Rohtas Industries Ltd. and Another

Vs

Rohtas Industries Staff Union and Others

Civil Appeals Nos. 1727-1728 of 1968

(Y. V. Chandrachud, V. R. Krishna Iyer, A. C. Gupta JJ)

18.12.1975

JUDGMENT

KRISHNA IYER, J. -

1. We permit ourselves a few preliminary observations disturbingly induced by the not altogether untypical circumstances of these two appeals, before proceeding to state the facts, set out the submission and decide the points.

2. Industrial law in India has not fully lived up to the current challenges of industrial life, both in the substantive norms or regulations binding the three parties - the State, Management and Labour - and in the processual system which has baulked, by dawdling dysfunction, early finality and prompt remedy in a sensitive area where quick solution is of the essence of real justice. The legislative and judicial processes have promises to keep if positive industrial peace, in tune with distributive economic justice and continuity of active production, were to be accomplished. The architects of these processes will, we hopefully expect, fabricate creative changes in the system, normative and adjectival.

3. The two appeals before us, passported by special leave under Article 136, relate to an industrial dispute with its roots in 1948, meandering along truce, union rivalry and the like, into strikes and settlements, the last of which led to an arbitration award in 1959 which, in turn, prompted two writ petitions before the High Court. After a spell of a few years they ripened into a judgment. Appeals to this Court followed and, after long gestation of six years for preparation of papers and a like period for the cases to be ready for final hearing or parturition, in all 12 years after the grant of leave, they have now come up. By this cumulative lapse of time the generation of workers who struck work two decades ago have themselves all but retired, the representative union itself which sponsored the dispute has, the other side faintly states, ceased to command representative character, the managements themselves, out of many motives, have disclaimed the intention to recover the huge sums awarded to them by the arbitrators and the only survival after death, as it were, is a die-hard litigation tied up to a few near-academic, but important, legal points for adjudication by the highest Bench. On this elegiac note we will enter the relevant areas of facts and law since we must decide cases brought before us, however stale the lis.

4. At this stage we may mention our strong feeling that where the superior courts, after hearing full arguments are clearly inclined to affirm the judgment under appeal for substantially similar reasons as have weighed with the lower court, there is not need to give lengthy reasons for dismissing the appeal. Brevity, except in special cases, may well fill the bill where the fate is dismissal. On this score we are disposed to made short shrift of the appeals with stating but the necessary facts and

focusing on the larger legal facets. Nevertheless, the significant and plurality of the points pressed have defeated condensation.

The facts

5. Two connected managements of industries in the same locality, who figure as appellants before us, had a running industrial dispute with their workers, which has had a long history moving in a zigzag course and sicklied over by alleged internecine trade union strife. There were two trade unions which were perhaps of competitive strength and enjoying recognition. One of them, the Rohtas Industries Mazdoor Sangh (for short, the Mazdoor Sangh) is not a party before this Court and so we are not concerned with it except for the purpose of noticing its presence in the settlement of the dispute which starts the story so far as the litigation is concerned. There was a strike in the industry (for our purposes this expression embraces both the appellants) which came to an end by virtue of a memorandum of agreement dated October 2, 1957, to which not merely the management but also the two registered unions aforementioned and the two unregistered unions which had a lesser following, were party. The terms of the said agreement provided inter alia that the employees' claim for wages and salaries for the period of strike and the company's claim for compensation for losses due to strike shall be submitted for arbitration of Sri J. N. Majumdar and Sri R. C. Mitter, Ex-High Court Judges and Ex-Members of the Labour Appellate Tribunal of India as joint arbitrators and their decisions on the two questions shall be final and binding on all the parties. (Clause 7 of agreement)

This agreement was admittedly arrived at during conciliation proceedings contemplated by the Industrial Disputes Act, 1947 (for short, the Act) and the reference to arbitration spelt out in Clause 7 directly and admittedly fell under Section 10A of the Act.

6. It is apparent that the arbitrators were seised of two questions : (a) the claim of the workers for wages for the period of strike : and (b) the claim of management for compensation for its losses flowing from the strike. The Broad of arbitrators, two retired judges of the Calcutta High Court - held extensive hearings spread over a year and a half, made a lengthy award marshalling the evidence, adducing the reasons, discussing the law and recording its decision on the two vital issues. At the end of the detailed and reasoned record of conclusions, the award runs thus :

Our award accordingly is :

> (1) That the workmen participating in the strike are not entitled to wages and salaries for the period of the strike.
>
> (2) That the company do recover from the workmen participating in the strike, compensation assessed at Rs. 80,000 (rupees eighty thousand).
>
> (3) That the workmen jointly and severally do pay to the company one-eight of the total costs of the arbitration. In default of payment the company will be at liberty to recover the same in such manner as it thinks fit. Subject to this the parties do bear their respective costs.

7. The workmen were deprived of their wages during the period of the strike on the score that it was in illegal strike. Both sides seem to have accepted this finding after an unsuccessful challenge in the High Court and happily industrial peace is said to be prevailing currently. What did hurt the Mazdoor Sangh more and what the management did try to have and to hold as a bonanza was the

second finding that the strikers, apart from forfeiting wages, do pay compensation in the huge sum of Rs. 6,90,000 in one case and Rs. 80,000 in the other, for the loss of profits suffered by the manufacturing business of the management, a pronouncement unusual even according to Counsel for the appellant, although sustainable in law, according to him. For the workers this unique direction of industrial law is fraught with ominous consternation and dangerous detriment. The Mazdoor Sangh challenged the award as illegal and void by filing two writ petitions but the High Court quashed that part of the award which directed payment of compensation by the workers to the management and, as earlier pointed out, both sides have chosen to abide by the award in relation to the denial of wages during the strike period.

The main points urged.

8. The short but important issue, which has projected some serious questions of law, is as to whether the impugned part of the award has been rightly voided by the High Court. We may as well formulate them but highlight the only major submission that merits close examination, dealing with the rest with terse sufficiency. In logical order, Counsel for the appellant urged that : (1) (a) an award under Section 10A of the Act savours of a private arbitration and is not amenable to correction under Article 226 of the Constitution. (b) Even if there be jurisdiction, a discretionary desistence from its exercise is wise, proper and in consonance with the canons of restraint this Court has set down. (2) The award of compensation by the arbitrators suffers from no vice which can be regarded as a recognised ground for the High Court's interference. (3) The view of law taken by the High Court on (i) the supposed flaw in the award based on 'mixed motives' for the offending strike; (ii) the exclusion of remedies other than under Section 26 of the Act; and (iii) the implied immunity from all legal proceedings against strikers allegedly arising from Section 18 of the Trade Union Act, 1926 is wrong. A few other incidental arguments have cropped up but the core contentions are what we have itemised above.

(1) (a) and (b)

9. The expansive and extraordinary power of the High Courts under Articles 226 is as wide as the amplitude of the language used indicates and so can affect any person - even a private individual - and be available for any (other) purpose - even one for which another remedy may exist. The amendment of Article 226 in 1963 inserting Article 226(1A) reiterates the targets of the writ power as inclusive of any person by the expressive reference to 'the residence of such person'. But it is one thing to affirm the jurisdiction, another to authorise its free exercise like a bull in a china shop. This Court has spelt out wise and clear restraints on the use of this extraordinary remedy and High Courts will not go beyond those wholesome inhibitions except where the monstrosity of the situation or other exceptional circumstances cry for timely judicial interdict or mandate. The mentor of law is justice and a potent drug should be judiciously administered. Speaking in critical retrospect and portentous prospect, the writ power has, by and large, been the people's sentinel on the qui vive and to cut back on or liquidate that power may cast a peril to human rights. We hold that the award here is not beyond the legal reach of Articles 226, although this power must be kept in severely judicious leash.

10. Many rulings of the High Courts, pro and con, were cited before us to show that an award under Section 10A of the Act is insulated from interference under Article 226 but we respectfully agree with the observations of Gajendragadkar, J, (as he then was) in Engineering Mazdoor Sabha (Engineering Mazdoor Sabha v. Hind Cycles Ltd., Supp 1 SCR 625, 640 : AIR 1963 SC 874 : (1962) 2 LLJ 760) which nail the argument against the existence of jurisdiction. The learned Judge

clarified at p. 640 :

Article 226 under which a writ of certiorari can be issued in an appropriate case, is, in a sense, wider than Article 136, because the power conferred on the High Courts to issue certain writs is not conditioned or limited by the requirement that the said writs can be issued only against the orders of courts or tribunals. Under Article 226(1), an appropriate writ can be issued to any person or authority, including in appropriate cases any Government, within the territories prescribed. Therefore even if the arbitrator appointed under Section 10A is not a tribunal under Article 136 in a proper cases, a writ may lie against his award under Article 226. (p. 640)

11. We agree that the position of an arbitrator under Section 10A of the Act (as it then stood) vis-a-vis Article 227 might have been different. Today, however, such an arbitrator has power to bind even those who are not parties to the reference or agreement and the whole exercise under Section 10A as well as the source of the force of the award on publication derive from the statute. It is legitimate to regard such an arbitrator now as part of the methodology of the sovereign's dispensation of justice, thus falling within the rainbow of statutory tribunal amenable to judicial review. This observation made en passant by us is induced by the discussion at the Bar and turns on the amendments to Section 10A and cognate provisions like Section 23, by Act XXXVI of 1964.

12. Should be Court invoke this high prerogative under Article 226 in the present case ? That depends. We will examine the grounds on which the High Court has, in the present case, excised a portion of the award as illegal, keeping in mind the settled rules governing judicial review of private arbitrator's awards. Suffice it to say, an award under Section 10A is not only not invulnerable but more sensitively susceptible to the writ lancet being a quasi-statutory body's decision. Admittedly, such an award can be upset if an apparent error of law stains its face. The distinction, in this area, between a private award and one under Section 10A is fine, but real. However it makes slight practical difference in the present case; in other cases it may. The further grounds for invalidating an award need not be considered as enough unto the day is the evil thereof.

(2)

13. Thus, we arrive at a consideration of the appellants second submission, perhaps the most significant in the case, that the High Court had no legitimate justification to jettison the compensation portion of the award. Even here, we may state that Counsel for the appellants, right at the outset, mollified possible judicial apprehensions springing from striking workers being held liable for loss of management's profits during the strike period by the assurance that he clients were inclined to abandon realisation of the entire compensation, even if this Court upheld that part of the award in reversal of the judgment of the High Court - a generous realism. He fought a battle for principle, not pecunia. We record this welcome fact and proceed on that footing.

14. The relevant law which is beyond controversy now has been clearly stated in Halsbury's Laws of England thus :

> Error of law on the face of award : An arbitrator's award may be set aside for error law appearing on the face of it, though the jurisdiction is not lightly to be exercised . . . . The jurisdiction is one that exists at common law independently of statute. In order to be a ground for setting aside the award, an error in law on the face of the award must be such that there can be found in the award, or in a document actually incorporated with it, some legal proposition which is the basis of the award and

which is erroneous.

> . . . where the question referred for arbitration is a question of construction, which is, generally speaking, a question of law, the arbitrator's decision cannot be set aside only because the court would itself have come to a different conclusion; but if it appears on the face of the award that the arbitrators has proceeded illegally, as for instance, by deciding on evidence which was not admissible, or on principles of construction which the law does not countenance, there is error in law which may be ground for setting aside the award. (para 623, p. 334, Vol. 2, Fourth Edn.)

We adopt this as sound statement of the law. Not that English law binds us but that the jurisprudence of judicial review in this branch is substantially common for Indian and Anglo-American systems and so Halsbury has considerable persuasive value. The wider emergence of common canons of judicial review is a welcome trend towards a one-world public law. Indeed, this Court has relied on the leading English decisions in several cases. We may content ourselves with adverting to Bungo Steel Furniture (Bungo Steel Furniture (P) Ltd. v. Union of India, (1967) 1 SCR 633 : AIR 1967 SC 378) and to the unreported decision Babu Ram. (L. Babu Ram v. Kanhaiyalal , C.A.No.107 of 1966 decided on December 5, 1968 (SC). In simple terms, the Court has to ask itself whether the arbitrator has not tied himself down to an obviously unsound legal proposition in reaching his verdict as appears from the face of the award. Bhargava, J., speaking for the majority, in Bungo Steel state the law :

> It is now a well-settled principle that if an arbitrator, in deciding a dispute before him, does not record his reasons and does not indicate the principles of law on which he has proceeded, the award is not on that account vitiated. It is only when the arbitrator proceeds to give his reasons or to lay down principles on which he has arrived at his decisions that the Court is competent to examine whether he has proceeded contrary to law and is entitled to interfere if such error in law is apparent on the face of the award itself (p. 640-641)

Bharat Barrel & Drum Manufacturing Co., (Bharat Barrel & Drum Mfg. Co. v. L. K. Bose, AIR 1967 SC 361 : (1967) 1 SCR 739) dealing with a private award and the conditions necessary for exercise of writ jurisdiction to correct an error of law apparent on the record, did not lay down the law differently from what we have delineated.

15. In one of the leading English cases Champsey Bhara & Co. (Champsey Bhara & Co. v. Jivraj Balloo Spg. & Wvg. Co. Ltd., IA 324 : AIR 1923 PC 66) followed in India, Lord Dunedin defined 'error of law on the face of the award' as 'where the question of law necessarily arises on the face of the award or upon some paper accompanying and forming part of the award' and said that then only the error of law therein would warrant judicial correction. The Law Lord expressed himself luscently when he stated :

> An error in law on the face of the award means, in their Lordships' view, that you can find in the award . . . some legal proposition which is the basis of the award and which you can then say is erroneous.

WILLIAMS, J., in the case of Hodkinsons v. Fernie ((1857) 3 CBNS 189) hit the nail on the head by using the telling test as firmly established, viz., 'where the question of law necessarily arises on the face of the award'. In this view of the enquiry by the Court before venturing to interfere is to

ascertain whether an erroneous legal proposition is the basis of the award. Nay, still less. Does a question of law (not even a proposition of law) necessarily arise on the award following by a flawsome finding explicit or visibly implicit ? Then the Court can correct.

16. Tucker, J., in James Clark ((1944) 1 KB 566) formulates the law to mean that if the award were founded on a finding which admits of only one proposition of law as its foundation and that law is erroneous on its face, the Court has the power and, therefore, the duty to set right. While the Judge cannot explore, by chasing subterranean routes or ferret out by delving deep what lies buried in the unspoken cerebration of the arbitrator and interfere with the award on the discovery of an error of law by such adventure, it is within his purview to look closely at the face of the award to discern the law on which the arbitrator has acted if it is transparent, even translucent but lingering between the lines or merely wearing a verbal veil. If by such an intelligent inspection of the mien of the award - which is an index of the mind of the author - an error of law forming the basis of the verdict is directly disclosed, the decision is liable to judicial demolition. In James Clark (supra), the issue was posed with considerable clarity and nicety. If, at its face value, the award appears to be based on an erroneous finding of law alone, it must fail. The clincher is that the factual conclusion involving a legal question must necessarily be wrong in point of law. Even though the award contains no statement of the legal proposition if the facts found raise 'a clear point of law which is erroneous on the face of it', the Court may rightly hold that an error of law on the face of the award exists and invalidates.

17. Let us put the proposition more expressively and explicitly. What is important is a question of law arising on the face of the facts found and its resolution ex facie or sub-silentio. The arbitrator may not state the law as such. Even then such cute silence confers no greater or subtler immunity on the award than plain speech. The need for a speaking order, where considerable numbers are affected in their substantial rights, may well be a facet of natural justice or fair procedure, although, in this case, we do not have to go so far. If, as here, you find an erroneous law as the necessary buckle between the facts found and the conclusions recorded, the award bears it condemnation on its bosom. Not a reference in a narrative but a clear legal nexus between the facts and the finding. The law sets no premium on juggling with drafting the award or hiding the legal error by blanking out. The inscrutable face of the sphinx has no better title to invulnerability than a speaking face which is a candid index of the mind. We may, by way of aside, express hopefully the view that a minimal judicialisation by statement, laconic or lengthy, of the essential law that guides the decision, is not only reasonable and desirable but has, over the ages, been observed by arbitrators and quasi-judicial tribunals as a norm of processual justice. We do not dilate on this part of the argument as we are satisfied that be the test the deeply embedded rules to issue certiorari or the traditional grounds to set aside an arbitration award 'thin partition do their bounds divide' on the facts and circumstances of the present case.

18. The decisive question now comes to the fore. Did the arbitrators commit an error of law on the face of the award in the expanded sense we have explained ? The basic facts found by the arbitrators are beyond dispute and admit of a brief statement. We summarise the fact situation succinctly and fairly when we state that according to the arbitrators, the strike in question was in violation of Section 24 of the Act and therefore illegal. This illegal strike animated by inter-union power struggle, inflicted losses on the management by forced closure. The loss flowing from the strike was liable to be recompensed by award of damages. In this chain of reasoning is necessarily involved the question of law as to whether and illegal strike causing loss of profit is a delict justifying award of damages. The arbitrators held, yes. We hold this to be an unhappy error of law - loudly obtrusive on the face of the award. We may as well set out, for the sake of assurance, the simple steps in the logic

of the arbitrators best expressed in their own words which we except :

> (a) It is argued that strike is a legitimate weapon in the hands of workmen for redressal of their grievances and if they are made liable for loss on account of strike then the basic idea of strike as a means for having the grievances redressed will be taken away. The fallacy in this argument is that it presupposes the strike not to be illegal and unjustified. In the present case we found the strike to be otherwise. The workmen have got on right of getting their grievances redressed by resorting to illegal means which is an offence.
>
> (b) It has been argued that the claim for compensation is not an industrial dispute as defined in the Industrial Dispute Act. Considering the issue of compensation in a watertight compartment the argument might appear to be attractive. But, in our opinion, in this case the claim for compensation by the company is a consequence flowing from an admitted industrial dispute, which is this case is whether the strike was illegal and/or unjustified and as against the condition of service as laid down in the certified standing order on which point our finding has been against the workmen . . . .

19. The award of the tribunal, in its totality, is quite prolix, the reasons stated in arguing out its conclusions many and thus it is just to state that in the present case the arbitrators - two retired judges of the Calcutta High Court - have made a sufficiently speaking award both on facts and on law. They have referred to the strike being illegal with specific reference to the provisions of the Act, but faulted themselves in law by upholding a case for compensation as axiomatic necessarily based on a rule a common law, i.e. English common law. The rule of common law thus necessarily arising on the face of the award is a clear question of law.

20. What is this rule of common law ? Counsel for the appellants inevitably relied on the tort of 'conspiracy' and referred us to Moghul Steamship Co. (Moghul Steamship Co. v. McGregor Gow & Co.; 1892 AC 25 : 61 LJQB 295 : 66 LT 1); Allen v. Flood ((1898 AC 1); Quinn v. Leathem (1901 AC 495 : 70 LJPC 6 : 17 TLR 749) and Sorrel v. Smith (1925 AC 700 : 94 LJ Ch 347 : 41 TLR 529). These decisions of the English courts are a response to the societal requirements of the industrial civilisation of the 19th century England. Trade and Industry on the laissez faire doctrine flourished and the law of torts was shaped to serve the economic interests of the trading and industrial community. Political philosophy and economic necessity of the dominant class animate legal theory. Naturally, the British law in this area protected business from the operations of a combination of men, including workers, in certain circumstance. Whatever the merits of the norms, violation of which constituted 'conspiracy' in English law, it is a problem for creative Indian jurisprudence to consider, detached from anglophonic inclination, how far a mere combination of men working for furthering certain objectives can be prohibited as a tort, according to the Indian value system. Our Constitution guarantees the right to form associations, not for gregarious pleasure, but to fight effectively for the redressal of grievances. Our Constitution is sensitive to workers' rights. Out story of freedom and social emancipation led by the Father of the Nation has employed, from the highest of motives, combined action to resist evil and to right wrong even if it meant loss of business profits for the liquor vendor, the brothel-keeper and the foreign-cloth dealer. Without expatiating on these seminal factors, we may observe that English history, political theory and life-style being different from Indian conditions replete with organised boycotts and mass satyagrahas, we cannot incorporate English torts without any adaptation into Indian law. A tort transplant into a social organism is as complex and careful an operation as a heart-transplant into an

individual organism, law being life's instrumentality and rejection of exotics being a natural tendency. Here, judges are sociological surgeons.

21. Let us examine 'conspiracy' in the English law of tort of see if even there it is possible to hold that an illegal strike per se spells the wrong. We may state that till recently it could not be said with any certainly that there was any such torts as 'conspiracy'. Salmond thought that there was not (see Salmond - Law of Torts p. 505, 15th Ed.).

It is interesting that in that edition of Salmond, Mogul (supra) is linked up by the learned author with a capitalist economy. Be that as it may, the common law of England today is more or less clear some rumblings notwithstanding :

A combination wilfully to do an act causing damage to a man in his trade or other interests is unlawful and if damage in fact is caused is actionable as a conspiracy. To this there is an exception where the defendants' real and per-dominant purpose is to advance their own lawful interests in matter in which they honestly believe that those interests would directly suffer if the action against the plaintiff was no taken. In truth, the Crofter case (Crofter Harris Tweed Co. v. Veitch, 1942 AC 435 : 111 LJPC 17 : (1942) 1 All ER 142) has made Section 1 of the Trade Disputes Act, 1906, largely unnecessary, for there will now be few conspiracies arising out of trade disputes which are protected at common law. (pp. 508-509, 15th Edn., Sweet and Maxwell)

The essence of actionable conspiracy is best brought out by Salmond :

> The tort is unusual because it emphaises the purpose of the defendants rather than the results of their conduct. (p. 513, 15th Edn., Sweet and Maxwell)

22. Even when there are mixed motives. 'Liability will depend on ascertaining which is the predominant object or the true motive or the real purpose of the defendant. Mere combination or action, even if it be by illegal strike, may be far away from a 'conspiracy' in the sense of the law because in all such case, except in conceivable exceptional instances, the object or motive is to advance the workers' interests or to steal a march over a rival union but never or rarely to destroy or damage the industry. It is difficult to fancy workers who live by working in the industry combining to kill the goose that lays the golden eggs. The inevitable by-product of combination for cessation of work may be loss to the management but the obvious intendment of such a collective bargaining strategy is to force the employer to accept the demand of the workers for betterment of their lot or redressal of injustice, not to inflict damage on the boss. In short, it is far too recondite for an employer to urge that a strike, albeit illegal, was motivated by destruction of the industry. A scorched earth policy may, in critical times of a war, be reluctantly adopted by a people, but such an imputed motive is largely imaginary in strike situations. However, we are clear in our minds that if some individuals destroy the plant or damage the machinery wilfully to cause loss to the employer, such individuals will be liable for the injury so accused. Sabotage is no weapon is workers' legal armoury.

23. The leading case of Sorrel v. Smith (supra) emphasizes that a combination of two or more persons for the purpose of injuring a man in his trade is unlawful and, if it results in damage to him, is actionable. The real purpose of the combination is the crucial test between innocence and injury. It may well be that even where there is an offending object, it may be difficult for a court to hold that there is tort if one may read into the facts an equal anxiety for the defendants to promote their success which produces the plaintiff's extinction. There is a penumbral region, as Lord Summer

pointed out in Sorrel :

How any definite line is to be drawn between acts, whose real purpose is to advance the defendant's interests, and acts, whose real purpose is to injure the plaintiff in his trade, is a thing which I feel at present beyond my power.

24. It is absolutely plain that the tort of conspiracy necessarily involves advertence to and affirmation of the object of the combination being the infliction of damage or destruction on the plaintiff. The strike may be illegal but if the object is to bring the employer to terms with the employees or to bully the rival trade union into submission, there cannot be and actionable combination in tort. In the present case, it is unfortunate that the arbitrators simply did not investigate or pass upon the object of the strike. If the strike is illegal, the tort of conspiracy is made out, appears to be the proposition of law writ tersely into the award. On the other hand, it is freely concede by Counsel for the appellant that the object was inter-union rivalry. There is thus a clear lapse in the law on the part of the arbitrators manifest on the face of the award.

25. We have earlier referred to the need for a fresh look at conspiracy as a tort when we bodily borrow the elements of English law and apply them to Indian law. It is as well that we notice that even in England considerable criticism is mounting on the confused state of the law of conspiracy. J.T. Cameron has argued (in 1965 Vol. 28 Modern Law Review p. 448) that

experience has already shown that conspiracy is a hydra perfectly capable of growing two heads to replace and amputated one, and the authorities contain material which could be used to impose liability in very wide and varied circumstances. It is time, therefore, to consider what form legislation should take, and to urge that the proper answer is to remove the tort of conspiracy from the law altogether, and with it the Rookes v. Barnard (1964 AC 1129 : (1964) 1 All ER 367 : (1964) 2 WLR 269) version of intimidation, and to put in its place a different basis of liability. (Conspiracy and Intimidation : An Anti-Metaphysical Approach)

The author complains that the fundamental basis is unsatisfactory and uncertain and demands that a complete rewriting of the principles on which the tort of conspiracy and intimidation is necessary.

26. We may as well suggest that, to silence possible mischief flowing from the confused state of the law and remembering how dangerous it would be if long, protracted, but technically illegal strikes were to be followed by claims by managements for compensation for loss of profits, a legislative reform and restatement of the law were undertaken at a time when the State is anxious for industrial harmony consistent with workers' welfare. This rather longish discussion has become necessary because the problem is serious and sensitive and the law is somewhat slippery even in England. We are convinced that the award is bad because the error of law is patent.

27. The High Court has touched upon another fatal frailty in the tenability of the award of compensation for the loss of profits flowing from the illegal strike. We express our concurrence with the High Court that the sole and whole foundation of the award of compensation by the arbitrators, ignoring the casual reference to an ulterior motive of inter-union rivalry, is squarely the illegality of the strike. The workers went on strike claiming payment of bonus as crystallized by the earlier settlement (dated October 2, 1957). There thus arose an industrial dispute within Section 2(k) of the Act. Since conciliation proceedings were pending the strike was ipso jure illegal (Sections 23 and 24). The consequence, near or remote, of this combined cessation of work caused loss to the management. Therefore the strikes were liable in damages to make good the loss. Such is the logic

of the award.

28. It is common case that the demands covered by the strike and the wages during the period of the strike constitute and industrial dispute within the sense of Section 2(k) of the Act. Section 23, read with Section 24, it is agreed by both sides, makes the strike in question illegal. An 'illegal strike' is a creation of the Act. As we have pointed out earlier, the compensation claimed and awarded is a direct reparation for the loss of profits of the employer caused by the illegal strike. If so, it is contended by the respondents, the remedy for the illegal strike and its fallout has to be sought within the statute and not de hors it. If this stand of the workers is right, the remedy indicated in Section 26 of the Act, viz., prosecution for starting and continuing an illegal strike, is the designated statutory remedy. No other relief outside the Act can be claimed on general principles of jurisprudence. The result is that the relief of compensation by proceedings in arbitration is contrary to law and bad.

29. The Premier Automobiles case (Premier Automobiles Ltd. v. K. S. Wadke (1976) 1 SCC 496 : 1976 SCC (L & S) 70) settles the legal issue involved in the above argument. The Industrial Dispute Act is a comprehensive and self-contained code as for as it speaks and the enforcement of rights created thereby can only be through the procedure laid down therein. Neither the civil court nor any other tribunal or body can award relief. Untwalia, J., speaking for an unanimous court, has, in Premier Automobiles observed : [SCC p. 503 : SCC (L & S) p. 77, para 8]

The object of the Act, as its preamble indicates, is to make provision for the investigation and settlement of industrial dispute, which means adjudication of such dispute also. The Act envisages collective bargaining, contracts between union representing the workmen and the management, a matter which is outside the realm of the common law or the Indian law of contract.

After sketching the scheme of the Act, the learned Judge stated the law thus : [SCC p. 505 : SCC (L & S) p. 79, paras 9, 10]

> . . . the civil court will have no jurisdiction to try and adjudicate upon an industrial dispute if it concerned enforcement of certain right or liability created only under the Act.

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In Doe v. Bridges ((1831) 1 B & Ad 847 (2), 859 : 9 LJ OS KB 113 : 199 ER 1001) are the famous and oftquoted words of Lord Tenterden, C.J., saying :

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Where an Act creates an obligation and enforces the performance in a specified manner, we take it to be general rule that performance cannot be enforced in any other manner.

Barraclough v. Brown (1897 AC 615 : 65 LJ QB 672 : 13 TLR 527), decided by the House of Lords is telling, particularly Lord Watson's statement of the law at p. 622 :

The right and the remedy are given uno flatu and one cannot be dissociated from the other.

In short, the enforcement of a right or obligation under the Act, must be by a remedy provided uno flatu in the statute. To sum up, in the language of the Premier Automobiles Ltd. [SCC pp. 513-514 : SCC (L&S) pp. 87-88, para 23] :

If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get and adjudication under the Act.

30. Since the Act which creates rights and remedies has to be considered as one homogeneous whole, it has to be regarded uno flatu, in one breath, as it were. On this doctrinal basis, the remedy for the illegal strike (a concept which is the creature not of the common law by of Section 24 of the Act) has to be sought exclusively in Section 26 of the Act. The claim for compensation and the award thereof in arbitral proceedings is invalid on its face - 'on its face' we say because this jurisdictional point has been considered by the arbitrators and decided by committing an ex facie legal error.

31. It was argued, and with force in our view, that the question of compensation by workers to the management was wholly extraneous to the Act and therefore, outside the jurisdiction of a voluntary reference of industrial dispute under Section 10A. While we are not called upon to pronounce conclusively on the contention, since we have expressed our concurrence with the High Court on other grounds, we rest content with briefly sketching the reasoning and its apparent tenability. The scheme of the Act, if we may silhouette it, is to codify the law bearing on industrial dispute. The jurisdiction essence of proceedings under the Act is the presence of an 'industrial dispute'. Strikes and lockouts stem from such disputes. The machinery for settlement of such disputes at various stages is provided for by the Act. The statutory imprimatur is given to settlement and awards, and norms of discipline during the pendency of proceedings are set down in the Act. The proscriptions stipulated, as for example the prohibition of a strike, are followed by penalties, if breached. Summary procedures for adjudication as to whether conditions of service etc., of employees have been changed during the pendency of proceedings, special provision for recovery of money due to workers from employers and other related regulations, are also written into the Act. Against this backdrop, we have to see whether a claim by an employer from his workmen of compensation consequent on any conduct of their, comes within the purview of the Act. Suffice it to say that a reference to arbitration under Section 10A is restricted to existing or apprehended industrial disputes. Be it noted that we are not concerned with a private arbitration, but a statutory one governed by the Industrial Disputes Act, deriving its validity, enforceability and protective mantle during the pendency of the proceedings, from Section 10A. No industrial dispute, no valid arbitral reference. Once we grasp this truth, the rest of the logic is simple. What is the industrial dispute in the present case ? Everything that overflows such disputes spills into areas where the arbitrator deriving authority under Section 10A has no jurisdiction. The consent of the parties cannot create arbitral jurisdiction under the Act. In this perspective, the claim for compensation can be a lawful subject for arbitration only if it can be accommodated by the definition of 'industrial dispute' in Sections 2(k). Undoubtedly this expression must receive a wide connotation, calculated as it is to produce industrial peace. Indeed, the legislation, substitutes for free bargaining between the parties a binding award; but what disputes or differences fall within the scope of the Act ? This matter fell for the consideration of the Federal Court in Western India Automobile Association (Western India Automobile Association v. Industrial Tribunal, Bombay, (1949) 1 LLJ 245 : AIR 1949 FC 111 : 1949 FCR 321). Without launching on a long discussion, we may state that compensation for loss of business is not a dispute or difference between employers 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'. We are unable to imagine a tort liability or compensation claim based on loss of

business being regarded as an industrial dispute as defined in the Act, having regard to the language used, the setting and purpose of the statute and the industrial flavour of the dispute as one between the management and workmen.

32. In this context, we are strengthened in our conclusion by the provisions of Section 33C which provides for speedy recovery of money due to a workman from an employer under a settlement or an award, but not for the converse case of money due to an employer from workmen. There is no provision in the Act which contemplates a claim for money by an employer from the workmen. And indeed, it may be a little starting to find such a provision, having regard to workmen being the weaker section and Part IV of the Constitution being loaded in their favour. The new light shed by the benign clauses of Part IV must illumine even pre-Independence statutes in the interpretative process. As yet, and hopefully, claims by employers against workmen on grounds of tortious liability have not found a place in the pharmacopoeia of Indian industrial law. However, as earlier stated, we do not pronounce finally as it is not necessary.

33. There was argument at the Bar that the High Court was in error in relying on Section 18 of the Trade Unions Act, 1926 to rebuff the claim for compensation. We have listened to the arguments of Shri B. C. Ghosh in support of the view of the High Court, understood on a wider basis. Nevertheless, we do not wish to rest out judgment on that ground. Counsel for the appellants cited some decisions to show that an award falling outside the orbit of the Indian Arbitration Act can be enforced by action in court. We do not think the problem so posed arises in the instant case.

34. We dismiss the appeal but, in the circumstances, there will be no order as to costs.

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