

(1952) 06 BOM CK 0005
In the Bombay High Court
Case No : Civil Application No. 124 of 1952

Batuk K. Vyas

APPELLANT

Vs

Surat Borough Municipality and Others

RESPONDENT

Date of Decision : 17-06-1952

Acts Referred:

Bombay Municipal Boroughs Act, 1925 — Section 58
Bombay Municipal Boroughs Rules — Rule 17, 17(4)
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 31, 33, 33A

Citation : AIR 1953 Bom 133 : (1952) 54 BOMLR 922 : (1953) ILR (Bom) 191

Hon'ble Judges : Chagla, C.J.;Gajendragadkar, J

Bench : Division Bench

Advocate : N.V. Phadke and M.V. Paranjape, for the Appellant; M.P. Amin, General with Little and Co., M.W. Pradhan, I.C. Bhatt and K.D. Desai, for the Respondent

Judgement

Chagla, C.J.

(1) This is a petition by a dismissed employee of the Surat Municipal Borough complaining that the decision given by the Industrial Tribunal and the Labour Appellate Tribunal was without jurisdiction and asking us to set right that decision by a prerogative writ. The facts briefly are that the petitioner joined the Surat Municipal Borough on. November 4, 1949. There was a dispute between the Municipality and its workmen which was referred to the Industrial Tribunal on May 15, 1950. While that dispute was pending before the Tribunal, the Surat Municipal Borough dismissed the petitioner. An application was made by the petitioner u/s 33A to the Tribunal complaining against his dismissal by the Surat Municipal Borough. The Tribunal" came to the conclusion that the Surat Municipal Borough was justified in terminating the services of the petitioner. There was an appeal to the Labour Appellate Tribunal and the Labour Appellate Tribunal upheld the decision of the Industrial Tribunal.

(2) A very able argument has been advanced before us by Mr. Phadke as to the scope and extent of the inquiry contemplated by Section 33A before the Labour Appellate Tribunal. Section 33 of the Act prohibits an employer from altering to the prejudice of the workmen concerned in any pending dispute the conditions of service applicable to them immediately before the commencement of such proceeding, and also prohibits him from discharging or punishing, whether by dismissal or otherwise any workman concerned in such dispute; and it is common ground that the petitioner was concerned in the pending dispute before the Tribunal. Now, this prohibition is not absolute. It would be open to the employer to alter the conditions of the workmen to their prejudice or even discharge or punish them if he obtained the express permission in writing of the conciliation officer, Board or Tribunal. If he did not obtain such a sanction and he acted to the prejudice of the workmen, a penalty is provided u/s 31 and the penalty is that any employer who contravenes the provisions of Section 33 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Therefore, reading Ss. 33 and 31, no difficulty presents itself. The Legislature has chosen to protect the rights of workmen pending industrial disputes by prohibiting the employer from doing anything to their prejudice without the express sanction of the conciliation officer, Board or Tribunal before whom there is a pending reference. In this particular case it is again common ground that the petitioner was discharged by the Surat Municipal Borough without the permission of that Tribunal and in having done so the Municipal Borough undoubtedly contravened the provisions of Section 33. It would also appear that by doing so it rendered itself liable to be prosecuted and punished u/s 31.

Then we come to Section 33A, the interpretation of which may suggest certain difficulties. The headnote of that section is, "Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceedings", and the section provides that

"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."

It was under this section that the petitioner made a complaint to the Tribunal and it was acting under this section that the Tribunal made "its award. The contention of Mr. phadke is that the scope and ambit of an inquiry under this section is limited and confined to a mere inquiry as to whether there has been a contravention of Section 33. Mr. Phadke says that if the Tribunal comes to the conclusion that the employer contravened the provisions of Section 33, then the only award that the Tribunal can make is to restore the status quo either by

ordering the reinstatement of the workman if he has been discharged, or by restoring the previous conditions of service if those conditions have been altered to his prejudice. But Mr. Phadke says that it is not competent to the Tribunal to go into the merits of the change made by the employer to the prejudice of the workman. Therefore, according to Mr. Phadke the Tribunal acted without jurisdiction when it adjudicated upon the question as to whether the employer was justified in discharging the petitioner.

(3) Now, it is necessary to consider what the law was before Section 33A was incorporated into the Industrial Disputes Act. That section was incorporated by Act 48 of 1950 and before that incorporation Section 33 was the only section dealing with a change made by the employer pending a reference, tinder the old law, if an employer changed the conditions of service of a workman to his prejudice or discharged him, the workman had no remedy available to him. A reference undoubtedly could be made to the Tribunal, but that reference could only be made by Government. The workman might move the Government to make the reference, but it was left to the discretion of the Government whether to make the reference or not. Therefore, under the old law, although the employer was liable to be punished for a contravention of Section 33 the workman had no remedy in himself to move the Tribunal to adjudicate upon what the employer had done to his prejudice. Therefore, Section 33A confers an important right upon the workman. He has a right to make a complaint to the Tribunal and the Tribunal has been given the right to adjudicate upon the complaint as if it were a dispute referred to or pending before it and the Tribunal has been also conferred the jurisdiction to submit an award in respect of this dispute to the appropriate Government. Therefore, prima facie, it seems clear that the object of Section 33A was to avoid a multiplicity of proceedings. Instead of Government making an independent reference and calling upon the Tribunal to adjudicate upon that reference, a more summary procedure was provided by which the workman himself, if he objected to the change or objected to his discharge, could go to the Tribunal and ask the Tribunal to adjudicate upon the dispute between himself and his employer. It seems to us difficult, on the language used by Section 33A, to hold that the ambit and scope of the inquiry to be held by the Tribunal is as limited as Mr. Phadke would suggest. If the intention of the Legislature was that all that the Tribunal could do u/s 33A was merely to determine the simple question as to whether a change to the prejudice of the workman had been brought about by the employer without the express permission in writing of the Tribunal, and if that decision was against the employer, the only power that the Tribunal had was to restore the status quo, it seems to us that the language used by the Legislature in Section 33A would have been very different from the language it has actually used. The very fact that the Legislature treats the complaint as if it were a dispute referred to or pending before it, goes to show that the jurisdiction of the Tribunal was not limited merely to consider the question of the contravention of Section 33, but to decide on the substantive dispute between the employer and the workman with regard

to the change in the conditions of service or the discharge of the employee by the employer.

(4) Reliance has also been placed by Mr. Phadke on the headnote to Section 33A. The head-note is not as unequivocal as Mr. Phadke would have us believe. But even if it were so worded as to support the contention of the petitioner, it obviously cannot control or limit the scope and ambit of the inquiry dealt with in the section itself. At best the headnote is intended to indicate the drift of the section.

(5) It has been argued with considerable force by Mr. Phadke that if the petitioner has been discharged in contravention of Section 33, the discharge is illegal and an illegal discharge can never be justified and upheld by the Tribunal. Mr. Phadke further contends that it is not open to an employer to urge the propriety of his action in discharging his workman if his act is prohibited by law. Put in that form the argument seems difficult to meet. But when one closely analyses that argument, it is clear that it is not tenable. The functions of the Tribunal acting u/s 33A in adjudicating upon the dispute and the functions of a criminal Court considering the violation of Section 33 are different and the two tribunals approach the matter from entirely different aspects. A criminal tribunal trying the employer who is prosecuted for violating Section 33 would confine itself to the sole question as to whether there was a breach of the law. If there was a breach of the law, the tribunal would have to proceed to inflict the punishment provided by Section 31. The Industrial Tribunal's functions are different and much wider. Apart from the breach of the law u/s 33 for which a penalty is provided, the Tribunal would be concerned with the question as to whether on merits the employer was justified in discharging the petitioner or changing the conditions of service to his prejudice. Take this very case.

It is perfectly true that the Surat Municipal Borough discharged the petitioner in contravention of Section 33. The Municipal Borough would have no answer if a prosecution had been launched against them by Government. But when the matter comes before the Tribunal and a complaint is made by the workman u/s 33A, the answer given by the Municipal Borough is that although in not taking the sanction of the Tribunal it undoubtedly committed a breach of the law, it was justified in discharging the petitioner because on the particular facts of the case it had the right to discharge him. Now is it suggested that when that answer is given by the employer, the Tribunal must continue its attention merely to the question of the breach of the law and ignore the answer given by the employer on the merits of the case? In our opinion, the object of enacting Section 33A is not merely to confine the jurisdiction of the Tribunal to the simple question of the breach of the law, but to confer upon the Tribunal the wider jurisdiction of deciding the merits of the dispute between the employer and the workman.

(6) Now, it is suggested by Mr. Phadke that this interpretation of ours would permit the employer to evade the law and would be highly prejudicial to the workman. We are conscious of the fact that we are interpreting a statute which

was intended to confer benefits upon the working classes and the underlying principle of all such legislation is that the workman should be protected against the employers and therefore we must always hesitate to put any interpretation upon labour legislation which is likely to prejudice the rights of workmen. But we feel certain that in placing the interpretation that we are doing, we are in no way prejudicing the rights of the workmen. Let us consider why Mr. Phadke thinks that the rights of the workmen will be prejudiced. What Mr. Phadke says is that an employer, hoping that his action would be ultimately upheld by the Tribunal, would take the law into his own hand, dismiss an employee or alter conditions of his service to his prejudice, without taking the sanction of the Tribunal. The answer to this is two-fold. In the first place, the employer would run the risk of being prosecuted. In the second case, it is difficult to understand why an employer, who could get the sanction of the Tribunal if his action could ultimately be justified at the hearing, would not do so and would, without any reason whatsoever, indulge in violating the law as laid down in Section 33. There is one possible prejudice of which we are conscious and the possible prejudice is that if the employer were to ask for sanction of the Tribunal before taking action, the Tribunal would have to hear the matter, and it is only after the Tribunal has given its decision that the employer could act as he intended to act. In this very case, if the Surat Municipal Borough had applied to the Tribunal for sanction for dismissing or discharging the petitioner, the Municipal Borough could not have discharged him till after the permission had been granted. In other words, the discharge of the petitioner would have been postponed for some time and during that period he would have earned his salary. But even this prejudice can be obviated by the Tribunal in proper cases awarding compensation to the workman when he has been discharged without the sanction of the Tribunal. The Tribunal may well say that although your action is justified, inasmuch as you did not take the sanction of the Tribunal, inasmuch as you committed a breach of the law, we will penalise you and compel you to give compensation to the workman for such period as the Tribunal thinks proper. It may be said in fairness to the Industrial Tribunal in this case that it did consider the question of compensation & on the facts of this particular case it came to the conclusion that no compensation should be awarded to the petitioner.

(7) It is then argued by Mr. Phadke that this interpretation of Section 33A would make the law discriminatory in favour of the employer and would give him an additional right which he did not enjoy before, and the additional right suggested is that by violating Section 33 he could get a reference u/s 33A which he would otherwise not have had. This seems to us to be a totally wrong approach to the purpose for which Section 33A was enacted. It is left to the workman whether to have a reference with regard to the industrial dispute u/s 33A or not. It is only if the workman feels that what the employer has done is without justification that he would proceed to make a complaint before the Tribunal, and therefore if a reference is brought about and there is an adjudication and award, it is at the instance of the workman and not strictly at the instance of the employer. Before

Section 33A was enacted, as we have already pointed out, the employer could have, risking a prosecution, acted to the-prejudice of the workman and it was left to the discretion of Government whether to come to the relief of the workman or not. Today the position is entirely different. The workman can protest against the action of the employer and protest effectively by going before the Tribunal and getting the adjudication of the Tribunal upon the matters in dispute. Apart from that it is always open to the employer to get an adjudication on the question of the change that he proposes to make u/s 33 by applying to the Tribunal for permission. It is difficult to understand why he should prefer a way by which he risks a prosecution and the possibility of having to pay-compensation to the employee whom he has discharged or whose conditions of service he has altered to his prejudice. It is also difficult to understand why the Tribunal cannot exercise the same jurisdiction when a complaint is made by the workman, when the Tribunal admittedly could go into the same question if the employer had asked for the necessary permission: u/s 33. Therefore, in our opinion, both the Industrial Tribunal and the Labour Appellate Tribunal were right when they took the view that they had jurisdiction to go into the merits of the dispute between the employer & his workmen.

(8) Mr. Phadke has then attempted to argue that on merits both the Tribunals below were in error in holding that the employer was justified in discharging the workman. It is clear that on this petition we are only concerned with the jurisdiction of the Tribunal. If the Tribunal had jurisdiction, then any decision it arrived at with jurisdiction could not be challenged by a writ. What is suggested by Mr. Phadke is that there is an error of law apparent on the face of the record. It seems that the Surat Municipal Borough acted under Rule 17(4) which had been framed u/s 58 of the Municipal Boroughs Act in discharging the petitioner. The petitioner wanted to stand and in fact stood for the election to the Rander Municipality and according to Rule 17(4) framed by the Surat Municipal Borough it was not competent to an Officer of the Surat Municipal Borough to stand for election to any other Municipality, and the contention of the petitioner was that Rule 17 (4) was "ultra vires" of the Municipality, and, therefore, in dismissing the petitioner the Municipality acted under an incompetent rule. Both the Industrial Tribunal and the Labour Appellate Tribunal took the view that Rule 17 (4) was "ultra vires". Mr. Phadke says that Rule 17 (4) goes beyond the scope of Section 58 of the Act. It is difficult to understand how this is an error of law apparent on the face of the record. Even assuming that there is force in the argument advanced by Mr. Phadke, the mere fact that two views are possible on a question of law does not make the decision of a Tribunal with jurisdiction bad on the ground that it has erred in law and the error is apparent on the face of the record. We have had occasion several times to point out that only that error will be corrected by this Court which is clearly apparent on the face of the record and which does not become apparent only by a process of examination or argument. With some hesitation Mr. Phadke has also attempted to argue that the decision of the Tribunal with regard to the competency of Rule 17 (4) is a decision as to

jurisdiction. It is obviously not because Rule 17 (4) has nothing to do with the jurisdiction of the Tribunal, but it has something to do with the jurisdiction of the Municipality, and the Tribunal was perfectly competent to decide whether the Municipality was right in dismissing its servant under Rule 17 (4).

(9) The result is that the petitioner fails. Rule discharged. No order as to costs. Rule discharged.

(10) Rule discharged.