1943] 2 All E.R. 633.
(3) [1951] 2 All E.R. 828.
(4) [1908] 6 C.L.R. 309, 332.
(5) [1909] 8 C.L.R. 465, 487, 488.

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in 1900 to the minds of persons conversant with the English language ....."

"The word 'industrial' .....denotes two qualties which distinguish them from ordinary private disputes between individuals, namely, ...(2) that on one side at least of the dispute the disputants are a body of men acting collectively and not individually. "

Issacs J. in *George Hudson Ltd.* v. *Australian Timber Workers Union* (1) stated :

"The very nature of an 'industrial dispute', as distinguished from an individual dispute, is to obtain new industrial conditions, not merely for the specific individuals then working .....It is a battle by the claimants, not for themselves alone and not as against the respondents alone, but by the claimants so far as they represent their class ....."

According to Griffths C.J. "The term "industrial dispute" connotes a real and substantial difference having some element of persistency, and likely, if not adjusted, to endanger the industrial peace of the community". Vide *Federated Saw Mills Case* (2) at p. 488. The same meaning was attached to the expression by Latham C. J. in *Metal Traders Employers Association* v. *Amalgamated Engineering Union* (3) at p. 403 :

"Industrial disputes are essentially group contests—there is always an industrial group on at least one side. A claim of an individual employee against his employer is not in itself an industrial dispute....."

We shall now refer to the Indian decisions which bear on this question.

Rajamannar C.J. in *Kandan Texti Ltd,* v. *The Industrial Tribunal, Maras and another* (4) held that the definition of industrial dispute is wide enough to cover a dispute between an employer and an individual workman but taking into consideration S. 18 of the Central Act he was of the opinion that such an extanded definition cannot be given to it in S. 2 (k) of the Central Act. Mack J. agreed with the decision of Rajamannar C. J. but he said that the case of an

(1) [1923] 32 C.L.R. 413, 441.
(2) [1909] 8 C.L.R. 465, 487, 488.
(3) [1935] 54 C. L. R. 387, 403.
(4) A. I. R. 1951 Madras 616.

individual workman if taken up by the worker's union makes such a dispute an industrial dispute. In that case 11 items of difference were referred to the Industrial Tribunal. One of the items in dispute was the wrongful removal of a workman, Sundaram by name. In the High Court an objection was taken to the legality of the award on the ground that no industrial dispute existed and that there was no material before the Government on the basis of which it could make a reference. It was held that the dispute as to a single workman was not an 'industrial dispute.' *Kandan Textile Ltd. case* (1) was followed in *United Commercial Bank Ltd.* v. *The Commissioner of Labour, Madras*(2) which was a case under s. 41 of the Madras Shops and Establishments Act and the right of appeal given to an individual employee against the order of the employer dispensing with his services under s. 41(2) of Madras Shops and Establishments Act was challenged on the ground that it had been taken away by the Central Act. It was held that an individual worker had the right to appeal. Vishwanatha Sastri J. in his judgment referred with approval to the distinction made between an individual dispute and an industrial dispute in *Kandan Textile Ltd.* v. *Industrial Tribunal, Madras* (supra).

The second view that such a dispute falls within the definition of the word "industrial dispute" is supported by a decision of a Full Bench of the Labour Appellate Tribunal—*Swadeshi Cotton Mills Co. Ltd.* v. *Their Workmen*(3). There the question was mainly decided on the basis of s. 33-A of the Central Act (introduced in 1950) which gives the right to an individual workman dismissed or dealt with contrary to s. 33 of the Act during an industrial dispute to raise the matter before a tribunal. The introduction of s. 33-A would not alter the construction to be placed on the phrase 'industrial dispute'. On the contrary it supports the view that an individual dispute is not comprised in that phrase. In view of what has been said above, we are of the opinion that in so far as that case lays down

(1) A.I.R. 1951 Madras 616. (2) I.L.R. [1952] Madras 43.

(3) [1953] 1 L.L.J. 757.

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that a dispute raised by an individual workman as to his personal grievance is within an industrial dispute, it cannot be said to have been correctly decided.

The cases which support the third view are the following :

J. Chowdhury v. *M. C. Bannerjee*(1) was a case in which a lino operator was removed from service on the ground of his negligence and arrears of work. The matter was referred to the Industrial Tribunal under the Central Act. The Management moved the High Court under Art. 226 of the Constitution and s. 45 of the Specific Relief Act and it was held that the Tribunal had no jurisdiction to entertain the matter as on a perusal of the various sections of the Central Act including ss. 10 and 18 the dispute of an individual workman was not covered by the term 'industrial dispute'.

In *Bilash Chandra Mitra* v, *Balmer Lawrie & Co.* (2), a suit was brought for the recovery of arrears of wages on the basis of an award of an Industrial Tribunal and one of the issues raised was whether an 'individual dispute' fell within 'industrial dispute'. Following the judgment in *J. Chowdhury* v. *M. C. Bannerjee* (1), Bose J. held that it did not.

Another case in which this view was held is *N. I. Assurance Co.* v. *C. G. I. Tribunal* (3). There the Government referred the question of dismissal of an employee of an Assurance Co. and it was not proved that his case was taken up by the employees association. The same view was adopted in *Standard Vacuum Oil Co.* v. *Industrial Tribunal*(4).

In *Lakshmi Talkies, Madras* v. *Munuswami and Others*(5), Balakrishna Ayyar J. held that an 'industrial dispute' arises where a case of an individual workman is espoused by a union. The same view was taken in *Lynus & Co.* v. *Hemanta Kumar Samanta*(6).

The view taken in these cases is in accord with the interpretation we have put on the expression 'Industrial dispute' as defined in the U.P. Act or the Central Act.

(1) [1951] 55 C.W.N. 256.
(2) [1952] 57 C.W.N. 169.
(3) [1953] I.L.R. 32 Patna 181.
(4) I.L.R. [1952] Trav.-Co. 432.
(5) [1955] 2 L.L.J. 477.
(6) [1956] 2 L.L.J. 89.

Taking into consideration the whole tenor of the Act and the decisions of this Court the decided cases to the extent that they take a contrary view, i. e., an individual dispute is comprised in an 'industrial dispute' must unless there is something peculiar as to facts , be held to have been wrongly decided.

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. *State of Madras* v. *C. P. Sarathy*(1).

It may also be noted that the notification issued by the U. P. Government on January 3, 1953, already quoted proceeds on the assumption that a dispute exists between the "employer and his workmen". The points of dispute in the reference, however, comprise the wrongful termination of the service of only Tajammul Hussain, a lino operator. The words used in the first part of the notification show that the Government was labouring under the misapprehension that this dispute was between the employer on the one hand and his workmen on the other, which, in fact it was not. Tajammul Hussain could not be termed workmen (in the plural) nor could the U. P. Working Journalists Union be called "his workmen" nor is there any indication that the individual dispute has got transformed into an industrial dispute. The very basis, therefore, of the reference was bad and must be held to be so.

We would, therefore, allow this appeal with costs.

Appeal allowed.

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(1) [1953] S.C.R. 334, 347.