

(1963) 09 GUJ CK 0027

In the Gujarat High Court

Case No : Special Civil Application No. 194 of 1961

Asoka Mills Ltd.

APPELLANT

Vs

Industrial Court and Others

RESPONDENT

Date of Decision : 10-09-1963

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 106(1), 106(2), 106(3), 3(14), 3(15)
Criminal Procedure Code, 1898 (CrPC) — Section 84

Citation : (1964) GLR 300

Hon'ble Judges : P.N. Bhagwati, J;B.J. Divan, J

Bench : Division Bench

Advocate : P.B. Patwari and S.K. Zaveri, for the Appellant; K.S. Acharya and M.D. Dhruv, for the Respondent

Judgement

Bhagwati, J.—This petition raises a short question relating to the interpretation of certain provisions of the Bombay Industrial Relations Act, 1946. The facts giving rise to the petition are few and for the most part undisputed and may be briefly stated as follows. The petitioner is the manager of a limited company called Asoka Mills, Ltd. The company owns a textile mill in Ahmedabad and carries on business of running the textile mill. Since the company is engaged in the textile industry, the relations between the company and its employees are governed by the Bombay Industrial Relations Act, 1946. Respondent 3 is a doffer employed in the ring spinning department of the textile mill belonging to the company. The duties and wages of doffers for the textile industry in Ahmedabad are governed by the Standardization award published in the Bombay Government Gazette, Part I-L, dated 7 August 1951, at p. 3904. It appears that the petitioner, as the manager of the company, was exacting from respondent 3 work which was not mentioned in the Standardization award. Respondent 3, therefore, filed a complaint against the petitioner before the labour court under S. 106(1) complaining that the petitioner was exacting from respondent 3 work not mentioned in the Standardization award as set out in the list annexed to the complaint and that this action on the part of the petitioner being a breach of the

Standardization award constituted an illegal change and that the petitioner was, therefore, guilty of the offence under S. 106(1). The petitioner raised before the labour court two contentions of a preliminary nature in answer to the complaint. The first contention was that the complaint was not tenable since it was not preceded by a declaration of an illegal change obtained from the labour court under S. 78(1)A(c) and the second contention was that in any event no complaint could be maintained against the petitioner who was the manager and that the complaint, if at all, could be only against the company. Both these contentions were negatived by the labour court by an order dated 2 March 1960. The petitioner thereupon preferred a revision application to the industrial court and in the revision application the same two contentions were urged which were urged before the labour court. The industrial court also rejected these contentions and held that the complaint did not suffer from any of the infirmities suggested on behalf of the petitioner. The petitioner thereupon preferred the present petition challenging the decision of the industrial court on these contentions.

2. The main question debated before us was whether a complaint for an offence under S. 106(1) could lie without a previous declaration obtained from the labour court under S. 78(1)A(c) that the change complained of was an illegal change. Sri P. B. Patwari, learned advocate appearing on behalf of the petitioner, contended that in order to found a complaint under S. 106(1), it was necessary to first obtain a declaration from the labour court under S. 78(1)A(c) that an illegal change had been committed by the employer and that since this was not done in the present case, the complaint was not maintainable. Sri P. B. Patwari relied on the scheme of the Act and the second proviso to S. 79(4) and urged that there was a clear correlation between an application for a declaration of an illegal change under S. 78(1)A(c) and a complaint under S. 106(1) and the correlation was that no complaint under S. 106(1) could be filed unless it was preceded by a declaration of an illegal change under S. 78(1)A(c). Sri P. B. Patwari argued that the construction suggested by him was the only right construction and that if any other construction were accepted, it would result in various anomalies which could not possibly have been contemplated by the legislature. We shall refer to the anomalies apprehended by Sri P. B. Patwari to arise from the construction suggested by the other side when we refer to the agreement based on these anomalies. But it is sufficient to state, for the present, that a vehement and insistent argument was founded by Sri P. B. Patwari on these anomalies. Sri P. B. Patwari also adverted to the larger interests of industrial peace and contended that the construction contended for by him should be accepted, as that would further the cause of industrial peace much more than the other construction suggested on behalf of the workman and accepted by the industrial court. Sri Acharya, arguing *amicus curiae*, on the other hand, supported the construction put by the industrial court and contended that the plain language of S. 106(1) did not warrant the introduction of any condition that a complaint under S. 106(1) must be preceded by a declaration of an illegal

change under S. 78(1)A(c). Sri Acharya pointed out that if an employer made an illegal change, he committed an offence under S. 106(1) and either the employee affected by such illegal change or the labour officer could file a complaint in the labour court under S. 82 and the labour court could try the offence by virtue of the jurisdiction conferred upon it by S. 78(1)B and for the purpose of deciding whether the employer was guilty of the offence charged, determine whether an illegal change was made by the employer. There was no necessity, argued Sri Acharya, to obtain a declaration of the labour court on this point by a separate application under S. 78(1)A(c) when the same point could equally be decided by the labour court on the complaint under S. 106(1). Sri Acharya submitted that there was, therefore, no substance in the contention raised by Sri P. B. Patwari and that it must be rejected.

3. In order to appreciate these rival contentions it is necessary to refer to a few sections of the Bombay Industrial Relations Act, 1946. Section 3(15) defines "illegal change" to mean an illegal change within the meaning of Sub-section (4) or (5) of S. 46. Sub-section (4) of S. 46 provides that any change made in contravention of the provisions of Sub-section (1), (2) or (3) of that section shall be illegal. We are, however, not concerned in the present case with Sub-section (4) of S. 46 since the change complained of is alleged to be illegal not under Sub-section (4) of S. 46 but under Sub-section (5) of S. 46. Sub-section (5) of S. 46 declares that failure to carry out the terms of any settlement, award, registered agreement or effective order or decision of a wage board, a labour court or the industrial court affecting industrial matters shall be deemed to be an illegal change. It is Sub-section (5) of S. 46 which is relied on by respondent 3 in support of the contention that the petitioner by exacting from respondent 3 work not mentioned in the Standardization award has failed to carry out the terms of the Standardization award and has thereby made an illegal change. Section 78(1) deals with the powers of the labour court and is in the following terms :

"78. (1) A labour court shall have power to -

A. decide -

(a) disputes regarding -

(i) the propriety or legality of an order passed by an employer acting or purporting to act under the standing orders;

(ii) the application and interpretation of standing orders;

(iii) any change made by an employer or desired by an employee in respect of an industrial matter specified in Sch. III and matters arising out of such change;

(b) industrial disputes -

(i) referred to it under S. 71 or 72;

(ii) in respect of which it is appointed as the arbitrator by a submission,

(c) whether a strike, lookout, closure, stoppage or any change is illegal under this Act;

B. try offences punishable under this Act and where the payment of compensation on conviction for an offence is provided for, determine the compensation and order its payment;

C. require any employer to -

(a) withdraw any change which is held by it to be illegal, or

(b) carry out change provided such change is a matter in issue in any proceeding before it under this Act."

4. Sub-section (1) of S. 79 in so far as it is material for the purpose of the present judgment provides that proceedings before a labour court in respect of a matter falling under S. 78(1)A(c) shall be commenced on an application made by any employer or employee directly affected or the labour officer or a representative union. Sub-section (2) requires that every such application shall be made in the prescribed form and manner. Sub-section (3) provides a period of limitation for an application in respect of a dispute falling under S. 78(1)A(a); but since we are not concerned in the present case with any dispute falling under S. 78(1)A(a), it is not necessary to refer to this provision in any detail. Sub-section (4), however, contains an important provision respecting matters falling under S. 78(1)A(c) and since considerable argument turned upon it, we shall reproduce the same in extenso. It is in the following terms :

"79. (4) An application in respect of a matter falling under Clause (c) of Para. A of Sub-section (1) of S. 78 shall be made within three months of the commencement of the strike, lookout, closure or stoppage or of the making of the illegal change, as the case may be :

Provided that the labour court may, for sufficient reasons, admit any application for a declaration that a change is illegal under this Act, after the expiry of three months from the date on which such change was made :

Provided further that when an application is admitted after the expiry of three months under the preceding proviso the employer who made the change shall not be liable to the penalty provided under S. 106."

Section 82 prescribes the conditions which must be fulfilled before a labour court can take cognizance of an offence under the Act and says :

"82. No labour court shall take cognizance of any offence except on a complaint of facts constituting such offence made by the person affected thereby or on a report in writing by the labour officer."

5. Section 83 deals with the powers and procedure of the labour court while trying an offence under the Act and makes the relevant provisions of the Code of Criminal Procedure applicable to the trial by the labour court. Section 84, in so

far as it is material, provides for a right of appeal in the following terms :

"84. (1) Notwithstanding anything contained in S. 83 an appeal shall lie to the industrial court -

(a) against a decision of a labour court in respect of a matter falling under Clause (a) or (c) of Para. A of Sub-section (1) of S. 78 except to the extent to which it determines whether a strike, lockout, closure or stoppage was illegal or not, or a decision of such Court under Para. C of Sub-section (1) of the said section;

(b) against a conviction by a labour court by the person convicted;

* * *

6. Section 86 attaches a certain amount of finality to the decision, award or order of a labour court by providing that except as otherwise provided by the Act, no decision, award or order of a labour court shall be called in question in any proceeding in any civil or criminal Court. Then comes S. 106 which provides for penalty in certain cases and it runs as follows :

"106. (1) Any employer who makes an illegal change shall, on conviction, be punishable with fine which may extend to Rs. 5,000.

(2) Any employer who contravenes the provisions of S. 47 shall, on conviction, be punishable with imprisonment which may extend to three months, or for every day on which the contravention continues with fine which may extend to Rs. 5,000 or with both.

(3) The Court convicting any person under Sub-section (1) or (2) may direct such person to pay such compensation as it may determine to any employee directly and adversely affected by the change in issue."

These are the sections which were referred to by one side or the other in the course of the arguments and which have a material bearing on the determination of the present controversy between the parties.

7. Now it is clear that on a plain and grammatical construction S. 106(1) imposes a criminal liability on any employer who makes an illegal change. The making of an illegal change constitutes the offence punishable under S. 106(1) and no other ingredient is required to be fulfilled for the commission of such offence. The moment an illegal change is made, the offence under S. 106(1) is complete and the employer becomes subject to the criminal penalty provided in the section. The question would then arise : In which Court is the employer to be prosecuted for the offence under S. 106(1) ? Which is the Court empowered to enforce the criminal sanction provided in the section ? When we turn to S. 78(1)B we find that the statute having created the offence has also prescribed the Court which must try the offence. Section 78(1)B empowers the labour court to try offences punishable under the Act and where payment of compensation on conviction is provided for, to determine the amount of compensation and order its payment. The labour court has, therefore, jurisdiction to try an offence under S. 106(1).

But how are the proceedings to be initiated for punishing the employer for the offence committed by him ? Section 82 provides the answer by enacting that in such a case the employee aggrieved by the illegal change may file a complaint in the labour court or the labour officer may make a report in writing to the labour court setting out the facts constituting the offence and the labour court would then be competent to take cognizance of the offence and try the same by virtue of the jurisdiction conferred upon it by S. 78(1)B. Now it is significant that neither in S. 82 nor in S. 106(1) is there any requirement that the offence shall not be complete unless there is a declaration made by the labour court under S. 78(1)A(c) that the employer has made an illegal change or that unless there is such a declaration no complaint shall be filed by the aggrieved employee or report made by the labour officer. The scheme underlying the sections, in so far as criminal proceedings are concerned, seems to be this, namely, that when an illegal change is made by an employer, an offence is committed by him under S. 106(1) and when such offence is committed by him, the employee aggrieved by the illegal change may file a complaint in the labour court or the labour officer may make a report in writing to the labour court under S. 82 and the labour court would then take cognizance of such offence and try it by virtue of the power conferred upon it under S. 78(1)B. It is not necessary for the aggrieved employee or the labour officer who wants to proceed under S. 82 for enforcing the criminal sanction provided in S. 106(1) against the employer to first obtain a declaration of an illegal change from the labour court under S. 78(1)A(c). If such a declaration were intended to be a condition precedent to the filing of a complaint for the offence under S. 106(1), we should have expected a provision to that effect either in S. 82 or in S. 106(1) or at least there could have been some such provision in some other section of the Act. No such provision could, however, be pointed out by Sri P. B. Patwari.

8. The only provision on which Sri P. B. Patwari could place reliance was the second proviso to S. 79(4). It would not be incorrect to state that Sri P. B. Patwari almost staked his entire case on the second proviso to S. 79(4). Sri P. B. Patwari pointed out that under S. 79(4) an application for a declaration of an illegal change being an application in respect of a matter falling under S. 78(1)A(c) was required to be made within three months of the making of the illegal change, but under the first proviso such application could be entertained even after the expiration of the period of three months if sufficient reasons were shown and when it was so admitted after the expiration of the period of three months, the second proviso declared that the employer making the illegal change shall not be liable to the criminal penalty provided in S. 106(1). Sri P. B. Patwari contended that it was because a complaint under S. 106(1) was required to be preceded by a declaration of an illegal change under S. 78(1)A(c) that the second proviso was enacted by the legislature providing that where an application for a declaration of an illegal change was not made within the prescribed period of three months but was admitted after the expiration of such period, a declaration of an illegal change made on such application should not

form the foundation for a complaint under S. 106(1) and the employer should not be liable to the criminal penalty provided in the section which may otherwise be enforced against the employer on the strength of such declaration. The admission of an application for a declaration of an illegal change after the expiration of the prescribed period of three months was, argued Sri P. B. Patwari, an indulgence granted by the legislature but while granting the indulgence, the legislature made it clear that a declaration of an illegal change made on such application shall not be followed by a complaint under S. 106(1). Sri P. B. Patwari urged that unless there was this correlation between a declaration of an illegal change under S. 78(1)A(c) and a complaint under S. 106(1), there was no point in the enactment of the second proviso to S. 79(4). The contention of Sri P. B. Patwari, though at first blush attractive, is in our opinion defective and suffers from various infirmities.

9. In the first instance the contention is based on the hypothesis that the second proviso to S. 79(4) was necessitated by reason of a supposed correlation between a declaration of an illegal change under S. 78(1)A(c) and a complaint under S. 106(1) and that the *raison d'être* of the second proviso to S. 79(4) would disappear if such correlation did not exist. In order to test the validity of this hypothesis, let us first of all examine the language of S. 79(4) and consider its true import in the context and setting in which it occurs. If an employer makes an illegal change to the detriment of an employee, the employee may either file a complaint before the labour court in respect of the offence committed by the employer under S. 106(1) or make an application to the labour court under S. 78(1)A(c) for a declaration that an illegal change has been made by the employer claiming in addition, if he so chooses, that the employer be required to withdraw the illegal change under S. 78(1)C(a). If the employee wants to pursue the latter remedy, he must make an application to the labour court within three months from the date of the making of the illegal change. Of course there is no separate period of limitation provided for an application for an order requiring an employer to withdraw an illegal change under S. 78(1)C(a) but such an application, unless it is preceded by an application for a declaration of an illegal change under S. 78(1)A(c) made within the period of three months, would have to be made within the same period of three months since the illegal change which can be required to be withdrawn under S. 78(1)C(a) is an illegal change which has been declared as such by the labour court and that can only be done on an application made within the period of three months. If an application for a declaration of an illegal change is not made within the period of three months, the remedy under Ss. 78(1)A(c) and 78(1)C(a) would cease to be available to the employee and the only sanction then available to the employee against the employer would be that under S. 106(1). The first proviso to S. 79(4), however, provides that an application for a declaration of an illegal change may be admitted even after the expiration of the period of three months provided sufficient reasons are shown. But then the second proviso enacts that in such a case, the remedy under Ss. 78(1)A(c) and 78(1)C(a) being made

available to the employee notwithstanding the expiration of the period of three months, the criminal sanction under S. 106(1) should no longer be available against the employer. During the time up to the expiration of the period of three months, the employee has his individual remedy under Ss. 78(1)A(c) and 78(1)C(a) as also the criminal sanction under S. 106(1), but after the expiration of the period of three months, the legislature declares that the employee shall have either the individual remedy or the criminal sanction but not both. If his application for a declaration of an illegal change is not admitted, his individual remedy would be lost but he would be entitled to enforce the criminal sanction against the employer. Likewise, if his application for a declaration of an illegal change is admitted, even though filed beyond the period of three months, his individual remedy would be available to him, but in that event the criminal sanction would stand withdrawn. This is the result which is brought about by the second proviso to S. 79(4). All that the second proviso to S. 79(4) enacts is that if an application for a declaration of an illegal change is admitted beyond the period of three months, the employer shall cease to be liable to the criminal penalty provided in S. 106(1). From this provision it is a long step in the argument to conclude that a declaration of an illegal change by the labour court under S. 78(1)A(c) is a condition precedent to the filing of a complaint under S. 106(1). Such an inference cannot be legitimately raised and to draw such an inference is to read much more in the second proviso to S. 79(4) than what is warranted by the language employed or even by the object and purpose of the enactment. If the legislature wanted to bring about such a result, it is surprising that the legislature should not have made a direct provision to that effect but should have left its intention to be gathered from a provision such as this by a process which involves more speculation than logic. We are unable to accede to the contention of Sri P. B. Patwari that the second proviso to S. 79(4) must inevitably lead to the inference that a declaration of an illegal change by the labour court under S. 78(1)A(c) was intended to be a condition precedent to the filing of a complaint under S. 106(1).

10. It is also difficult to see the logic of the argument which requires that before a complaint can be filed before the labour court for an offence under S. 106(1), there must be a declaration of an illegal change obtained from the labour court under S. 106(1). The labour court has jurisdiction to try the offence under S. 106(1) and for the purpose of deciding whether the employer is guilty of such offence, the labour court would have to determine the question whether an illegal change has been made by the employer and such question would, therefore, be within the jurisdiction of the labour court even on a complaint under S. 106(1). An application for a declaration of an illegal change under S. 78(1)A(c) also lies to the labour court and the labour court has jurisdiction to entertain such application and to decide on such application whether an illegal change has been made by the employer. If it is the same labour court which is going to decide the question whether an illegal change has been made by an employer or not, whether such question arises on an application for a declaration

of an illegal change under S. 78(1)A(c) or a complaint under S. 106(1), we are unable to see any reason why the legislature should have thought it necessary to make a declaration of an illegal change under S. 78(1)A(c) a condition precedent to the filing of a complaint under S. 106(1). We could have appreciated the necessity for enacting such a provision if the complaint under S. 106(1) were triable by a Court other than the labour court, for then the legislature might well have thought that the question whether an illegal change has been made by an employer being a question pertaining to industrial legislation and the labour court being best suited to decide such question, there must be a decision given by the labour court declaring an illegal change before any complaint for the making of such illegal change could be filed in the criminal Court. But such a provision would be quite pointless when the jurisdiction to declare an illegal change under S. 78(1)A(c) as also to entertain a complaint under S. 106(1) is with the same Court, namely, the labour court. There would be no particular charm in having the question of an illegal change decided by the labour court on an application for declaration of an illegal change under S. 78(1)A(c) when that very question can be decided equally well by the labour court in disposing of the complaint under S. 106(1).

11. There is also another consideration which weighs heavily with us against the contention of Sri P. B. Patwari. There are, as we have pointed out above, two remedies available to an employee aggrieved by an illegal change made by the employer. One is an individual remedy provided under Ss. 78(1)A(c) and 78(1)C(a). while the other is a remedy by way of criminal sanction under S. 106(1). The nature of the two remedies is, however, different and so is their object and purpose. The remedy provided under Ss. 78(1)A(c) and 78(1)C(a) is a remedy to enforce the rights of an employee aggrieved by an illegal change by giving him redress in that the illegal change may be required to be withdrawn if it is capable of being withdrawn or at any rate may be declared to be illegal. The remedy provided under S. 106(1) is, however, a remedy of a criminal nature in which the employer is accused of having committed an offence and is punished for the offence, such punishment being imposed not for the purpose of giving redress to the employee wronged by the illegal change but for the purpose of securing that illegal changes are not made by an employer leading to industrial disputes and that if the employer makes such illegal changes, he shall do so at the cost of criminal penalty. While in the one case redress of the wrong is the main object and purpose of the remedy, in the other case punishment in the larger interests of labour welfare and industrial peace is the main object and purpose of the remedy and if that be so, it is difficult to see why the legislature should have made the adoption of the latter remedy dependent on the successful pursuit of the former. The distinction between the two remedies is of the same nature as the distinction between a civil remedy and a criminal remedy in respect of the same wrong and just as it would be illogical and inexplicable to link up the criminal remedy with the civil remedy by providing that the criminal remedy shall not be adopted unless the civil remedy has been pursued to a successful

conclusion, it would be equally illogical and inexplicable to provide that the remedy under S. 106(1) shall not be adopted until the remedy under S. 78(1)A(c) has been successfully invoked and a declaration of an illegal change obtained from the labour court under that section. The effect of acceptance of the argument of Sri P. B. Patwari would be that such a provision has been made by the legislature but we are glad to find that such is not the position. The remedy under Ss. 78(1)A(c) and 78(1)C(a) is distinct and independent from the remedy under S. 106(1) and the latter is not dependent on the former so as to constitute a declaration of an illegal change under S. 78(1)A(c) a condition precedent to the filing of a complaint under S. 106(1).

12. It may also be noted that the consequence of accepting the construction contended for by Sri P. B. Patwari would be to introduce by the backdoor a period of limitation for a prosecution for the offence under S. 106(1) which would be contrary to the well-accepted principle of Criminal law that there can be no limitation in enforcement of a criminal liability against an offender unless the statute creating the offence so provides. There is nothing in S. 82 or 106(1) which prescribes any period of limitation for a prosecution for the offence under S. 106(1), nor is there any other provision in the Act which lays down any such period of limitation and it would indeed be remarkable that the legislature should have chosen to enact such period of limitation in this indirect manner by leaving the legislative intent in that behalf to be gathered from the language of the second proviso to S. 79(4) or the context of the Act. We would certainly be disinclined to accept a construction which has the effect of creating a period of limitation in enforcement of a criminal liability unless the language of the enactment is clear and leaves no doubt that such was the intention of the legislature. We cannot say this of the present enactment.

13. In view of these difficulties in his way Sri P. B. Patwari tried to fall back on S. 79(1) and contended that when S. 79(1) provided that the proceedings in respect of a matter falling under S. 78(1)A(c) shall be commenced on an application made by any employer or employee affected or the labour officer or a representative union, what was intended to be covered by the provision was also a prosecution for the offence under S. 106(1). Sri P. B. Patwari urged that a prosecution for the offence under S. 106(1) was as much a proceeding in respect of a matter falling under S. 78(1)A(c) as an application for a declaration of an illegal change under that section and that such prosecution was also, therefore, to be required to be commenced by an application as provided in S. 79(1) and that the first step which was, therefore, necessary to be taken for prosecuting an employer was to make an application for a declaration of an illegal change under S. 78(1)A(c) and to obtain a declaration of an illegal change from the labour court. The contention is, in our opinion, plainly unsound and is not only contrary to the scheme of the Act but also offends against the language of the section. It is clear from Ss. 78(1)A(c) and 78(1)B that proceedings in respect of a matter falling under S. 78(1)A(c) are different from proceedings in respect of an offence punishable under the Act triable by the labour court under S. 78(1)B. When S.

79(1) talks of proceedings in respect of a matter falling under S. 78(1)A(c), it refers to proceedings by way of an application for a declaration of an illegal change under S. 78(1)A(c) and does not refer to proceedings in respect of an offence under S. 106(1) which can be tried by the labour court under S. 78(1)B. So far as the proceedings in respect of an offence under S. 106(1) are concerned, the question as to how such proceedings can be initiated is dealt with in S. 82 and the powers of the labour court while trying such proceedings are provided in S. 83. Section 79(1) deals only with proceedings by way of an application for declaration of an illegal change under S. 78(1)A(c) and does not comprehend within its scope and ambit proceedings by way of a prosecution for an offence under S. 106(1) triable by the labour court under S. 78(1)B. The contention of Sri P. B. Patwari based on S. 79(1) must, therefore, be rejected.

14. Sri P. B. Patwari then contended that a special machinery was set up by the Act for the determination of the question whether an illegal change has been made by an employer and that such special machinery required the making of an application to the labour court for a declaration of an illegal change under S. 78(1)A(c). The question whether an illegal change has been made by an employer or not could not, therefore, argued Sri P. B. Patwari, be determined except by following the special machinery provided by the Act and that the prosecution for the offence under S. 106(1) was, therefore, required to be preceded by an application for a declaration of an illegal change under S. 78(1)A(c) and a declaration of an illegal change obtained on such application. This contention is, on the face of it, unsustainable since the same Act which has provided the machinery for an application for a declaration of an illegal change under S. 78(1)A(c) has also provided the machinery for prosecution for an offence under S. 106(1) and if the first machinery is a special machinery for obtaining a declaration of an illegal change under S. 78(1)A(c), the second machinery is equally a special machinery in so far as prosecution for an offence under S. 106(1) is concerned. It is impossible to hold that the legislature has provided two different machineries, one for obtaining a declaration of an illegal change under S. 78(1)A(c) and the other for prosecution for an offence under S. 106(1) - each special in its own way-the procedure prescribed by the former machinery must be gone through even in a case where resort is made only to the latter machinery.

15. The last contention of Sri P. B. Patwari was that if the construction contended for on behalf of the other side were accepted, it would leave to various anomalies which could not possibly have been contemplated by the legislature and that the intention of the legislature could never have been to produce such anomalies. Now the intention of the legislature is a very slippery phrase which popularly understood may signify anything from intention embodied in the enactment to speculative opinion as to what the legislature must have intended, although there has been an omission to enact it. In a Court of law that the legislature intended to be done or not to be done can only be legitimately ascertained from what it has chosen to enact either in express words or by reasonable and

necessary implication. If the language of an Act is clear and explicit, effect must be given to it whatever may be the consequences, for in such a case the words best declare the intention of the law-giver. It would not be right to refuse to place on the language of the statute the plain and natural meaning which it must bear, on the ground that it produces consequences which could not have been intended by the legislature. As observed by Viscount Simon, L.C., in *King Emperor v. Benoari Lal Sarma* [72 IA 57].

"... in construing enacted words we are not concerned with the policy involved or with the results injurious or otherwise, which may follow from giving effect to the language used."

16. Regard may be had to the consequences of a suggested construction if the language of the statute is susceptible of two meanings. Where there are two meanings, each adequately satisfying the meaning of the statute and absurdity or harshness to produced by one of them, that must have a legitimate influence in inclining the mind to the other, for it is reasonable to presume that the legislature must have used the words in a sense which accords most with reason and justice. Where, however, the language used by the legislature can bear only one meaning according to its plain and natural sense, this consideration should not be allowed to influence the interpretation of the statute. This is exactly what Lord Greene, M. R., said in *Grundt v. Great Boulder Proprietary Mines, Ltd.* (1948) 1 Ch. 145 :-

"There is one rule, I think, which is very clear-and this brings me back to where I started, the doctrine of absurdity - that although the absurdity or the non-absurdity of one conclusion as compared with another may be of assistance, and very often is of assistance, to the Court in choosing between two possible meanings of ambiguous words, it is a doctrine which has to be applied with great care, remembering that Judges may be fallible in this question of an absurdity, and in any event must not be applied so as to result in twisting language into a meaning which it cannot bear : it is a doctrine which must not be relied upon and must not be used to rewrite the language in a way different from that in which it was originally framed."

The language in the present case is, in our opinion, clear and capable of bearing only one interpretation, namely, that which has found favour with us and to construe the language in the manner suggested by Sri P. B. Patwari for the purpose of avoiding any anomalies which may result on the other construction would be to do the very thing prohibited by Lord Greene, M.R., and such construction would clearly offend against the well-recognized canons of interpretation. The language employed in the enactment is capable of bearing one and only one meaning and that is the meaning which we have put upon the enactment and the doctrine of absurdity cannot be applied so as to result in twisting the language of the enactment or re-writing the language in a way different from that in which it is framed.

17. We may point out that in fact the apprehension of Sri P. B. Patwari that any anomalies would be produced by the construction which we are inclined to put upon the enactment is not real or well-founded. Let us consider what are the anomalies which according to Sri P. B. Patwari would be produced by that construction. The first anomaly pointed out by Sri P. B. Patwari was that if a complaint for an offence under S. 106(1) could be filed without obtaining a declaration of an illegal change from the labour court under S. 78(1)A(c), the result would be that on an application for a declaration of an illegal change under S. 78(1)A(c) a labour court may give one decision while another decision may be reached by the same labour court or another labour court having concurrent jurisdiction on a complaint for an offence under S. 106(1). We are, however, not impressed by this supposed anomaly, for it is not a matter of infrequent occurrence that where the same act constitutes a civil wrong as well as a criminal offence, a civil Court may come to one decision, while a criminal Court may come to another. The possibility of conflicting decisions is inherent in the very nature of the two remedies and that cannot be a valid ground for making the adoption of the remedy dependent on the successful pursuit of the other. We may point out that as a matter of fact the possibility of conflicting decisions is to a large extent eliminated under the Act, for unlike civil and criminal remedies which are pursued in different Courts, the two remedies here are pursued in the same Court, namely, the labour court. The second anomaly which troubled Sri P. B. Patwari was that an application for a declaration of an illegal change under S. 78(1)A(c) and for withdrawal of the illegal change under S. 78(1)C(a) would be barred on the expiration of a period of three months from the date of the making of the illegal change but a complaint for an offence under S. 106(1) would not be barred by any lapse of time and an employer would be liable to be convicted for such offence after any length of time. We are unable to see any anomaly in this position. This is the position which arises every day in case of civil and criminal remedies, for in respect of an act which constitutes a civil wrong as well as a criminal offence, the civil remedy would always get barred on the expiration of the period of limitation prescribed for it, while the criminal remedy would ordinarily never get barred by any lapse of time. Sri P. B. Patwari then pointed out what he considered to be another anomaly arising out of the construction which we propose to put upon the enactment. He pointed out that a situation may well arise where an employer against whom a complaint for an offence under S. 106(1) to filed may be acquitted by a labour court on the ground that in its opinion no illegal change has been made by the employer, whereas on an application for a declaration of an illegal change under S. 78(1)A(c) and for withdrawal of the illegal change under S. 78(1)A(a), the same labour court or another labour court which has concurrent jurisdiction may come to the conclusion that an illegal change has been made by the employer and require the employer to withdraw the illegal change and in such a case though the employer is acquitted of the offence under S. 106(1) on the ground that no illegal change has been made by him, the employer would still be liable to be convicted for the offence under S. 106(2) on the ground that he has not withdrawn the illegal

change. This anomaly is also more apparent than real and does not at all impress us. Section 106(1) makes it an offence for an employer to make an illegal change, while S. 106(2) punishes contravention of the provisions of S. 47 which would be constituted by disobedience of the order of the labour court under S. 78(1)C(a). The two offences one under S. 106(1) and the other under S. 106(2), are entirely distinct. One punishes the making of an illegal change, while the other punishes disobedience of the order of the labour court. It may be that on a complaint for an offence under S. 106(1), the labour court trying the offence may take the view that no illegal change has been made by the employer and may, therefore, acquit the employer. But, if on an application for a declaration of an illegal change under S. 78(1)A(c) and for withdrawal of the illegal change under S. 78(1)C(a), the labour court makes an order declaring an illegal change and requiring the employer to withdraw the illegal change, the employer must carry out the order of the labour court and if he does not do so, he would render himself open to prosecution for the offence under S. 106(2). This is the logical consequence which must arise when there are two distinct and independent remedies, one of a civil nature and the other of a criminal nature, which can be pursued in case of an illegal change made by an employer. Sri P. B. Patwari also pointed out that if an application for a declaration of an illegal change under S. 78(1)A(c) was made after the expiration of a period of three months from the date of the making of the illegal change and was admitted by the labour court for sufficient reasons under the first proviso to S. 79(4), the employer would cease to be liable to the criminal penalty provided in S. 106(1) by reason of the second proviso to S. 79(4), but if no such application was made at all or it was made after the expiration of the period of three months and not admitted, the employer would remain liable to the criminal penalty provided in S. 106(1) and contended that this was an anomalous position which should deter the Court in accepting the construction contended for on behalf of the workman. This again, in our opinion, is no anomaly. The legislative intent, as we have pointed out above, is clear, namely, that during the time up to the expiration of the period of three months, two remedies shall be available against the employer, one under Ss. 78(1)A(c) and 78(1)C(a) and the other under S. 106(1), but after the expiration of the period of three months, there shall be only one remedy available against the employer, either the one under Ss. 78(1)A(c) and 78(1)C(a) or the one under S. 106(1) but not both. If the remedy under Ss. 78(1)A(c) and 78(1)C(a) can be pursued as a result of condonation of delay for sufficient reasons under the first proviso to S. 79(4), the remedy under S. 106(1) shall cease to be available by reason of the second proviso to S. 79(4), but if the remedy under Ss. 78(1)A(c) and 78(1)C(a) is not pursued or cannot be pursued because delay is not condoned, the remedy under S. 106(1) must continue to remain available and can be pursued against the employer. We are, therefore, of the opinion that in fact there are no such anomalies as would even make us hesitate to consider whether the construction which we are inclined to put upon the enactment is the right construction.

18. These were all the contentions urged by Sri P. B. Patwari on the construction of the enactment and in our opinion there is no substance in them. We are of the view, for the reasons stated above, that an application for a declaration of an illegal change under S. 78(1)A(c) and a complaint for an offence under S. 106(1) are two distinct and independent remedies unconnected with each other and that a complaint for an offence under S. 106(1) is not required to be preceded by a declaration of an illegal change obtained from the labour court under S. 78(1)A(c). We, therefore, reject the contention of Sri P. B. Patwari that no complaint for an offence under S. 106(1) can be filed unless a declaration of an illegal change is obtained from the labour court under S. 78(1)A(c) prior to the filing of the complaint. The complaint filed by respondent 3 in the present case was, therefore, clearly maintainable and did not suffer from any infirmity as suggested by Sri P. B. Patwari.

19. The next contention of Sri P. B. Patwari was that in any event no complaint could be filed against the petitioner who was the manager of the company and that the complaint, if at all, could be only against the company. The short answer to this contention is provided by S. 3(14) which defines an employer to include inter alia any agent of an employer. If the petitioner was an agent of the company and in the course of his duties as such agent, he made an illegal change as alleged by respondent 3, he would certainly be liable for the offence under S. 106(1). It would, therefore, have to be investigated by the labour court whether the petitioner was an agent of the company and whether he made an illegal change in the course of his duties as such agent. Unless these questions are decided by the labour court on the evidence before it, it is not possible to say that the complaint is not maintainable against the petitioner. The contention of Sri P. B. Patwari that the complaint must be dismissed in limine on the ground that it is filed against the petitioner who is the manager of the company, must, therefore, be rejected.

20. The result, therefore, is that the petition fails and is dismissed. The rule will stand discharged.