BOMBAY HIGH COURT

The Province of Bombay

Vs

Western India Automobile

(M Chagla, C.J. Bhagwati, J.)

09.09.1948

JUDGMENT

M.C. Chagla, C.J.

1. This is an appeal from a judgment of Mr. Justice Coyajce ordering the issue of a writ of prohibition against the Industrial Tribunal set up by the Government of Bombay. It seems that a dispute between the Western India Automobile Association and its workers started about November 1946, and on November 9, 1946, the President of the Western India Automobile Association Staff Union served a notice upon the President of the Association setting out various demands of the employees. On December 4, 1946, the President of the Association informed the President of the Union that they were not prepared to recognise the Union or to carry on any correspondence with it. On December 30, 1946, the President of the Union by a letter informed the President of the Association that unless the demands of the workers were accepted, the members of the Union would strike work on January 2, 1947, and pursuant to this notice there was a strike of the members of the Union starting on January 2, 1947. On January 22, 1947, the Association gave notice to those on strike that unless they resumed their duties by the 27th they would be deemed to be dismissed from the day they went on strike, and on February 11, 1947, the services of those on strike were terminated. On May 28, 1947, the Union made fresh demands upon the Association, and on August 11, 1947, the Government of Bombay issued a notification under Section 7 of the Industrial Disputes Act, constituting an Industrial Tribunal consisting of Mr. Vyas, and on September 17, 1947, under Section 10 of that Act, the Government referred to the Tribunal for its adjudication the various disputes which were pending between the Association and the Union, and the material one to which I may draw attention was whether such of the members of the Association staff who joined the strike at the date of its commencement on January 2, 1947, and/or thereafter should be reinstated and paid back wages or salaries with all allowances, bonuses, etc., at the increased rates as may be fixed by the Tribunal, from January 2, 1947, till the date of reinstatement, and/or such other relief which the Tribunal may grant. I may point out that subsequently in place of Mr. Vyas, Mr. M.C. Shah constituted the Industrial Tribunal.

2. The Association challenged the jurisdiction of the Tribunal to inquire into this dispute and they filed a petition on November 15, 1947, for a writ of cetiiorari, in the alternative, for a writ of prohibition, and in further alternative, for an order under Section 45 of the Specific Relief Act, against the Tribunal, preventing it from proceeding with the investigation of this dispute. Before Mr. Justice Coyajee it was contended by the Association that the Industrial Disputes Act did not apply to the Association at all and therefore the dispute between the Association and its workers could not be referred to the Tribunal, It was also contended by the petitioners that in any event the question of reinstatement of the dismissed employees could not be considered and investigated by the Tribunal. The learned Judge held that the Industrial Disputes Act did apply to the Western India Automobile Association, but he held that it was not competent to the Tribunal to consider the question of the reinstatement of the dismissed employees, and therefore he issued a writ of prohibition against the Tribunal, restraining it from entering1 upon any inquiry or giving any direction on the question of reinstatement. From this order an appeal is preferred by the Province of Bombay, and also there is an appeal by the Western India Automobile Association, inasmuch as the learned Judge held that the Tribunal had jurisdiction to investigate the disputes except for the question of reinstatement.

3. Now, as far as the Province of Bombay is concerned, it was not a party to the petition, although under the direction of the learned Judge notice was served upon the Province of Bombay, and pursuant to that notice the Province of Bombav appeared before the learned Judge and submitted its point of view before the Court; and a preliminary point is taken that inasmuch as the Province of Bombay was not a party to the petition, it is not competent for the Province of Bombay to prefer an appeal from the decision of the learned Judge. The Civil Procedure Code does not in terms lay down as to who can be a party to an appeal. But it is clear, and this fact arises from the very basis of appeals, that only a party against whom a decision is given has a right to prefer an appeal. Even in England the position is the same. But it is recognised that a person who is not a party to the suit may prefer an appeal if he is affected by the order of the trial Court, provided he obtains leave from the Court of Appeal. Therefore, whereas in the case of a party to a suit he has a right of appeal, in the case of a person, not a party to the suit who is affected by the order he has no right, but the Court of Appeal may in its discretion allow him to prefer an appeal. It is difficult to understand why the Province of Bombay, which is vitally affected by the decision of Mr. Justice Coyajee, did not think lit to get itself made a party to the petition. Not only it did not do so, but it preferred an appeal without obtaining any leave or any direction from the Court of Appeal, and there can be no doubt that Mr. Vimadalal's contention is sound that as the record stands the appeal preferred by the Province of Bombay is not competent. It is an appeal preferred by a person who was not a party to the proceedings before Mr. Justice Coyajee and who has not been given any leave by the Court of Appeal to prefer this appeal. It was open to the Province of Bombay to come before us before filing this appeal and get the necessary leave and directions, but that, again, the Province of Bombay did not choose to do. But I do not think it would be right to deprive the Province of Bombay of the right to challenge Mr.

Justice Coyajee's decision merely on this technical ground. Technicalities should never be permitted to override substantial justice, and we think that the Province of Bombay should be heard provided it pays all the costs of this appeal up to date. We would, therefore, give leave to the Province of Bombay to maintain this appeal although it was not a party to the proceedings before Mr. Justice Coyajee.

4. Now, coming to the merits of the matter, in order to understand the rival contentions of the parties it is necessary to look at the Industrial Disputes Act and to some of its material provisions. The Act was put on the statute book for the purpose of investigation and settlement of industrial disputes and it provides a machinery for settlement of disputes and differences between the employers and workers. Under Section 7 of the Act, Industrial Tribunals are to be constituted by the appropriate Government. Under Section 10 references of disputes are to be made to these Tribunals. Section 15 lays down the duties of the Tribunals which include the submission of its award to the appropriate Government, and Sub-clause (2) of Section 15 provides that on the receipt of such award, the appropriate Government shall by order in writing declare the award to be binding, and Section 19 provides for the period of operation of the award. Section 29 is the penal section which lays down the penalty for the breach committed by either party of the terms of the award.

5. Now, the first contention of Mr. Kolah is that the Western India Automobile Association is not an industry at all to which the Industrial Disputes Act can apply. "Industry" is defined by the Act under Section 2, Sub-clause (j), and the definition is :

Industry means any business, trade, undertaking, manufacture, or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.Mr. Kolah says that the Western India Automobile Association does not carry on any business, trade or undertaking with a view to making profits. It is an association whose sole function is to render services to its members and it exists for the purpose of encouraging and developing the automobile movement in Western India. Mr. Kolah contends that it is only when an undertaking is carried on with a view to making profit that it is constituted an industry for the purposes of the Act. I see no reason, looking to the plain words of the section, why such a narrow and restricted meaning should be given to the expression "industry." There is no indication in the section itself that the undertaking referred to in the definition clause must be an undertaking carried on for the purpose of making profit. It may be that as far as a business, trade or manufacture is concerned, every one of those has to be carried on with the profit motive. But as far as an undertaking is concerned, it is something different from business, trade or manufacture, and there is no reason why every undertaking, in order to fall under that sub-clause, must be something done with a view to making profit. The expression "calling" is also sufficiently wide to include in it activities not necessarily concerned with the profit motive. What is really emphasised in this sub-section is the relationship of employers and workers. If you have an undertaking carried on by employers and workers and if in that undertaking a dispute takes place, then you have a dispute in an industry contemplated by the statute, and it cannot be denied that in this particular case both the employers who are the Association and the workers who are the

other party to the dispute are engaged in the undertaking known as the Western India Automobile Association which exists for the purpose of rendering services to its members.

6. It is then argued that the Association is not an employer within the meaning df the definition in Section 2, Sub-clause (g), which defines "employers" as :
Employer means-

(i) in relation to an industry carried on by or under the authority of any department of a Government in British India, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department.
(ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority.The submission made on behalf of the petitioner is that this is an exhaustive definition, that the Act only applies where the employer is either the Government or the local authority, and as the Western India Automobile Association happens to be neither the Government nor a local authority, the Act does not apply and no Tribunal can be set up to investigate a dispute between the Association and its workers. It is perfectly true that a definition may be exhaustive or it may be inclusive. It would depend upon the context which it is. It is also true that ordinarily when the Legislature says that a particular word means something, it intends to convey that that is the only meaning to be given to that expression wherever it appears in the statute. But in this particular case "employer" has a particular meaning, not throughout the context of the statute, not wherever it appears in the statute, but only in relation to the two cases mentioned in Sub-clauses (g)(i) and (g)(ii). When the question arises with regard to an industry carried on by Government, then "employer" has a certain meaning given to it by Sub-clause (g)(i). When the industry is carried on by a local authority, then the word "employer" has a certain meaning given to it by Sub-clause (g)(ii). It is exhaustive only question the two industries mentioned in Sub-clauses (g)(i) and (g)(ii). But the Legislature has not attempted to define "employer" generally or for all purposes under the Act. "Employer" is a well known expression which really does not require any definition. But as special eases are contemplated by the statute, the Legislature thought that the word "employer" should be denned with regard to those special eases. The earlier history of this particular legislation also makes this point perfectly clear. This Act, viz. the Industrial Disputes Act XIV of 1947, replaced the earlier Act which is Act VII of 1929 known as the Trade Disputes Act, and in the Trade Disputes Act an "employer" was defined as :Employer, in the case of any industry, business or undertaking carried on by any department of any Government in British India, means the authority prescribed in this behalf or, where no authority is proscribed, the head of the department.Mr. Kolah states that as far as the Trade Disputes Act VII of 1929 was concerned, it applied not merely to industries carried on by Government or local authorities, but also to industries carried on by private individuals. But according to Mr. Kolah there is a vital distinction between the definition of "employer" in Act VII of 1929 and in Act XIV of 1947. I fail to see any such vital distinction. The only distinction is that whereas the Trade Disputes Act defined "employer" with regard to only one class of cases, viz. where the industry was carried on by Government, Act XIV of 1947 defines "employer"

with regard to two classes of cases, as I have already pointed out, (i) where the industry is carried on by Government and (ii) where the industry is carried on by a local authority. The exact placing of the word "means" in the earlier Act and in the later Act, to my mind, does not indicate any change in the object of the Legislature in defining the expression "employer." To my mind, it is impossible to contend that whereas Act VII of 1929 applied to all industries, public and private, the new Act XIV of 1947 has suddenly contracted its scope and ambit and is now applicable only to industries carried on by Government and the local authority. One has only to look at some of the provisions of the Act to see how untenable such an interpretation, is. For instance, the Act applies to various public utility services and according to Mr. Kolah it is only when the public utility service is carried on by Government or the local authority that the Act would apply and it would not apply if the public utility service was rendered by a limited company or by a private agency. Unless one is driven irresistibly to putting such a construction on the expression "employer," one should be reluctant to do so, as it would indicate a revolutionary change in the policy of the Legislature between the passing of the Trade Disputes Act VII of 1929 and the passing of Act XIV of 1947. There is not a trace of such a change in policy in the actual substantive portions of the two pieces of legislation. Therefore, in my opinion, the learned Judge was right when he came to the conclusion that the definition of "employer" was not exhaustive and that it only referred to the two classes enumerated in Sub-clauses (g)(i) and (g)(ii).

7. The next question to be considered is whether it is competent to the Tribunal appointed by Government to consider the question of the reinstatement of the dismissed employees of the Western India Automobile Association. In order to answer this question, what we have to consider is whether the question of reinstatement can constitute an industrial dispute between an employer and an-employee within the meaning of the Act. "Industrial dispute" has been defined by Section 2, Sub-section (k), and the definition is :industrial dispute means 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.Therefore, if there is a dispute or difference between one set of employers and another or between employers and workmen or between workmen themselves, and if such a dispute or difference relates to (1) employment or non-employment of any person. (2) the terms of employment of any person, or (3) the conditions of labour of any person, then such a dispute or difference may constitute an industrial dispute which can be referred to a Tribunal under the provisions of the Act. Apart from any authority, I should have said that when there is a dispute with regard to the reinstatement of a worker who has been dismissed, it is certainly covered by the expression "dispute connected with the non-employment of any person." The grievance of the workers is that certain persons who were the employees-of the Association have not been employed by the Association and they have been wrongly dismissed. Mr. Kolah says that the Legislature has not advisedly used the expression "reinstatement" and therefore the question of reinstatement cannot be referred to the Tribunal. I do not understand why the Legislature should have used such an expression when

they have used a much clearer and a much wider expression which would cover cases of reinstatement and which may cover also other cases of non-employment. In this connection it is also pertinent to note the definition of "workman" as it appears in Section 2, Sub-clause (s):workman means any person employed (including an apprentice) in any industry to do any skilled or unskilled manual or clerical work for hire or reward and includes, for the purposes of any proceedings under this Act in relation to an industrial dispute, a workman discharged during that dispute, but does not include any person employed in the naval, military or air service of the Crown.Therefore, a workman who is not actually employed by the employer at the time that the dispute is referred to the Tribunal is included in the expression "workman" if he was discharged while the dispute was going on, and that is the very case of the workmen here. They were discharged during the dispute between the Association and its workmen, and one of the points of the dispute is the non-employment of those workers who were discharged during the dispute. As I was saying, apart from any authority, on a plain construction of the Act, I should have no hesitation in holding that "industrial dispute" does include a question with regard to the reinstatement of a dismissed employee, and I think Mr. Kolah, also for the petitioner, finds it rather difficult to justify his position on the language of the statute itself. But he takes his stand on a decision of the English Court of Appeal which, according to him, is his sheet-anchor.

8. Now, let us look at this decision and see whether it is really a sheet-anchor or merely appears to be an anchor and in reality is anything but that. That is a recent decision reported in *R. v. National Arbitration Tribunal*[1] There the Court of Appeal was considering the Conditions of Employment and National Arbitration Order, 1940, which was made under reg. 58AA of the Defence (General) Regulations, 1939. By that Order any trade dispute may be reported to the Minister of Labour and the Tribunal appointed may make an award which was binding on the employer and the workers to whom it related, and it was to be an implied term of the contract between the employers and the workers that the rate of wages to be paid and the conditions of employment to be observed under the contract shall be in accordance with the award. In November 1946 the workmen employed by the Horatio Crowther & Co., Ltd., pressed for changes in wages and conditions of service. On March 28, 1947, the company gave the workmen notice terminating their employment as from April 4. On April 14 the matter was reported to the Minister of Labour and National Service, who referred it to the National Arbitration Tribunal. The claim of the workmen included the reinstatement from the date of dismissal of the workers dismissed, and the award of the Tribunal stated that they were in favour of that particular claim, and the Court of Appeal held that the direction to reinstate the workmen was ultra vires the Tribunal, and that finding and the award in so far as it related to the reinstatement of the workmen was quashed, and the learned Chief Justice Lord Goddard delivering the main judgment has emphasised the fact that under common law it is not open to a Court to pass a decree compelling an employer to engage an employee. If an employer wrongfully dismisses an employee, then the only right of the employee is to claim damages or compensation. No decree for specific performance can be passed with regard to a contract which entails personal services, and the learned Chief Justice says that unless the Legislature expressly confers such a power

upon the Tribunal he was not prepared to assume that the Tribunal could compel an employer to keep engaged an employee whose services it had terminated.

9. Now, Mr. Kolah adopts the same argument and contends that here also it would not be open to the Tribunal to compel the Western India Automobile Association to employ the workmen whom it has dismissed. According to Mr. Kolah, there is no such right in any Court of law to compel an employer to engage an employee in whom it has no confidence or whom he does not want to employ for any reason whatsoever. The only right is for the worker to claim damages or compensation. Mr. Kolah is right that as in England so in India, under the Specific Relief Act no civil Court in this count would ever pass a decree for specific performance at the instance of a worker dismissed by his employer, compelling the master to continue the services of his servant. But it is also to be noted that the whole trend of labour legislation in this country and elsewhere is to interfere with the sanctity of private contract. We are no longer living in those far off days, which according to some may be halcyon days and according to others wicked and evil days, when the rights of employers and employees were governed purely by contract. The employer went out into the open market, employed whom he liked, paid what he liked, dismissed him when he liked, and the State permitted him to do so. As I was saying, the whole trend of labour legislation is to protect labour against the free play of contractual rights which may harm him and against which he is not strong enough to protect himself. Therefore, the mere fact that this particular legislation interferes with the rights of contract or the sanctity of a contract cannot be an argument for holding that such an encroachment upon private rights cannot be permitted. What we have to consider is whether the Legislature has chosen to confer upon the Tribunal a right which ordinary civil Courts dealing with ordinary matters between litigants and subjects may not possess.

10. Now, one important fact to bear in mind is the very fundamental difference between the Order which the English Court was considering and our own statute. The efficacy of the award which the Tribunal could make under the Conditions of Employment and National Arbitration Order lay in this that the terms of the award were to be considered as the implied terms of the contract of service. But the award was circumscribed by this that it could only deal with the rates of wages and the conditions of employment, and after the Tribunal had determined what should be the rates of wages and the conditions of employment, they were imported into the original contract of service between master and servant and the servant could enforce the decision of the Tribunal in a Court of law as if he was suing on the original contract of service. It is also to be noted that, as appears from this decision, there was no means of enforcing the award, no specific means laid down in the English Order itself, and finally the definition of "workman" was very different from the definition that we find in our own statute; there was no reference in the English Order to a workman who had already been discharged. Turning to the judgment of the learned Chief Justice, there can be no doubt that what induced him to come to the conclusion which he did was mainly the circumstance that there was no means of enforcing the award under the English Order, as the-learned Chief Justice says at p. 697 :If there is and can be no means of

enforcing that award, it seems to me a cogent, if not a compelling, reason for saying that the tribunal has no power to award it.It being the order for reinstatement of the dismissed servants. With respect, the reasoning of the learned Chief Justice is right, because if the award could not be enforced, no ordinary Court of law would ever pass in favour of the dismissed employee a decree for reinstatement, and therefore the award would become really an in fructuous decision. But that is not the case here. As I pointed out, our statute contains a penal provision for the enforcement of the award. If the Tribunal orders an employer to reinstate an employee who has been dismissed, he cannot defy that decision or set it at naught because he would be liable to penalties under the Act if he took the risk of disregarding the decision of the Tribunal.

11. It has been strongly impressed upon us that under the English Order the trade dispute which the Tribunal could investigate was similar to the industrial dispute under our own Act and that the Tribunal in England could also consider the question with regard to the non-employment of a worker. It is therefore urged that Lord Goddard came to the conclusion that notwithstanding the power that the Tribunal had to investigate into the question of non-employment of a worker the Tribunal could not order reinstatement. Similarly here the Industrial Tribunal could not be given the power to order reinstatement of a worker dismissed by the employer. But what is got to be borne in mind, and to my mind that is the fundamental distinction between the position in England and the position here, is that Under the English Order, as I have already pointed out before, the award that could be made by the Tribunal was a strictly circumscribed award. It was confined to regulating rates of wages and conditions of employment, and the learned Chief Justice in terms in his judgment points out that whereas express power was given to the Tribunal to do what no Court could do, viz. to add to or alter the terms or conditions of contract of service, no such power was given to the Tribunal to reinstate or revive a contract lawfully determined. As far as our statute is concerned, the Tribunal has power to adjudicate upon all matters in dispute between the employer and the worker. Therefore, it is open to the Tribunal to award reinstatement of a dismissed worker, and if such award is made that award would be valid and binding and enforceable by means of the penal provisions in the Act.

12. I am therefore of the opinion that the English decision which is so strongly relied upon is not an authority for the proposition that under no circumstances could an Industrial Tribunal be competent to order reinstatement of a dismissed worker. It is only an authority for the proposition that looking to the special terms of the English Order and the circumscribed nature of the award that the Tribunal could make under that Order, the Tribunal in England was not competent to order reinstatement of a dismissed worker.

13. I am therefore of the opinion that the learned trial Judge was in error when he issued a writ of prohibition upon the Tribunal restraining it from entering upon any inquiry or giving any direction on the question of reinstatement. I would therefore allow the appeal preferred by the Province of Bombay, set aside the order of the trial Judge, and dismiss the petition filed by the Western India Automobile Association. The appeal preferred by the Association must fail.

Bhagwati, J.

14. These are two appeals from the judgment of Mr. Justice Coyajee, one preferred by the Province of Bombay, being appeal No. 31 of 1948, "and the other preferred by the Western India Automobile Association hereinafter referred to as the Association, being appeal No. 39 of 1948. The Association, in the course of its business or undertaking, whatever it may be called, employed workmen, and on November 9, 1946, a letter was addressed to the President of the Association by the President of what was styled Western India Automobile Association Staff Union, presenting before the Association several demands of theirs. It appears that the Association was not in favour of this Staff Union and did not take any cognisance of its status or existence, and on December 4, 1946, a reply was sent by the Association to G.G. Mehta, President of the Union, stating that the committee of the Association was not prepared to enter into any correspondence or discuss with him the matters relating to the Association's staff. A notice of strike was given by the Union on December 12, 1946, whereupon on December 27, 1946, the President of the Association issued a circular letter addressed to the staff intimating what steps had been taken by the Association and its committee for the amelioration of the conditions of the members of the staff and asking them not to take any precipitate action as intimated by the Union. On December 30, 1946, the President of the Union addressed a letter to the President of the Association reiterating the employees' demands and further intimating that if the Association did not comply with the request therein contained, the employees would be compelled to strike work and they would make a further demand and be entitled to full wages for the whole of the strike period. Nothing happened thereafter and the strike was commenced by the members of the Union on January 2, 1947, which resulted in a notice of dismissal being addressed by the Association on January 22, 1947, to those members of the staff who had commenced the strike. On May 28, 1947, the Union addressed to the Association their fresh demands. On August 11, 1947, a notification was issued by the Government under the Industrial Disputes Act, 1947, constituting an Industrial Tribunal consisting of Mr. D.V. Vyas, i.c.s., for adjudication of industrial disputes in relation to which the Central Government was not the appropriate Government in accordance with the provisions of the Act. On September 22, 1947, the disputes which had arisen between the Association and the workmen employed by it were referred for adjudication to the Industrial Tribunal under Section 10 of the Act. In this notification over and above the demands which were the subject-matter of the letter dated November 9, 1946, was added a demand for reinstatement and back wages and salaries, which demand arose by reason of the strike situation which had developed since. There was correspondence between the Association and the Industrial Tribunal wherein the Association challenged the jurisdiction of the Industrial Tribunal to act in the matter of the disputes which had arisen between itself and its employees, and the last letter addressed to the Industrial Tribunal was on November 14, 1947, fixing November 17, 1947, as the date when whatever arguments on the points of jurisdiction the Association wanted to urge would be heard by the Tribunal. It was thereupon that the petition was filed by the Association on November 15, 1947. The rule nisi was

granted by Mr. Justice Desai on November 17, 1947, and by the terms of the order Mr. Justice Desai directed that a notice of the rule nisi should be given by the petitioner to the Province of Bombay and to two employees of the Association on behalf of the employees of the Association. It was in pursuance of this direction that the Province of Bombay as well as the two employees in their representative capacity appeared at the hearing of the petition before Mr. Justice Coyajee.

15. In the petition as it was filed the Association contended that the definition of "employer" contained in Section 2(g) of the Act was exhaustive and did not include the Association. It also contended that it did not carry on any industry but merely gave service to its members and was therefore not amenable to the jurisdiction of the Industrial Tribunal. It lastly contended that demand No. 1, namely, regarding reinstatement and payment of back wages or salary, etc., was not an industrial dispute at all within the meaning of the expression as used in the Act. These were the main points on which the matter was argued before Mr. Justice Coyajee. Mr. Justice Coyajee held that the Association was an employer within the meaning of Section 2(g) of the Act, but as regards the demand for reinstatement he, following a decision of the Appeal Court in England reported in B. v. National Arbitration Tribunal [1947] 2 A.E.R. 693 held that it was not an industrial dispute and therefore issued a writ of prohibition against the Industrial Tribunal, respondent No. 2, prohibiting the Tribunal from entering upon the enquiry into the demand for reinstatement or giving any direction with reference thereto. The Province of Bombay who had appeared before Mr. Justice Coyajee in accordance with the direction given at the time when the rule nisi was issued by Mr. Justice Desai filed the appeal No. 31 of 1948 against this decision of Mr. Justice Coyajee in relation to the question of reinstatement. The Association filed appeal No. 39 of 1948 against the decision of Mr. Justice Coyajee in regard to the question of the Association being an employer within the meaning of the Act. These are the two appeals which have been argued before us.

16. When Appeal No. 81 of 1948 was called on before us counsel for the respondent took a preliminary objection that the Province of Bombay not having been a party to the petition it was not competent to the Province of Bombay to file the appeal. It was contended that it was only the parties to the proceedings before the lower Court that had a right of appeal and those persons who were not parties to the proceedings were not competent to file any appeal even though the judgment and the decree appealed from might adversely affect their interests. Our attention was directed to the relevant provisions of the Civil Procedure Code, namely, Sections 96 and 146 and Order XLI, Rule 1, of the Civil Procedure Code. It may be noted however that in none of these provisions of the Civil Procedure Code has it been laid down who can prefer an appeal It was further pointed out that in the commentary of Sir Dinshah Mulla on the Civil Procedure Code and also in a judgment of Mr. Justice Madhavan Nair in *Indian Bank Ltd. v. Seth Bansiram Jeshamal Firm*[2] it was stated that no person who is not a party to the suit or proceedings has a right of appeal. This is no doubt the position so far as the right of appeal is concerned. A person who is not a party to the suit or proceedings has no right to appeal against the decision and this is the position where a person who is not such party is aggrieved by the decision and wants to

appeal against it. He can only ask for leave to appeal from the appellate Court before he can be allowed to file an appeal. There is no right of appeal vested in him by any of the provisions of the Civil Procedure Code or by any other provision of law. The only remedy open to him, if his interests are adversely affected or if he is aggrieved by a decision of the Court, is to approach the Appellate Court and ask for leave to appeal which the appellate Court would grant in proper cases. This is the position in England as one finds it laid down in In re Securities Insurance Company [1894] 2 Ch. 410 where Lindley L.J. observed (p. 413):Now, what was the practice of the Court of Chancery before 1862, and what lias it been since ? I understand the practice to be perfectly well settled that a person who is a party can appeal (of course within the proper time) without any leave, and that a person who without being a party is either bound by the order or is aggrieved by it, or is prejudicially affected by it, cannot appeal without leave. It does not require much to obtain leave. If a person alleging himself to be aggrieved by an order can make out even a prima facie case why he.should have leave he will get it; but without leave he is not entitled to appeal.The Province of Bombay had not obtained any such leave to appeal and had filed the appeal as if in exercise of a right to do so. This position was certainly not tenable and under the circumstances of the case we thought it proper to give the Province of Bombay leave to appeal but on terms that the Province of Bombay do pay all the costs up to the time when the leave to appeal was granted by us. This disposed of the preliminary objection which was taken by counsel for the respondent and appeal No. 31 of 1948 proceeded for hearing.

17. The point which arises for our determination in this appeal No. 31 of 1948 is whether the question of reinstatement being demand No. 1, is an industrial dispute within the meaning of the Act. The determination of this question depends on the terms of the Industrial Disputes Act, 1947, the relevant sections of which may be noted in this connection. Section 2, which is the definition clause, defines what is an industrial dispute. Section 2(k) says :

> "industrial dispute" means 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 condition of labour of any person;
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> Section 2(s) defines workman and it says, "workman" means any person employed (including an apprentice) in any industry to do any skilled or unskilled manual or clerical work for hire or reward and includes, for the purposes of any proceedings under this Act in relation to an industrial dispute, a workman discharged during that dispute,....These are the relevant definitions which have to be borne in mind in connection with this point which has been raised before us. The other provisions of the Industrial Disputes Act to which our attention was drawn are Section 10 which provides for reference of disputes, inter alia, to the Industrial Court; Section 15, which defines the duties of the Tribunal; Section 18, which sets out the persons on whom the settlements and awards are binding and Section 29 which provides penalty for breach of settlement or award. These provisions will be important when considering whether a demand for reinstatement is an

industrial dispute within the meaning of the Act or not.

18. Turning now to the definitions which have been given of the industrial dispute and the workman, it is clear that any dispute which arises between employers and workmen and which is connected, inter alia, with the employment or non-employment of any person would be an industrial dispute within the meaning of that definition, and workman is defined so as also to include a workman discharged during that dispute for the purposes of proceedings under the Act in relation to an industrial dispute. Having regard to the ordinary meaning of the terms "employment" and "non-employment", it follows that a dispute as regards the reinstatement of a workman would be covered either in the term "employment" or "non-employment" according as you look at it from the point of view of the employer or the workman. When the question of reinstatement is raised, the workman insists that he should be employed by the employer in spite of the employer having discharged him from the employment by reason of the industrial dispute itself arising. The employer on the other hand says that he is not going to employ the discharged employee whatever be the reason which led to his discharge. So that, if you look at it from the point of view of the employee who wants to be reinstated in his employment, it is a question of his non-employment. If you look at it from the point of view of the employer, the employer does not want to employ him; he does not want to reinstate him in the employment and it becomes a question of the employment of the workman by the employer. Having regard to these considerations, it would be a question of either employment or non-employment when the question of reinstatement in employment is raised by the employee who has been discharged by the employer. What is more, this very question has been contemplated by the definition of workman which I noticed above. That definition has been made inclusive of a workman who has been discharged during the industrial dispute for the purpose of proceedings under the Act in relation to an industrial dispute. So that, in so many words, the question of the reinstatement of the discharged work man is contemplated by the Legislature when framing this definition of workman under Section 2(s) of the Act. If there was nothing more than the two definitions of industrial dispute and workman, that would be enough to dispose of this point and I would hold that the question of reinstatement was an industrial dispute within the meaning of the Act. It w as however urged very strenuously by counsel for the respondent that the Appeal Court in England has held that reinstatement is not an industrial dispute and particular stress was laid on the observations of Lord Goddard C.J. at p. 696 in *H. v. National Arbitration Tribunal*[3] The question which was there considered was under the Conditions of Employment and National Arbitration Order, 1940, The workmen employed by the applicant company through their union had pressed for changes in wages and conditions of service, and consequent upon that demand the company had given the workmen on the manufacturing side of their business, including those in the union, notice terminating their employment as from a particular date. After the termination of the employment as aforesaid, the matter had been referred to the National Arbitration Tribunal. The claim of the workmen; included, inter alia, reinstatement from the date of dismissal of the workers dismissed. The award of the Tribunal stated that they found in favour of the claim set out in item (1), that is, reinstatement, and they awarded accordingly. On the applicant company

applying for an order of certiorari to quash the award, it was held that although at the date of the report to the Minister of Labour the contract of service between the company and the workmen had been terminated, there was nevertheless a "trade dispute", within the meaning of Article 7 of Order of 1940, which had been properly referred under Article 2(2), a direction to reinstate the workmen would be ultra vires the tribunal and as the finding on this item of the claim was equivalent to such a direction, the award in so far as it related to that finding must be quashed. The learned Chief Justice there observed (p. 696):There are no express words either in the regulation or in the Order which in terms give the tribunal any power to reinstate, but it is said that as they have power to deal with any question relating to employment or non-employment it follows that they must have the power to make an award of reinstatement. It seems to me a strong thing to say, looking at this regulation which alone gives force to the Order, that a power is thereby impliedly given to the tribunal to grant a remedy which no Court of law or equity has ever considered they had power to grant. If an employer breaks his contract of service with his employees either by not giving notice to which the latter are entitled or by dischargng them summarily for a reason which cannot be justified, the workmen's remedy is for damages only. A Court of equity has never granted an injunction compelling an employer to continue a workman in his employment or to oblige a workman to work for an employer. If a workman, or any other employee who occupies a higher status than that usually implied by the term workman, breaks his contract with his employer, no injunction has ever been granted obliging that workman or employee to work for the employer. The most that has ever been done is that, if the contract was one by which for a certain period a person has agreed to serve another exclusively, the workman or employee may be restrained from working for anybody else during the term for which he contractually engaged to serve his employer. Nor is there any provision in the regulation which imposes a penalty on the employer if he refuses after the award to re-employ the man, nor on the workman if, in spite of an award, he refuses to work for an employer. Suppose that after the award the workman sued his employer. He would be met at once by the defence : 'I gave you the notice to which you were entitled, and, therefore, you have no remedy against me for breach of contract.' Again, supposing the employers out of deference to the award took the man back into their employment, I cannot find anything in the Order or regulation which would disentitle them to give notice the next day or next week in accordance witrj the terms of the contract to any individual workman or to all of them. It is true that this tribunal can do what no Court can, namely, add to or alter the terms or conditions of the contract of service. Express power to do so is given by the regulation, while there are no-words conferring a power to reinstate or revive a contract lawfully determined.

As I read this judgment of the learned Chief Justice, it proceeds on two grounds : (1) that the freedom of the contract should, in order to be taken away, be taken away by express provisions in that behalf, and (2) that there were no provisions in the Order which would effectuate the direction given in behalf of reinstatement in the award made by the tribunal. So far as the first ground is concerned, no doubt, in the absence of any statutory provision in that behalf, the common law and the freedom of contract which is recognised therein does prevail. One has, however, got to have regard to the express provisions of the statute which may, and in certain

cases, do, abrogate this provision of the common law and substitute special provisions in that behalf. The intention of labour legislation is to restrict this freedom of contract and to enact provisions for the benefit of labour. The freedom of contract has no doubt been considerably curtailed in the enactment before us, and if one finds a definite intention in a statute which has been enacted by the legislature which goes to show that this freedom of contract which is to be found in the common law is intended to be curtailed in a particular manner, the Court must give effect to those provisions. It is therefore necessary to consider how far this freedom of contract is curtailed by the provisions which have been enacted in the Industrial Disputes Act before us. The very definitions of "industrial dispute" and "workman", which I have above referred to and which are-contained in Section 2(k) and (s) of the Act, go to show that employment and non-employment are the subject-matter of the industrial dispute; even a workman who has been discharged is included in the definition of workman. It is clear from the terms of the Act which lay down these definitions of "industrial dispute" and "workman" that the question of reinstatement which can be raised by a discharged workman under these circumstances is a dispute which is connected with the employment or non-employment of the workman and is included within the definition of the "industrial dispute" as enacted in this Act. It is therefore clear that within the very observations of Lord Goddard C.J. the Legislature here has by reason of the enactment of these definitions given power to the tribunal to do something which no Court could do; an express power is given to the tribunal to go into and adjudicate upon the question of reinstatement which, without these particular provisions enacted in the Act, the tribunal would have been unable to do. In my opinion, the power of reinstatement or reviving a contract even though lawfully determined is given to the Industrial Tribunal by the very terms of the Act which I have referred to above.

19. The second ground on which the learned Chief Justice, Lord Goddard, came to the conclusion that there was no such power was that there was no penal clause to be found in the Conditions of Employment and National Arbitration Order, 1940, which would effectuate any such award if made by the tribunal and that, according-to the learned Chief Justice, was a cogent, if not a compelling, reason for saying that the tribunal has no power to award reinstatement. In the case before us we are not troubled by any such consideration because in Section 19 of the Act we have got specific provision providing a penalty for the breach of any settlement or award made by the Industrial Court. The settlement or award made by the Industrial Court has got to be submitted by it to the appropriate Government for action under Section 15(2) of the Act. These settlements and awards are binding, as laid down in Section 18 of the Act, on all parties to the industrial dispute and all other parties summoned to appear in the proceedings as parties to the dispute and other parties referred to in that section. Section 19 lays down the period of the operation of the settlement or award, and Section 29 says that if during the period of the settlement or award any person commits any breach of the settlement or award which is binding upon him, he would be visited with certain penalties prescribed therein. It is this penal clause contained in Section 29 of the Act coupled with the other provisions which I have referred to, which makes the difference to the position here. The position in India is quite different from that

which obtained in England and which came to be considered by Lord Goddard C.J. over there. Having regard to the provisions which are contained in the Act before us, there is no doubt that the settlement or award which is given a binding effect can be enforced upon the recalcitrant employer or workmen as the case may be and the industrial tribunal to whom such industrial dispute has been referred under the Act has got the power, therefore, to go into and adjudicate upon the question of reinstatement of the discharged workmen. The learned Judge below relied upon the observations of Lord Goddard C.J. reported in the case which I have discussed above and came to the conclusion, to which he did, irrespective of the provisions which are contained in the Industrial Disputes Act which I have above referred to. With great respect to the learned Judge, he was in error when he came to the conclusion that the question of reinstatement was not an industrial dispute. I therefore agree with the learned Chief Justice in the conclusion which he has reached that the question of Reinstatement was an industrial dispute within the meaning of the Act and the Industrial Court had jurisdiction to entertain the same.

20. Coming now to appeal No. 39 of 1948 which has been filed by the Association, two questions have been raised by it in the appeal. One is that the Association is not an employer within the meaning of Section 2(g) of the Act and therefore there cannot be any industrial dispute within the meaning of the definition thereof in Section 2(7c) of the Act and it was not competent to the Government to refer the alleged industrial dispute to the Industrial Tribunal. It was urged on behalf of the Association that the definition of "employer" contained in Section 2(g) of the Act is exhaustive, because the words used are "employer means"; the words are not "employer includes." It was urged that the definition "employer means" is meant to be exhaustive and you cannot travel beyond the definition as given of the word "employer" in the definition clause itself. But if, as is found in other definition clauses, the definition was "employer includes", then the definition would not be exhaustive but merely inclusive and the Association could in that event be included in the definition of employer. In regard to this definition one has only got to observe that even though the word "means" has been used in this particular definition clause against the employer, it is a special definition of employer which has been given in Section 2(g) of the Act. The general definition of employer is not touched by it. Generally speaking, a person who employs another is an employer and the person who is employed is the employee, and that general definition is not touched by the special definition which one finds in Section 2(g) of the Act. If one looks at the various objects for which this Act has been enacted, it contains within its provisions various types of employers, including those who are concerned with public utility services. If the definition of employer which is contained in Section 2(g) of the Act were read in the restricted sense which is sought to be given to it on behalf of the Association, it would mean that all employers, except the departments of the Government in British India and local authorities, are taken outside the jurisdiction of this Act altogether. There are various industries falling within the definition of industry in Section 2(j) of the Act which carry on business, trade, undertaking, manufacture or calling mentioned therein, they may be public utility services, such as Posts and Telegraphs Services, Education services, sanitation, etc., and in all cases where these industries or public utility services were not carried on by departments of the Government in

British India or local authorities, they would not come within the purview of the Act at all. No such consequence could ever have been intended by the Legislature. In so far as the various industries and public utility services may be carried on not only by private individuals or associations of individuals but also by the departments of the Government in British India and by local authorities, it was thought necessary by the Legislature to define what employer means with regard to the departments of the Government in British India and the local authorities where they happen to carry on these industries or public utility services, and it was only in that connection that the special definition of "employer" contained in Section 2(g) of the Act was given, and this is clear from the wording of the definition, namely, that in relation to an industry carried on by or under the authority of any department of a Government in British India, employer means the authority prescribed in that behalf, or where no such authority is prescribed, the head of the department; and in relation to an industry carried on by or on behalf of a local authority, it means the chief executive officer of that authority; but that does not mean that in those cases where the industry or public utility service was carried on by any individuals or associations of individuals apart from the departments of the Government in British India or local authorities the word employer does not mean what it indicates, though it may not be comprised within the definition of that word given in Section 2(g) of the Act. This to my mind is sufficient to dispose of this contention of the Association. It is an employer with regard to the workmen or employees whom it employs in the course of its business or undertaking which it carries on under its memorandum or articles of association and the definition of "employer" given in Section 2(g) was certainly not meant to apply to it. It is not in fact a department of the Government in British India or a local authority and that definition does not apply to it.

21. The next contention which was taken up on behalf of the Association was that it was merely a service association catering to the needs of its members, though no doubt in return for a particular fee which every member of the association was to pay to it and was certainly not an industry within the meaning of that term contained in Section 2(j), namely, any business, trade, undertaking, manufacture or calling of employers, or any calling, service, employment, handicraft or industrial occupation or avocation of workmen. It was urged on its behalf that what it was doing was certainly not any such business, trade, undertaking, manufacture, etc. and it was certainly not an undertaking with a view to profit. It was contended that the words business, trade, undertaking or calling should be read esjudem generis and the central idea running through all these items which were included in the definition of industry was that they should be carried on with a view to profit. It was also pointed out that this Association carried on its business or trade, whatever it may be called, not with a view to profit but merely with a view to serve the members. Clause 7 of the memorandum of association definitely laid down as follows :If upon the winding-up or dissolution of the Association there remains after the satisfaction of all its debts and liabilities any property whatsoever the same shall not be paid to or distributed" amongst the members of the Association but shall be given or transferred to such other institution or institutions having objects similar to the objects of the Association to be determined by the Members of the Association at or before the time of dissolution or in default thereof by the High

Court of Bombay and if and so far as effect cannot be given to the aforesaid provision then to some charitable object.On all these grounds it was urged that the Association not being an association carrying on this particular business or undertaking with a view to profit was not included in the definition of "industry" contained in Section 2(j) of the Act.

22. Apart from the authority which I will refer to in a moment, even on a reading of the various definitions which are contained in Section 2 of the Act and particularly Section 2(n), which defines public utility services, it is dear that even though a business, trade, undertaking, manufacture or calling may in some cases result in a profit or be carried on with a view to profit, that certainly is not the central idea running in the definition of industry contained in this Act. Public utility services, which I have enumerated above, may be carried on not only by private individuals or associations of individuals but may also be carried on by departments of the Government in British India or local authorities, and those that are carried on by the departments of Government or local authorities would not necessarily be run with a view to profit. There are various cases in which the public utility services are carried on at nominal charges and the person who receives a benefit of the services may do so at charges which do not appear to be at all in proportion to the value or the utility of the services rendered to him. There are certain public utility services which may be carried on even at a loss by the various bodies concerned. It is, therefore, in my opinion, clear that where industry is defined in Section 2(j) of the Act, it is certainly inclusive of those public utility services which are carried on not necessarily with a view to profit. This circumstance, therefore, can be eliminated from consideration when we consider whether a particular business or undertaking falls within the definition of industry within the meaning of the Act. I am, therefore, of the opinion, that "a view to profit" is not the central idea running in the various items which are mentioned in the definition of "industry" contained in Section 2(j) of the Act.

23. I am further fortified in this conclusion of mine by certain observations which are to be found in a case which is decided by the High Court of Australia in Federated Municipal and Shire Council Employees' *Union of Australia v. Melbourne Corporation*[4]The observations of Mr. Justice Isaac and Mr. Justice Rich at p. 554 and pp. 228-233 are very illuminating in understanding the concept of industrial dispute. They are as follows :The concept may be thus formulated:-Industrial disputes occur when, in relation to operations in which capital and labour are contributed in co-operation for the satisfaction of human wants or desires, those engaged in co-operation dispute as to the basis to be observed, by the parties engaged, respecting either a share of the produce or any other terms and conditions of their co-operation. This formula excludes the two extreme contentions of the claimant and the respondents respectively. It excludes, for instance, the legal and the medical professions because they are not carried on in any intelligible sense by the co-operation of capital and labour and do not come within the sphere of industrialism. It includes, where the necessary co-operation exists, disputes between employers and employees, employees and employees, and employers and employers. It implies that 'industry' to lead to an industrial dispute, is not, as the Claimant contends, merely industry in

the abstract sense, as if it alone effected the result, but it must be acting and be considered in association with its co-operator "capital" in some form so that the result is, in a sense, the outcome of their combined efforts. It also implies that 'an industry,' in the relevant sense, is not confined to a single enterprise, but means a class of operations in which all persons, employers and employees, are engaged on the same field of industry-not necessarily of commerce-provided by the society in -which they exist.I also cannot resist the temptation of quoting from the observations of Mr. Justice Powers at p. 590, which are as follows :It is admitted that 'quarrying' (a necessary work in connection with street making) by a private employer would be 'Industrial,' and that an industrial dispute could arise beween him and his employees engaged at work in a quarry; but it was asserted that if a municipal corporation acquired the quarry and employed the same men, no industrial dispute could arise, because the Council was not carrying on ' an industry' or a trade or business for profit. So far as the question in this case is concerned, as the argument proceeded the ground mostly relied upon (after the Councils were held not to be exempt as State instrumentalities) was that the work was not carried on by the Municipal corporation for profit in the ordinary sense of the term, although it would generally speaking be carried on by the Councils themselves to save contractors' profits. If that argument were sufficient, then a philanthropist who acquired a clothing factory and employed the same employees as the previous owner had employed would not be engaged in an occupation about which an industrial dispute could arise, if he distributed the clothes made to the poor free of charge or even if he distributed them to the poor at the bare cost of production. If the contention of the respondents is correct, a private company carrying on a ferry would be engaged on an industrial occupation. If a municipality carried it on, it would not be industrial, The same argument would apply to baths, bridge-building, quarries, sanitary contracts, gas-making for lighting streets and public halls, municipal buildings or houses or halls, and many other similar industrial undertakings. Even coal-mining for use on municipal railways or tramways would not be industrial work if the contention of the respondents is correct. If the works in question are carried out by contractors or by private individuals it is said to be industrial, but not industrial within the meaning of the Arbitration Act or Constitution if carried out by municipal corporations, I cannot accept that view.

24. I also agree with this particular point of view that in order to constitute an industry within the meaning of that terra as defined in Section 2(j) of the Act it is not necessary that the business, trade, undertaking, manufacture or calling should be carried on with a view to profit. If that is so, the Association which carries on this undertaking under the terms of its memorandum and articles of association and renders services to its members can none-the-less be an industry within the definition of that term contained in Section 2(j) of the Act, the undertaking is carried on by it as employers who employ workmen, and therefore if differences arise by reason of certain disputes which may arise in connection with the employment or non-employment or the terms of employment or with the conditions of labour, an industrial dispute arises between it and the workmen employed by it, which would be the subject-matter of reference to the Industrial Tribunal under the terms of the Act. This contention of the Association also, therefore, fails.

25. In the result I agree that the appeal of the Province of Bombay should be allowed and the appeal of the Association should be dismissed.

26. Per Cubiam. We think the fairest order with regard to costs would be, in the first instance, to set aside the order of costs of the trial Judge and in appeal No. 31 of 1948 the order of costs will be that the Western India Automobile Association, respondent No. 1, should pay the costs of the appeal including costs reserved, of the Province of Bombay. There will be no order as to costs in respect of respondents Nos. 2, 3 and 4.

27. With regard to Appeal No. 39 of 1948, the appellant will pay the costs of the respondents, the Industrial Tribunal. As regards the costs of the petition, the Western India Automobile Association will, pay the costs of the petition to the respondents the Industrial Tribunal and also the costs of the Province of Bombay and of the workers-the costs of the Province of Bombay and workers to be in one set.

Cases Referred

1[1947] 2 A.E.R. 693
2[1933] I.L.R. 57 Mad. 670
3[1947] A.E.R. 693
4 26 C.L.R. 508.