PATNA HIGH COURT

Bata Shoe Co., Ltd

Vs

Ali Hasan

Misc. Judicial Case No. 325 of 1955

(Ramaswami and Imam, JJ.)

08.11.1955

JUDGMENT

Ramaswami, J.

1. In this case the petitioner, namely, the Bata Shoe Company Ltd., has moved the High Court for grant of a writ in the nature of certiorari to quash the proceedings taken by the Industrial Tribunal, respondent 1, on 21-5-1955 under Section 33A, Industrial Disputes Act (Act 14 of 1947) and also the interim order passed by the Industrial Tribunal on 31-5-1955, that "the status quo should be maintained" till the disposal of the miscellaneous case.

2. On 29-4-1955, the State Government referred an industrial dispute between the management of the Bata Shoe Company Ltd. at Dighaghat and its workmen represented by the Bata Mazdoor Union to respondent 1, the Industrial Tribunal at Patna, for adjudication under Section 10, Industrial Disputes Act (Act 14 of 1947). The notification of the State Government is notification no. 3D (1)/16015/55L dated 29-4-1955. Respondent 2 was employed by the Company as supervisor of the Personnel Department of Dighaghat branch. It is the petitioner's case that Sri Jamuna Prasad was the head of the Personnel Department doing independent supervision and control of his department. On 27-4-1955, the petitioner transferred Sri Jamuna Prasad from the Personnel Department to the Purchasing Department known as Department No. 100 of the same factory at Digha. Sri Jamuna Prasad, however, did not obey the order of transfer. On 5-5-1955, the factory manager made another order asking Sri Jamuna Prasad to hand over charge of the Personnel Department. Sri Jamuna Prasad, however, deliberately refused to obey the order and continued to hold charge of the Personnel Department. On 21-5-1955, Sri Jamuna Prasad filed a petition under Section 33A, Industrial Disputes Act before the Tribunal alleging that "he was harassed, victimised and punished" by the management of the Company. On 28-5-1955, the Industrial Tribunal registered the petition under Section 33A and "issued notice on the management to show cause by 10-6-1955". On 31-5-1955, Sri Jamuna Prasad again filed a petition 'before the Tribunal praying for "immediate protection" and to order the management "to maintain the status quo in the petitioner's case."
The Tribunal allowed the application and ordered that "the status quo should be maintained" till the petition of Sri Jamuna Prasad was finally heard. The Company made objection before the

Tribunal that Sri Jamuna Prasad was not a "workman" within the meaning of the Industrial Disputes Act and that the Tribunal had no jurisdiction to proceed under Section 33A. The Company prayed that the Tribunal should first decide the preliminary question whether Sri Jamuna Prasad was a "workman" or not. The prayer was refused by the Tribunal on the ground that "no useful purpose would be served by taking up the preliminary issue first".
The submission on behalf of the petitioner is that Sri Jamuna Prasad is not a "workman" within the meaning of Act 14 of 1947 and there was no contravention of the provisions of Section 33 of that Act. It was contended, therefore, that the Tribunal had no jurisdiction to initiate any proceeding under Section 33A or to pass interim orders on the application of Sri Jamuna Prasad. The petitioner, therefore, prayed that a writ in the nature of certiorari should be issued to quash the entire proceeding under Section 33A, Industrial Disputes Act,

3. Cause has been shown by Mr. Baldeva Sahai on behalf of respondent 2, Sri Jamuna Prasad. The learned Government Pleader appeared on behalf of the Industrial Tribunal, respondent 1. It was submitted by the Government Pleader that his attitude was neutral and that he would not say anything either in favour of or against the application.

4. On behalf of the petitioner Mr. P.R. Das put forward the argument that two conditions were to be satisfied before the Industrial Tribunal could start a proceeding under Section 33A, Industrial Disputes Act. It was submitted by learned counsel that the person who makes the complaint under Section 33A must be a "workman" within the meaning of Act 14 of 1947 and there must be an allegation that the employer has altered the conditions of service to the prejudice of the workman, or has discharged or punished the workman concerned in the industrial dispute. It was contended on behalf of the petitioner that neither of these two conditions has been satisfied in this case and the Industrial Tribunal, therefore, had no jurisdiction to start a proceeding under Section 33A. The argument of learned counsel is beds upon Sections 33 and 33A, industrial Disputes Act. Section 33 states :

> "33. Conditions of service, etc., to remain unchanged during pendency of proceedings. During the pendency of any conciliation proceedings or proceedings before a Tribunal in respect of any industrial dispute, no employer shall
> (a) alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings, or
> (b) discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute save with the express permission in writing of the conciliation officer, board or tribunal, as the case may be." Section 33A provides :
> "Where an employer contravenes the provisions of Section 33 during the pendency of proceedings before a Tribunal, any employee aggrieved by such contravention, may make a complaint in writing, in the prescribed manner to such Tribunal and on receipt of such complaint/that tribunal shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit its award to the appropriate Government and the provisions of this Act shall apply accordingly."

5. It is true that Section 33A uses the word "employee", but if Section 33A is read in the context of Section 33, it is obvious that the person who makes the complaint under Section 33A must be a "workman" concerned in the industrial dispute pending before the tribunal. It is necessary in this connection to refer to Section 2(s) of the Act which defines "workman" to mean any person employed in any industry to do any skilled or unskilled manual or clerical work for hire or reward. Mr. P.R. Das also referred to a decision of a Bench of this Court in *V. N.N. Sinha v. Bihar Journals, Ltd*[1]. (A), where it was held that an assistant editor of a newspaper was not a workman within the meaning of the Industrial Disputes Act. In the course of the judgment the Bench observed that in the lexicographic sense a clerk generally denoted a person employed in a subordinate position in a public or private office to make fair copies of documents or to do mechanical work of correspondence and that the duties assigned to petitioner 1 as senior assistant editor were not clerical that in doing his editorial work, petitioner 1 had to display qualities of initiative and independence and his duties were not mechanical or of routine description. It was argued by Mr. P.R. Das on behalf of the petitioner that Sri Jamuna Prasad was not a workman within the meaning of Section 2(s) and Section 33A, Industrial Disputes Act. According to the petitioner's affidavit, Sri Jamuna Prasad was a member of the supervisory staff and was the departmental head in charge of and responsible for the proper working and management of the Personnel Department. It was also alleged that Sri Jamuna Prasad was performing responsible duties like recruitment, transfer and promotion of all staff (see the chart of working of the Personnel Department which is part of Annexure E at page 63 of the paper-book). It was further stated that Sri Jamuna Prasad represented the management in negotiations with Union of workers (see the agreed record note of discussion which is part of Annexure C at page 61). It was also stated on behalf of the petitioner that Sri Jamuna Prasad issued charge-sheets against members of the staff, including dismissal orders, and that he signed transfer orders on behalf of the management. On the basis of these facts it was contended on petitioner's behalf that Shri Jamuna Prasad was not a workman and he was not entitled to make any application under Section 33A. In the counter-affidavit Sri Jamuna Prasad has denied that he was in independent charge or management of the Personnel Department. On the contrary, he has asserted that his work was purely mechanical and of routine nature and that he had displayed no initiative or independence in the course of his duties. As annexure to the counter-affidavit, Sri Jamuna Prasad has attached a list of his duties showing that his work was purely clerical in character. It is not possible, in my opinion, to attach any importance to the allegations made by Sri Jamuna Prasad in the counter-affidavit . The reason is that in his earlier application before the Tribunal made under Section 33A on 21-5-1955, Sri Jamuna Prasad has made important admissions which corroborate the case of the petitioner that he was working as head of Personnel Department and that he had powers of direction, control and supervision over his department. In his petition before the Tribunal, Sri Jamuna Prasad has admitted in the first place that "all dismissal orders of the staff were signed by him and by Mr. Vytopil, the then factory manager". In para. II (c) respondent 2 further admitted that right up to 1st of April, he "worked Independently as Supervisor Personnel". In the first enclosure to his application at page 26, respondent 2 also asserted that he had been able to manage the department independently after the transfer of Sri B.N. Chakraverty, the Personnel Officer in 1951". Respondent 2 also made the allegation that the Watch and Ward Department was under "the direct control of the Personnel Department" and the factory manager should not take that department under his direct control. At page 41 there is letter of the factory manager addressed to all the heads of departments including the Personnel and Welfare Department and Watch and Ward Department. This letter bears the signature of respondent 2, Sri Jamuna Prasad, indicating that he received it as the departmental head. At page 24 respondent 2

also admitted that the himself handled all the individual grievances of the employees and that he handed over those papers to Mr. S.P. Jain for discussion with Mr. Jaffar Hussain, employees' representative. The main allegation of respondent 2 before the Tribunal was that Mr. S.P. Jain was deputed as supervisor of the Personnel Department in his place. Enclosure 6 to the respondent's petition shows what are the duties of Sri S.P. Jain at Digha. Among the duties of Sri S.P. Jain, respondent 2 refers to (1) recruitment of staff. (2) placement of staff, (3) promotions, (4) attendance, (5) leave and allied matters, (6) discipline, (7) grievance and complaints, (10) security staff. It is reasonable to draw the inference from the application of respondent 2 that the duties performed by Sri S.P. Jain were previously performed by respondent 2 as head of the Personnel Department. It is, therefore, manifest that the application of respondent 2 before the Tribunal dated 21-5-1955 strongly corroborates the case of the petitioner that the duties of respondent 2 were not clerical or manual in nature and that respondent 1 had important powers of direction, control and supervision. I am satisfied that the case of the petitioner on this point is true, and my concluded opinion is that respondent 2, Sri Jamuna Prasad, is not a "workman" within the meaning of Act 14 of 1947.

6. It was next contended by Mr. P.R. Das on behalf of the petitioner that there was no contravention of Section 33 of Act 14 of 1947. It was submitted that in his application dated 21-5-1955, respondent 2 did not set out the facts even to make out a prima facie case that there was violation of Section 33 on the part of the employer. It was contended by learned counsel that on 27-4-1955 Sri Jamuna Prasad was transferred from the Personnel Department to the Purchasing Department, but his emolument was not affected or reduced and he continued to be paid at the previous rate of over Rs. 600/- per month. The industrial dispute, namely, Reference No. 9 of 1955, was pending before the Industrial Tribunal from 29-4-1955, on which date the reference was made. On 5-5-1955, the factory manager ordered that Sri Jamuna Prasad should hand over charge of Personnel Department to Mr. S.P, Jain; but respondent 2 refused to comply with the order. In Para. 11(h) of the application, respondent 2 complained that the factory manager had taken away from him the control of the Watch and Ward Department. The letter of the factory manager in this connection is dated 6-5-1955. In para. 11(f) respondent 2 alleged that the factory manager ordered that all individual grievances should be handed over to Mr. S.P. Jain for being dealt with. In para. 11(g) respondent 2 complained that the factory manager "started unusual practice of dealing with the petitioner's subordinates directly". Mr. P.R. Das submitted that none of these allegations come within the ambit of Section 33 of the Industrial Disputes Act. It was submitted that there was no discharge or punishment of respondent 2 and that there was no alteration in the condition of service, to his prejudice and, there fore, the Industrial Tribunal had no jurisdiction to start a proceeding under Section 33A. Industrial Disputes Act. It was contended on petitioner's behalf that Sri Jamuna Prasad was granted the same pay and that he had been only transferred from the Personnel Department to the Purchasing Department and there has been no alteration in the condition of his service to his prejudice. In any opinion, the submission of learned counsel on this point must be accepted as correct. Under para. 10 of standing orders, the transfer of an employee is entirely at the discretion of the Company and an employee is bound to accept the transfer when made. Respondent 2 cannot, therefore, be heard to say that he has been prejudiced merely because on account of his transfer. The grievances of respondent 2 set out in his application of 21-5-1955 appear to be imaginary, and in any event I am satisfied that there has been no contravention by the employer of the terms of S. 33, Industrial Disputes Act.

7. It was contended by Mr. Baldeva Sahai on behalf of respondent 2 that the questions at issue

were questions of fact and it was for the Industrial Tribunal to decide in the first place whether Sri Jamuna Prasad was a "workman", and secondly, whether there has been a contravention of the provisions of Section 33 of the Act. It was urged by learned counsel that the High Court load no jurisdiction to decide these questions and under the scheme of the Industrial Disputes Act the power was given wholly to the Industrial Tribunal to determine these questions. I am unable to accept this argument as correct, it is true that the two questions at issue are questions of fact. The two questions are (1) whether respondent 2 is a "workman" and, therefore, competent to complain under Section 33A, Industrial Disputes Act to the Industrial Tribunal, and (2) whether there has been contravention of the provisions of Section 33. But these questions are not questions of pure fact for the Industrial Tribunal to decide. In my opinion, the questions are not questions of pure fact but questions of "jurisdictional fact". The reason is that the jurisdiction of the Industrial Tribunal depends upon the preliminary conditions of fact imposed by Section 33A. If in fact these conditions do not exist, the Industrial Tribunal cannot give itself jurisdiction by wrongly deciding that those conditions exist. The Industrial Tribunal cannot thereby give itself jurisdiction to decide a dispute and to submit an award to the State Government under the provisions of Section 33A. It is well established that where the jurisdiction of an administrative authority depends upon a preliminary finding of fact, the High Court is entitled in a proceeding for a writ of certiorari to determine upon its independent judgment whether or not that find of fact is correct. The matter has been very well put by Farwell L.J. in *The King v. The Assessment Committee of the Metropolitan Borough of Shoreditch*[2] (B) : -

> "The existence of the provisional list is a conditional precedent to their jurisdiction to hear and determine, and as the claimant is entitled to require them to hear and determine, they cannot refuse to take the steps necessary to give rise to such jurisdiction; if they do, their refusal may be called in question in the High Court.

No tribunal of inferior jurisdiction can by its own decision finally decide on the question of the existence or extent of such jurisdiction : such question is always
subject to review by the High Court, which does not permit the inferior tribunal either to usurp a jurisdiction which it does not possess, whether at all or to the extent claimed or to refuse to exercise a jurisdiction which it has and ought to exercise. Subjection in this respect to the High court is a necessary and inseparable incident to all tribunals of limited jurisdiction; for the existence of the limit necessitates an authority to determine and enforce it : it is a contradiction in terms to create a tribunal with limited jurisdiction and unlimited power to determine such limit at its own will and pleasure - such a tribunal would be autocratic, not limited - and it is immaterial whether the decision of the interior tribunal on the question of the existence or non-existence of its own jurisdiction is rounded on law or fact; a Court with jurisdiction confined to the city of London cannot extend such jurisdiction by finding as a fact that Piccadily Circus is in the ward of Chepe."

8. The same principle is enunciated by the Court of Appeal in *White and Collins v. Minister of Health*[3] (C). The question debated in that case was whether the High Court has jurisdiction to review the finding of the administrative authority on a question of fact. It appears that part V of the Housing Act, 1936, enabled the local authority to acquire land compulsorily for the provision of houses for the working classes, but Section 75 of the Act provided that nothing in the Act was to authorize the compulsory acquisition of land "which at the date of the compulsory purchase

forms part of any park, garden or pleasure ground or is otherwise required for the amenity or convenience of any house". In accordance with the provision of this part of the Act, the Ripon Borough Council made an order for the compulsory purchase of 23 acres of and, it being part of an estate in Yorkshire called High-field, consisting of a large house and 35 acres of land surrounding it. The owners served notice of objection to the order as being contrary to Section 75 and the ground of objection was that the land was part of a park and was required for the amenity or convenience of the house. The Minister of Health directed a public inquiry, and, after holding the inquiry and taking evidence, the chairman duly made his report to the Minister, who thereupon confirmed the order. A motion was then brought under Rule of the Supreme Court, O. 55B, R. 71, asking that the order be quashed as being outside the powers of the Act. Charles, J. dismissed the motion holding that the question was one of fact and it was not open to the High Court to interfere by re-hearing the case. The order of Charles, J. was, however, reversed by the Court of Appeal on the ground that the High Court had jurisdiction to review the findings of fact and since the land in question was part of the park of Highfield, the order of compulsory purchase was quashed. At page 855 Luxmoore L.J. states :

> "The first and most important matter to bear in mind is that the jurisdiction to make the order is dependent on a finding of fact; for, unless the land can be held not to be part of a park or not to be required for amenity or convenience, there is no jurisdiction in the borough council to make, or in the Minister to confirm, the order.

In such a case it seems almost self-evident that the Court which has to consider whether there is jurisdiction to make or confirm the order must be entitled to review the vital finding on which the existence of the jurisdiction relied upon depends. If this
were not so, the right to apply to the Court would be illusory. There is however ample authority that the Court is entitled so to act."

9. In the course of argument Mr. Baldeva Sahai referred to an Allahabad case *Sundar Lal Saxena v. The Hindustan Commercial Bank Ltd*[4]*.,* (D) in support of his proposition that the question whether a petitioner is a workman or not is not a collateral or preliminary fact and that the jurisdiction of the tribunal does not depend upon the existence of any collateral fact. But the authority of this decision is doubtful in view of the decision of the Supreme Court in *Automobile Products of India Ltd. v. Rukmaji Rala*[5]*,* It was observed by Das, J. who pronounced the judgment of the Supreme Court that the conditions imposed under Section 33A were in the nature of preliminary conditions upon which the jurisdiction of the Industrial Tribunal depended. At page 303 (of SCA) : (at p. 263 of AIR), Das, J. states : -

> "A cursory perusal of Section 33A of the 1947 Act, as well as Section 23 of the 1950 Act will at once show that it is the contravention by the employer of the provisions of Section 33 in the first case and of Section 22 in the second case that gives rise to a cause of action in favour of the workman to approach and move the respective authority named in the section and this contravention is the condition precedent to the exercise ay the authority concerned of the additional jurisdiction and powers concerned on it by the sections.

The authority referred to in the section is, as we have seen, a Court of limited jurisdiction and

must accordingly be strictly confined to the exercise of the function and powers actually conferred on it by the Act which constituted it."

10. I think the law laid down by the Supreme Court in this regard must take precedence over the view of the Allahabad High Court in AIR 1953 Allahabad 260(D). My concluded opinion, therefore, is that the conditions laid down by Section 33A are preliminary or collateral conditions upon which the jurisdiction of the Industrial Tribunal depends and that the High Court is entitled to a proceeding for writ of certiorari to determine upon its independent judgment whether or not these conditions have been established. I would reject the argument of Mr. Baldeva Sahai on this part of the, case as incorrect.

11. Lastly, it was contended by Mr. Baldeva Sahai on behalf of respondent 2 that the High, Court should not quash the entire proceeding, because the petitioner has not expressly asked for that relief. It was pointed out by learned counsel that the petitioner has only asked in this application, for quashing the interim order of the Industrial Tribunal dated 31-5-1955 and not for quashing the entire proceeding taken by the Industrial Tribunal under Section 33A. To this Mr. P.R. Das replied that the necessary facts have been alleged and placed in the application and even though the petitioner has not expressly asked for that relief, the High Court is competent to quash the entire proceeding. Mr. P. R. Das referred in this connection to a decision of the Supreme Court in *Chiranjit Lal Choudhary v. The Union of India*[6], (F) where Mukherjee, J. points out that theSupreme Court has been given very wide discretion under Article 32 of the Constitution in the matter of framing writs to suit the exigencies of particular cases and that the application of the petitioner could not be thrown out simply on the ground that the proper, writ or direction has not been prayed for. In my opinion, the argument cl Mr. P.R. Das is well-founded and the technical objections raised on behalf of respondent 2 has no merit. The petitioner has pleaded the necessary facts in this application and respondent 2 had notice of those facts! and has made an attempt to controvert them in the counter-affidavit. I therefore see no reason why the High Court should not quash the entire proceeding started by the Industrial Tribunal under Section 33A and also the interim order passed by the Industrial Tribunal on 31-5-1955.

12. For the reasons I have assigned, I hold that the petitioner should be granted a writ in the nature of certiorari to quash the entire proceedings of the Industrial Tribunal taken under Section 33A of Act 14 of 1947 in Misc. Case No. 40 of 1955 including the orders dated 28-5-1955 and 31-5-1955 directing that "the status quo should be maintained". I would accordingly allow this application with costs. Hearing fee : Rs. 100/- to be paid by respondent 2 Jamuna Prasad alone.

Imam, J.

13. I agree.

Writ granted.

Cases Referred.

[1] ILR 32 Pat 688 : (AIR 1954 Pat 1)
[2](1910) 2 KB 859 at p. 879
[3](1939) 2 KB 838

[4] AIR 1953 All 260
[5]1955 SCA 295 : (AIR 1955 SC 258)
[6]1950 SCR 869 at p. 900 : (AIR 1951 SC 41 at p. 53)