CALCUTTA HIGH COURT

Harendra Nath Bose

Vs.

2nd Industrial Tribunal

Civil Revn. Case No. 481 of 1957

(Sinha, J.)

27.11.1957

JUDGMENT

Sinha, J.

1. This is an application wherein there are 44 petitioners previously employed by Messrs. Rallis India Ltd., formerly known as Messrs. Ralli Brothers Limited, together with Rallis India Limited Employees' Union.

2. The facts are shortly as follows : The said Company is a very well-known concern carrying on business in Calcutta for many years past. At one time they were employing more than 600 workmen in their Calcutta branch. From 1953 onwards, the Company found their Calcutta concern running at a loss. Sometime in April 1954, the Company retrenched some of the employees in its Calcutta establishment as well as at Kantapukur, Cossipore and some other out-stations. The retrenchment, however, was strongly opposed and had to be abandoned. Ultimately, in 1955 the Board of Directors finally decided to close the Calcutta establishment entirely with effect from 31-5-1955. At this stage, however, the Minister for Labour, West Bengal intervened and the Board of Directors agreed to give effect to a scheme, the foundation of which was that all unprofitable activities were to be abandoned and only the minimum staff retained to continue departments which under present conditions could be expected to pay their way. This entailed, apart from the closure of the Cossipore and the up-country jute and seeds organization, the entire cessation of trading in jute and shellac and the closure of the printing press. The departments which were to be retained would be those trading in gunnies, cotton, bones, piece goods, machinery, general exports and imports and ancillary departments, e. g., accounts, shipping, etc. Under the scheme the maximum clerical and subordinate staff which could be employed is 208. Although previous to this, conciliation proceedings had commenced, the matter was taken up at the ministerial level and there is on record correspondence between the Company and the Ministry of Labour negotiating the terms upon which the Company could be induced to carry on its business rather than entirely terminate it. In the background of these facts, it will be easier to understand the two notices served by the Company upon its workmen. The first is dated 5-2-1955 annexure 'D' to the petition, whereby it was announced that the entire Calcutta branch will be closed on and from 31-5-1955 and that the staff would be paid compensation, provident fund,

retiring gratuity, etc. The second notice is dated 12-2-1955, which is annexure 'E' to the petition. This letter referred to the notice dated 5-2-1955 and mentioned that the Company was approached by the Ministry of Labour and it had been decided to retain certain employees comprising of 208 workmen, so that the employment of the remaining staff was to cease as previously notified on 31-5-1955. The selection was based on certain principles mentioned in the said annexure which, it is said, was submitted to the Minister and approved. Even with regard to these 208 employees, they were only to be retained on new terms of service to be agreed upon. The short reason was as follows:

3. The Company found it unprofitable to carry on business in its Calcutta establishment and its ancillaries and it decided to close them altogether. This would have resulted in the mass dismissal of a large number of employees. The Government, therefore, took the matter in hand and induced the Company to continue its business in Calcutta, but upon such reduced scale and under such circumstances as would make it profitable for them to remain in business. The Company made it clear that it would be impossible to carry on the business unless they had liberty to choose their own avenue of business and to choose the number of men that they could employ. The nett result was that 208 workmen found employment but the others were thrown out. These workmen and their Union raised disputes which formed the subject-matter of conciliation proceedings. An application was made before this Court by 114 workmen upon the ground, that although conciliation proceedings had failed the disputes were not being referred to adjudication under the Industrial Disputes Act, nor was Government giving any reasons therefor under Section 12 (5) of the said Act. That application upon which a Rule was issued, was disposed of by my order dated 5-9-1955. A copy of the order is Annexure A-1 to the affidavit-in-opposition affirmed by P. A. C. Pulo. I found that there could be no doubt that the Government had not referred the disputes for adjudication nor had it given any reason. It was represented, however, on behalf of Government that the question was still under consideration and in due time Government would either refer the matter to adjudication or give reasons for not referring the matter, if there was no reference. In view of this representation, I found no further utility in going on with the matter at that stage. What I said exactly was as follows:

> "In view of this, I think that this application does not call for any further consideration except recording the admission by the State that the State Government has not considered the matter yet and when it does so, it will give reasons and communicate them. It is to be expected that it will do so within a reasonable time. It will then be open to the parties to move the Court in the way that they may be advised."

4. On 17-1-1956 the State Government by its order No. 219-Dis/D/11 L-13-55 dated 17-1-1956 referred an industrial dispute between the Company and its employees represented by Rallis India Limited Employees Union, to the 7th Industrial Tribunal constituted under the Industrial Disputes Act, for adjudication. At that time the 7th Industrial Tribunal was B. K. Bhattacharjee. The dispute that was referred was as follows:

> "Whether gratuity and compensation offered to the employees of the said Company retrenched after May 1955 are adequate and justified?
> If not, what should be the amount of gratuity and compensation?"

5. That the Government decided not to refer any other disputes for adjudication is clear from letters dated 6th/7th April, 1955 and 11th April, 1955 being exhibits P and Q to the affidavit of Mr. Pulo and a letter dated 10-4-1956, teeing exhibit J, to the petition. In this last mentioned letter addressed by the Government to the Secretary of the Rallis India Limited Employees' Union, reasons were given why only the issue as to gratuity and compensation had been referred and no other dispute. It is mentioned there that the retrenchment that had taken place was fair and in conformity with the provisions of Section 25G of the Industrial Disputes Act. it was further stated that the allegation of favoritism in selection had been examined and rejected. In the pleadings filed before the Tribunal, the workmen again raised the question of unfair retrenchment, that is to say, Section 25G of the said Act. It was urged on behalf of the Company that in view of the order of adjudication it was no longer possible to raise the point of unfair retrenchment and consideration of Section 25G of the Act was wholly inappropriate. On 16-4-1956, the Tribunal Mr. Bhattacharjee made an order the relevant part whereof is as follows:

> "The Company has agreed that in order to show clearly the cases where deviation has been made from the principle laid down in Section 25G of the Act, a statement will be filed within a fortnight from today, showing all the employees concerned category-wise and giving the date of entry in service of each and specifying the grounds on which deviation in each case is sought to be justified.'

6. On 30-4-1956 and 3-5-1956, applications were made by the Company stating that there was no agreement on its behalf to furnish particulars as mentioned above and it was contended that in view of the reference order and in the background of the facts stated above, the consideration of Section 25G of the Act would be wholly inappropriate and beyond the jurisdiction of the Tribunal. The application was of course contested by the workmen. On 5-5-1956, an order was made by the Tribunal stating that the reasons given by Government in its letter dated 10-4-1956 after the reference had been made was not binding on the Tribunal, it being within its jurisdiction to decide if any question about Section 25G pertinently arose in the case. The Tribunal however did not decide the point at that stage but held that the Company should be ready at the hearing with particulars, when the question would be decided. In or about May, 1956 Mr. B. K. Bhattacharjee ceased to be any longer in the employ of the State Government, having been sent on deputation to the Central Government. On or about 2-8-1956 Government reconstituted the Tribunal and by its Order No. 3662-Dis dated 2-8-1956, referred the identical industrial dispute to the re-constituted 7th Industrial Tribunal. The order itself contained a statement that Mr. B. K. Bhattacharjee had ceased to be in the employ of the State Government and that the Industrial Tribunal had been reconstituted on 16-7-1956. The reconstituted Tribunal consisted of Mr. B. L. Sarkar. Before the reconstituted Tribunal, the parties adopted their former pleadings. By Order No. 3931-Dis dated 4-9-1956, the Government withdrew the dispute from the 7th Tribunal altogether and referred the identical dispute to the 2nd Industrial Tribunal for adjudication. The relevant part of the order is as follows:

> "Whereas an industrial dispute exists between M/s. Rallis India Ltd., Ralli House, 16, Hare Street, Calcutta and their employees represented by Rallis India Limited Employees' Union, 16 Hare Street, Calcutta-1, regarding matters specified in the schedule below;
> And whereas under Government of West Bengal, Labour Department Order No. 3662-

Dis dated 2-8-1956, the said dispute was referred to the 7th Industrial Tribunal constituted under Notification No. 3061-Dis/D/12 L-8/56 dated 16-7-1956 for adjudication;

And whereas it is expedient that the said reference should be withdrawn and the said dispute should be referred to another Industrial Tribunal constituted under Section 7 of the Industrial Disputes Act 1947 (XIV of 1947);

Now therefore in exercise of the powers conferred by Section 10 of the said Act read with Section 21 of the General Clauses Act 1897 (X of 1897) and in supersession of the aforesaid order No. 3361-Dis dated 2-8-1956, the Governor is pleased hereby to refer the said dispute to the second Industrial Tribunal constituted under Notification No. 3930-Dis/D/12 L-5/54".

7. The second Tribunal before whom the matter came up for hearing was G. P. Mukherjee, respondent No. 1. The said Tribunal entered into the adjudication and after hearing the parties made its award dated 14-11-1956. It inter alia held that regard being had to the order of reference, it was not open to the Tribunal to apply the provisions of Section 25G of the said Act. Consequently, it refused to grant permission to the workmen to adduce evidence upon that point. By its award, the Tribunal has held that the compensations paid or offered to be paid to the workmen by the Company were fully adequata and justified

8. This Rule was issued on 21-2-1957 calling upon the respondents to show cause why an appropriate Writ should not issue setting aside the orders complained of in the petition and why the respondents Nos. 3, 4 should not be directed to refer the entire dispute to a Tribunal and for other reliefs.

9. Mr. Chakravarty appearing on behalf of the petitioners took the following points:-

(1) That the State had ho jurisdiction to withdraw the reference from the 7th Tribunal and refer it to the second Tribunal and that the orders of reference dated 2-8-1956 and 4-9-1956 are both invalid.

(2) That the State Government in refusing to refer the other items of dispute (other than the question of compensation) to adjudication failed to exercise jurisdiction in accordance with law and acted mala fide.

(3) That the Government failed to record reasons for not doing so as required by Section 12 (5) of the Industrial Disputes Act.

(4) That the Tribunal should have considered Section 25G of the Industrial Disputes Act and should have allowed evidence to be led upon the points.

10. The last point may be disposed of at once. Section 25G of the said Act deals with the procedure for retrenchment and has given legislative recognition to the principle "last come, first go." This is preceded by Section 25P which lays down the condition precedent to retrenchment of workmen. It will appear from the facts stated above that Government did consider the question as to whether retrenchment was justified or whether the principle of "last come, first go" had been followed and it is after considering these questions that the Government came to the conclusion that it will not disturb the question of retrenchment but refer to adjudication only the

question of adequacy of compensation. Under Section 10, it is for Government to consider and come to an opinion whether any industrial dispute exists or is apprehended and even then it has a discretion as to whether it will refer any dispute or not. This is purely an administrative discretion and the Court will not disturb or interfere in the exercise of such rights unless mala fides have been clearly established (See *State of Madras v. C. P. Sarathy*[1].) In my opinion, no mala fides at all have been established in this case. It seems to me that the Government has been doing the best it can for the workmen concerned and it is amply clear that no trace of mala fides can be attributed to its action in this respect. The order of adjudication consequently proceeds on the assumption that the retrenchment is justified. It is not open to the Tribunal under the order of reference to consider whether the workmen concerned were properly retrenched or not. If this were not so, it would give rise to curious results. Suppose the Tribunal came to the conclusion that the workmen were not properly retrenched. Could it order their re-instatement? Obviously, the only jurisdiction being to decide upon the adequacy of the gratuity or compensation, no such order could be made. In my opinion, the Tribunal correctly decided that it had no jurisdiction to consider the legality or otherwise of retrenchment and rightly excluded evidence on this point.

11. I now come to the main argument in the case, namely, the point No. 1. Before dealing with the point, it would be necessary to keep in mind the following facts. So far as the first reference was concerned, namely to Mr. B. K. Bhattacharjee, that came to an end not by reasons of any withdrawal but because Mr. Bhattacharjee ceased to be in the employ of the State Government and went on deputation to the Central Government as a member of the Election Commission. That would bring into operation Section 8 of the Act. Under Section 8 (2), if for any reason a vacancy occurs in a Tribunal, it is open to the Government to fill the vacancy. When Mr. Bhattacharjee was transferred to the employ of the Central Government there was obviously a vacancy and the order dated 2-8-1956 appears to be perfectly in order. In fact, the order recited the fact that Mr. Bhattacharjee had ceased to be in the employ of the State Government and that is why the second reference was being made. The position is, however, quite different when we come to the third order of reference. Mr. B. L. Sarkar who was the incumbent to the 7th Industrial Tribunal did not cease to be in office, or in other words, there was no vacancy and Section 8 of the Act did not come into operation. Therefore, there is no reason why the matter should be withdrawn from Mr. Sarkar and referred to Mr. Mukherjee and no reason has been advanced. It is stated on behalf of the petitioners that because Mr. Bhattacharjee expressed an opinion adverse to Government, stating inter alia that he was not bound by the letter dated 16-4-1956 and that the Company should file particulars under Section 25G etc., that Government withdrew the reference from the 7th Industrial Tribunal and entrusted it to the second Industrial Tribunal. This, in my view, is without substance. It might have applied to the transfer from Mr. Bhattacharjee to Mr. Sarkar, but it cannot explain the transfer from Mr. Sarkar to Mr. Mukherjee. The transfer from Mr. Bhattacharjee to Mr. Sarkar has been well explained as having been necessitated owing to a vacancy occurring by the fact that Mr. Bhattacharjee ceased to be in the employ of the State Government. Therefore there is nothing in the point of mala fides as set out in paragraph 22 of the petition. As I have stated above, the withdrawal of the case from Mr. Sarkar and referring it to Mr. Mukherjee is under a different basis altogether. Section 8 does not come into the picture. Therefore the question is whether Government has any power to withdraw a pending reference from one Tribunal and transfer it to another

[1] AIR 1953 SC 53

Tribunal. In other words, if there is a reference to one Tribunal and the Tribunal enters into the reference and is going on with it, can Government, in the midst of the proceeding, suddenly

transfer it to another Tribunal and act in a way which completely wipes off the previous proceedings and requires the new Tribunal to start afresh. This precise question has been considered by a Division Bench of the Patna High Court in *D. N. Ganguly v. State of Bihar*[2], It was held by Ramaswami J. (as he then was) with the concurrence of Das C.J., that there was no express provision in the said Act either under Section 10 or any other section of the Act, empowering the State Government to withdraw a reference after it has been made to the Industrial Tribunal. It was further held that the State Government had also no implied power to cancel or withdraw a reference which had already been made to an Industrial Tribunal under the provisions of Section 10 of the Act. The learned Judge examined all the relevant provisions of the Act and pointed out that the section granted a power to the State Government to refer an industrial dispute to a Tribunal for adjudication and similarly a statutory duty was cast upon the Tribunal to hold its proceedings expeditiously and submit its award to the State Government. The learned Judge pointed out that there is no express provision either under Section 10 or any other section in the Act, empowering the State Government to withdraw a reference after it has been made to an Industrial Tribunal. As I shall presently point out, regard being had to a decision of the Supreme Court, it is perhaps no longer open to say that Government cannot cancel a reference. In this case, however, there has been no cancellation of the reference. The order dated 4-9-1956 itself states that the reference should be "withdrawn" and referred to another Tribunal. The order mentions Section 21 of the General Clauses Act. That ground was also dealt with in the Patna case above mentioned. Section 21 of the General Clauses Act lays down that where a power is conferred to issue notifications or orders, then it implies a power to add, amend, vary or rescind the same. The learned Judges however pointed out that Section 21 of the General Clauses Act merely granted a power to the State Government to vary or rescind an order which had already been made. But Section 21 of the General Clauses Act only embodies a rule of construction which should be applied if the construction cannot be arrived at or determined with reference to the context or subject-matter of the particular statute. It was held that the context and subject-matter of the Industrial Disputes Act made it clear that the State Government should have no implied power of cancelling a reference which had already been made. Das C.J., (as he then was) pointed out that assuming that Section 21 gives such power, it could not be used in such a way as to nullify the other provisions of the Industrial Disputes Act. In my opinion also, Government has not the power, express or implied, under the Act to withdraw a pending reference from one Tribunal and to transfer the same to another Tribunal. Where a vacancy occurs, it can proceed under Section 8 (2) of the Act, but otherwise, upon a reference having been made, Government has no longer a power to interfere with its proceedings except to exercise such powers as have been expressly granted to it under the Act. As I have already said, regard being had to a Supreme Court decision it must perhaps be conceded that there is a power of cancellation of the whole reference. A withdrawal, however, is not a cancellation. Cancellation means that the reference has come to an end, whereas withdrawal means the transfer of a subsisting reference.

12. The *Strawboard Manufacturing Company Ltd. v. Gutta Mill Worker's Union*[3], was a

[2] AIR 1956 Pat 449

[3] AIR 1953 SC 95

case in which there was a reference of a dispute by the Government of Uttar Pradesh and the adjudicator was directed to conclude the adjudication proceedings and submit an award not later than 5-4-1950. The adjudicator made an award, but after the expiry of the time fixed. After

delivery of the award, Government extended the time so as to make the award within time. The question was whether the Government had the power to do so. Das J., (as he than was) said as follows:

> "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."

13. What happened was that the Government after having referred to adjudication made a further order referring additional issues. Das J., held that the proper course would have been to cancel the previous notification and issue a fresh notification referring all the issues to the adjudicator specifying a fresh period of time. This case has been referred to in the Patna case cited above, but the learned Judges held that each case must be read in its context. The case certainly turned upon the fact that the original reference had itself prescribed a time limit and when the time limit expired the reference came to an end. However, as I have already pointed out, the Supreme Court has held that cancellation of a reference was possible. It certainly is an obiter but as it involves a principle, it is binding upon me. In the present case, however, I am not called upon to decide the question of cancellation. The point is whether there can be a withdrawal and/or transfer. In my opinion, therefore, the order dated 2-8-1956 was quite in order, but that the order of withdrawal dated 4-9-1956, was incompetent.

14. But the question is, assuming that there was any defect in the jurisdiction of the Tribunal, can such a question be raised in this application by the petitioners. The fact is that they, being aware of such defect of Jurisdiction, did not take it before the Tribunal at all. The result was that the issue was not raised and the Tribunal was never called upon to decide it. Under the circumstances, the petitioners cannot be permitted to take this point before this Court in writ petition. *Manak Lal v. Dr. Prem Chand*[4], was a case under the Bar Councils Act. A Bar Council Tribunal was appointed to make enquiry into the alleged misconduct of the appellant who was an Advocate of the Rajasthan High Court. The Chairman of the Tribunal had appeared for the opposite parties in the criminal proceedings out of which the misconduct proceedings arose and the appellant raised the question of bias before the High Court, although before the Tribunal he did not take the objection. The Supreme Court held that the Chairman ought never to have acted as a member of the tribunal, but that no relief could be given to the appellant, inasmuch as he had failed to take the point of jurisdiction before the tribunal and must be taken to have waived it. Reference may be made to another Supreme Court decision, *Pannalal Brijraj v. Union of India*[5], at p. 412, where it was held that failure to object to the jurisdiction of an Income-tax officer to whom a case had been transferred, renders future objection under Article 226. untenable.

[4] AIR 1957 SC 425
[5] AIR 1957 SC 397

15. The nearest case, however, is a Bombay decision *Gandhinagar Motor Transport Society v. State of Bombay*[6], In this case, the decision of the Government against an order of the Regional Transport Officer was challenged on the ground that Governmant had no jurisdiction to sit in appeal over the decision of the State Transport Authority. The petitioner raised no objection to

the Jurisdiction of Government when it heard the matter, but was content to hare it heard. It was held by Chagla C, J., that under such circumstances no relief could be granted in an application under Article 226 of the Constitution. The learned Chief Justice relied on the English Case of *Rex v. Williams; Philips Ex parte*[7], and said as follows:

> "The fact that the petitioner did not challenge the jurisdiction of the Government did not by consent or waiver confer jurisdiction upon the Government. As we have already pointed out, the question is not that if the Government's decision was without jurisdiction it became a competent decision merely because the petitioners did not object to the jurisdiction. But the question is whether the petitioners not having challenged the jurisdiction of the Government this Court will give them relief by exercising its very special and discretionary jurisdiction. Rowlatt J., in a very short judgment emphasizes the fact that the rule that the Courts of England have adopted is a very salutary rule. This is what he says:
> 'It is a very salutary rule that a party aggrieved must either shew that he has taken his objection at the hearing below or state on his affidavit that he had no knowledge of the facts which would enable him to do so'.

We see no reason why in this particular case we should not give effect to this rule."
Reference may also be made to *Abanindra Kumar Maity v. A. K. Majumdar*[8], *Satya Narayan Transport Co. Ltd. v. Secretary State Transport Authority etc*[9]., and *Ram Mohan v. State of West Bengal*[10], That being the position in law, the petitioners are precluded from putting forward the defect of jurisdiction of the Tribunal at this stage and in this application. Coming to the second point, I consider it to be of no substance at all. If there is any case in which the Government can be said to have acted perfectly *bona fide*, it is this case. The affairs of the Company, which had an enormous business at one time, came to such a pass that it was about to close its doors altogether. It was by dint of the efforts of the Government in its department of labour that the tragedy was averted.

16. The only allegations of mala fides that are alleged in the petition are to be found in para 22 and Ground C in para 29. The first allegation is as regards the withdrawal of the reference from the 7th Tribunal to the 2nd Tribunal. We have already seen that the petitioners are precluded from challenging the order of withdrawal in this application and it is unnecessary and profitless to deal with this allegation. The second allegation is not an allegation of mala fides at all. The Government has refused to refer any other disputes to adjudication, for reasons set out in the letter of the Joint Secretary to the Government of West Bengal dated 11-4-1955 (Annexure Q to affidavit in opposition). Reference may also be made to a letter by the same officer dated 6th/7th April, 1955 (Annexure 'P' to the a/o). It is clear therefore that Government considered every aspect of the matter and was

[6] AIR 1954 Bom 202 [8]60 Cal WN 299 : (AIR 1956 Cal 273) (PB) [10]61 Cal WN 779
[7](1914) 1 KB 608 [9]61 Cal WN 726 : (AIR 1957 Cal 638)

satisfied that the principles laid down in Section 25G of the Industrial Disputes Act had been followed and that no other disputes needed to be referred to adjudication save the issue of compensation of workmen whose services have been terminated. A reference of an industrial dispute for adjudication under Section 10 of the Industrial Disputes Act is not a matter of right. A

discretion has been given to Government and the act is a purely administrative Act. Whether a particular dispute should be referred under Section 10 or not is entirely for Government to decide and the Courts should not interfere unless mala fides are clearly established. This also deals with point No. 3, because it fully appears that the provisions of Section 12 (5) of the Industrial Disputes Act has been followed and reasons have been given in writing as to why no other disputes were referred for adjudication.

17. Apart from these points, Mr. Chakrabartty tried to take me through the award, in an attempt to prove that the gratuity had not been properly calculated'. I am unable to see why not. In any event, this is not an appeal Court in that sense. Simply because there is an error is not sufficient for asking for relief. There must be an error apparent on the face of the proceedings. There is no such error as is apparent on the face of the award.

18. The result is that all the points taken have failed and the application must be dismissed. The rule is discharged, interim orders if any vacated. There will be no order as to costs.

19. This will be without prejudice to any other right of action that the petitioners may have.

Application dismissed.