

Powers and functions of the commissioner.

Section **02** of the industrial dispute act casts a general duty on the commissioner of Labour to take steps to settle industrial disputes whenever they come up or are likely to come up.

The provisions in Section **02(1)** give wide power to the commissioner;

- The commissioner need not have been formerly informed or noticed of a dispute to exercise his powers for a possible settlement.
- He may exercise his power not only when an industrial dispute exists but also when he satisfied that such a dispute is apprehended.
- In his attempt to resolve a dispute his powers are not limited to the mode of conflict, resolution or machinery contained in the Act but he is free to use any method he may consider to be effective.

The machinery prescribed by the Act is given in the Section **03 of the IDA. Section 3(1) - To settle an industrial dispute, the commissioner can induce; Section 3(1)(a)-collective agreement.**

According to the section 3(1)(a)of the IDA, the commissioner can settle an industrial dispute in accordance with an agreement between the parties if any.

Example-There is an agreement between management and the union to give allowance for Awrudu festival. Every year company agreed to pay, but this time management decide to not to pay. This creates disputes between parties.

Section 3(1)(b), 3(1)(c) the commissioner can settle an industrial dispute by **conciliation**. This means an amicable settlement between parties.

Section 3(1)(c)- Refer the industrial dispute to an authorized officer (defined in section 48) for settlement by conciliation, or

If conciliation efforts fails;

Section 03 (1)(d)- Voluntary arbitration, Labour tribunal.

If parties to the industrial dispute or their representatives **consent**, refer **that dispute, by an order in writing**, for settlement by arbitration to an arbitrator **nominated jointly by such parties or representatives** , or in the absence of such nomination, refer that to an arbitrator/s appointed by the commissioner or to a Labour tribunal.(called as voluntary Arbitration procedure)

Therefore according to Section **03 (1)(d)** of the IDA, the commissioner can refer industrial dispute to an arbitrator to settle the dispute by arbitration. It is called “voluntary arbitration”, because the commissioner can refer industrial dispute for arbitration if the parties to the dispute have given their concern to refer the dispute for arbitration. In arbitration, a third party called arbitrator, makes an award which binds the parties.

If the parties do not consent to go for arbitration, the commissioner cannot force them to agree to such procedure.

When the commissioner fails in settling the dispute by conciliation and voluntary arbitration he is empowered to repeat, such procedure over and over again and ultimately if all attempts fail he shall refer the dispute to minister for him to take necessary steps under Section 4 of the IDA.

Powers and functions of a minister.

Minister can refer that dispute to **compulsory arbitration** under Section 4 (1) of the IDA.

Sec 4(1)- *The minister may, if the industrial dispute is a minor dispute, refer it 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 representatives do not consent to such reference 4(1) OR refer any dispute to an industrial Court for settlement[sec 4(2)].*

Therefore according to section 4(1) of the IDA the minister can refer an industrial dispute for settlement by arbitration even though the parties to the dispute have not given their concern to refer the dispute for arbitration. Therefore it is called **compulsory arbitration**. **If industrial dispute has been referred for arbitration, thereafter trade union cannot continue the strike.**

Nadarajah Ltd v Krishnadasan. 78 NLR 255.

When minister has duly made an order under Section 4 (1), he has no power to revoke the said order of reference.

- In a case of frustration, the minister Henry for the dispute to another arbitrator.

(when the arbitrator goes missing, in a coma etc.)

Wimalasena v Navaratne and two others. (1978-79)2SLR 10

The minister had the power to refer a dispute for settlement by arbitration under sec 4 (1) of the IDA, even though when the same enquiry was

pending in the Labour tribunal. Court of Appeal decided that minister has the power to refer the dispute for arbitration Section 4 (1), and Labour tribunal shall dismiss the case according to **sec 31B (2)(b)**.

Two situations can found when the word “referred” is not clear;

- Workman has gone to Labour tribunal and thereafter minister has gone to arbitration.
- Minister has gone to an arbitration and thereafter workman has gone to Labour tribunal..

In **Upali Newspapers Ltd v Eksath Kamkaru Samithiya** case the court of appeal and supreme Court interpreted sec 31B(2)(b) of the IDA. It was held that,

- If the workman has gone to a Labour tribunal there after the minister **dispute** for can't refer the same dispute for arbitration.
- If the minister has referred for arbitration, thereafter the workman cannot go to labour tribunal with regard to the same dispute.

The decision was affirmed by the Supreme Court.

Therefore Upali Newspapers case judgement has overruled the judgement given by the Court of Appeal in Wimalasena case,

According to section 4(2) of the IDA, minister can refer any industrial dispute to an industrial court for settlement.

Industrial court is not a permanent court. It is created on ad hoc basis. It is not popular mechanism in these days.

