
(1930) 10 AHC CK 0004
In the Allahabad High Court

Bhola Nath-Shankar Das

APPELLANT

Vs

Lachmi Narain and Others

RESPONDENT

Date of Decision : 29-10-1930

Acts Referred:

Companies Act, 1956 — Section 4(2)
Specific Relief Act, 1877 — Section 42

Citation : AIR 1931 All 83 : (1931) ILR (All) 316 : 136 Ind. Cas. 84

Hon'ble Judges : Sen, J; Niamat Ullah, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sen, J.—This is an appeal by the plaintiffs from the decree of the learned District Judge of Farrukhabad, reversing the decision of the Subordinate Judge of the same district in a suit in which the following reliefs were claimed:

(a) It may be declared that the committee of the defendants is unlawful according to law. The principle on which they are working is against law and no British subject is bound by it nor are they competent to offer obstruction in the business of the plaintiffs.

(b) A perpetual injunction may be issued to the defendants restraining them from doing the acts mentioned in para. 3 of the petition of plaintiff; and

(c) Rs. 1,000 as damages caused to the plaintiffs from the acts of the defendants may be awarded from the defendants.

2. Plaintiffs are members of a firm of commission agents who carry on business at Fatehgarh under the name and style of Bhola Nath-Shankar Das, The defendants are 17 in number and are members of an association unincorporated and unregistered, which is located in Lindsayganj market at Farrukhabad and is called Anaj Behohar Sabha. It is said that this case is an instance in point of trade union outrages; and although the association has no legal recognition as a jural unit, its number and the compact of its members give weight to its

concerted action and are according to the plaintiffs a source of danger to the public. The plaintiffs do not attribute unlawfulness to the association merely on the score that it is an unregistered body but they stoutly contend that its objects and methods are unlawful, the chief object of the association being to corner a monopoly and to drive out all rivals from the field by resource to unfair competition.

3. The heads of charges enumerated in para. 3 of the plaint are as follows:

(1) That no one can open a shop in Bazar Lindsayganj without the permission of this committee.

(2) The permission for opening a shop is given in the month of Kuar and Phagun.

(3) If anyone carries on business or opens a shop without the permission of the committee, no one can sell goods to him or purchase goods from him.

(4) If anyone who has not opened a shop wants to purchase goods direct. he cannot do so without the medium of any such shop-keeper whom the committee might have permitted to open a shop.

(5) That weighmen who have obtained a license from the Municipal Board and who are themselves the owners of the phars (the open space in front of each shop) or who have taken phars on rent cannot sell the goods to or weigh the goods of the persons not permitted by the committee to make the purchase.

(6) If any weighman or shopkeeper sells goods to or purchases from any such person not allowed by the committee, then penal orders are passed against him, such as fine, suspension of all business and purchase and sale.

4. The plaintiffs further complained that the association was oppressive in the treatment of its constituents inasmuch as it made unlawful gains by arbitrarily levying perquisites like the following:

(a) Twelve annas per cent commission fee.

(b) Four annas per cent brokerage. (c) One pice per rupee per parcha.

(d) One anna six pies per cent for Gaushala and Ramlila.

(e) Two chattaacks of grain per maund for Karda.

(f) Four chattaacks of grain per cart for Larka and

(g) two chattaaks of grain per maund for Palladar.

5. The plaintiffs further alleged that they had entered into a contract with a third party to supply 500 bags of poppy seed. For the due performance of this contract they had contracted to purchase the stock from a number of persons at Lindsayganj. The defendants intervened and prevented the owners of the stock from selling the poppy seed to the plaintiffs. The result was that the plaintiffs next tried to make purchases outside Lindsayganj and entered into contracts with

certain arhatias at Ghatia Ghat. Here also the defendants intervened and by their obstructive tactics prevented certain persons from selling the goods to the plaintiffs.

6. The suit was contested by all the defendants except two, namely, defendants 14 and 15. The defence amounted to a traverse of the material statements contained in the plaint. The Court of first instance repelled the contentions of the defendants, decided all the issues in favour of the plaintiffs and decreed the plaintiffs' claim for the declaratory relief and injunction as asked for and for Rs. 500 as damages. The lower appellate Court has reversed this decision. Hence this appeal.

7. It has been argued that the plaintiffs were entitled to a declaration that Anaj Behohar Sabha was an unlawful association inasmuch as it had not been incorporated and registered as required by Section 4 (2), Companies Act. The number of its members exceeds 20 and it may be assumed that the object of the association is gain or profit. The Sabha not having been registered u/s 4 (2), Companies Act (Act 7 of 1913), it can have no legal recognition as a juristic unit and it cannot sue or be sued as a corporate body nor can it enter into a contract as such. But, while taking a stock of its disabilities, we are not prepared to hold that a trade association is unlawful merely because it has not been registered in conformity with the provisions of the Companies Act. We are further of opinion that it will be nothing short of an abuse of the provisions of Section 42, Specific Relief Act, to entertain a suit for a declaration of what appears to us to be a self-evident proposition that the committee is not a corporate unit because it has not been legally constituted. The British Indian Courts have no general powers to make a declaratory decree outside the limits formulated by Section 42, Specific Relief Act and the said section cannot be utilized with the object of enunciating a truism.

8. It has next been argued that the agreement, whereby the members of the Sabha are held together, is in defiance of the provisions of Sections 23 and 27, Contract Act.

In *Hilton v. Eckersley* [1855] 6 El. & Bl. 47, Baron Alderson is reported to have said:

Prima facie it is the privilege of a trader in a free country, in all matters not contrary to law to regulate his own mode of carrying it on according to his own discretion and choice.

9. The question is whether the defendants have crossed the line which the law permits. This border line is not in all cases capable of very sharp definition and is a fruitful source of aggressive claims and subtle defences. It was ruled by the Privy Council in *Rogers v. Rajendro Dutt* [1859] 13 M.P.C. 209:

That it is essential to an action in tort that the act complained of should under the circumstances, be legally wrongful as regards the party complaining, that is,

it must prejudicially affect him in some legal right; merely that it will however directly do a man harm in his interests, is not enough.

10. The matter we are now considering was in issue before the Bombay High Court in *re Fraser & Co. v. Bombay Ice Manufacturing Company* [1906] 29 Bom. 107, the facts of which were parallel and the principle involved not dissimilar and the Court held that an agreement between manufacturers, not to sell their goods below a stated price, to pay profits into a common fund and to divide the business and profits in certain proportions is not avoided by Section 27, Contract Act and cannot be impeached as opposed to public policy u/s 23 of the Act. We are clearly of opinion that the constitution of the committee and its objectives do not offend against the provisions of Sections 23 and 27, Contract Act. It is patent that the case of the plaintiffs is founded upon tort and not upon contract. Where the claim is founded upon a tort alleged against the defendant, Sections 23 and 27, Contract Act, do not apply. The grievance is that the defendants by their organized and concerted action have by rule and level been crippling the plaintiffs in their trade and that they have been prevailing upon their constituents to obey their edicts to cut off the supply of materials from the plaintiffs as also the flow of customers. We cannot forget the emphatic statement of Bowen, L.J., that

no action at common law will lie or ever has lain against any individual or individuals for entering into a contract merely because it is in restraint of trade : vide *Mogul Steamship Company v. McGregor* [1889] 23 Q.B.D. 598 .

11. It is unfortunate that Section 27, Contract Act, has been moulded upon the New York Draft Code and seriously trenches upon the liberty of the individual in contractual matters affecting trade. We are however of opinion that Section 27 does not support the plaintiff's pretention. A combination amongst the. traders of a particular locality is not actionable per se merely because it brings profits to them and indirectly hurts a rival in trade.

12. It has been argued that the demands made by the defendant company are of the nature of arbitrary perquisites and operate oppressively against the plaintiffs if they do not respond to the demands made by the defendants. These demands are seven in number and have already been referred to in our judgment. The Court of first instance held that these demands were arbitrary perquisites. The lower appellate Court did not agree with this view:

Payment on account of commission agency and brokerage prevails everywhere. Item (c) also is of a piece with the purchase of a peculiar brand of paper for writing petitions in Courts and one pice, per rupee, is a very small amount. Payments made for Gaushala and Ram Lila certainly entail a loss on the ultimate customer but no one grudges it. I do not wish to lay down that there is any religious consideration in it, but from a humanitarian point of view a payment for Gaushala is not an evil. In the Western Presidency they take it in the name of "Pinjrapole." This idea itself is a laudable one because it prevents cruelty to

animals. Items (e), (f) and (g) are allowed everywhere. Instead of sifting the grain and throwing out the dust from it, it is much better to make a uniform allowance for it. Similarly the other two items are also reasonable ones. It therefore cannot be said that the aims and objects of the association are unlawful.

13. Without pausing to consider whether any particular item had a peculiar sanctity upon humanitarian grounds, we are clearly of opinion that the findings arrived at by the learned District Judge on this part of the case are reasonable and proper and are not open to any attack or criticism on any ground of law. We must therefore accept the finding that the so-called perquisites are neither arbitrary nor oppressive.

14. It was next contended that the plaintiffs were the victims of an unlawful conspiracy on the part of the defendants who intermeddled with and systematically prevented the due performance of contracts by third parties in favour of the plaintiffs. This part of the plaintiffs' case mainly rested upon oral evidence. The lower appellate Court discarded the statements of Madan Lal, Ajudhi, son of Khanjan and Babu Ram Sarup on the ground that they were pure hearsays and disbelieved Behari and Ajudhi, son of Paramsukh. As to Madho Ram it observed as follows:

He gave direct evidence. He stated that the committee people did tell him that if he weighed plaintiffs' goods his market would be stopped. This statement is highly damaging to the defendants.

15. But in cross-examination this witness stated as follows:

If we do not agree [to what the committee says the committee men will neither sell to nor purchase goods from us. There is no other pressure. By turning us from the market I mean that the committee-walas will not sell to or purchase goods from us. If we had not cared whether the 12 committeewalas sold or purchased goods to or from us we could have weighed goods to the plaintiffs.

16. From this it would appear that the committee people did not interfere with the freedom of this witness and what they told him was that they would withdraw their custom. This is hardly a form of pressure that can be called threat or coercion. Noor Mohammad was the witness who attempted to prove the whole of the plaintiffs' case but he made his position clear in cross-examination. He stated that

the members of the committee had told the weighmen that the market would otherwise be closed for them. By it they meant that the committee people would not purchase goods from them. He further stated that the weighmen who did not mean to deal with the committee people could weigh goods for the plaintiffs.

17. After commenting upon this evidence, the Court below came to the following conclusion:

From the evidence of these witnesses it is not proved (a) that no one is entitled to open a shop without the leave of the committee (b) that no one is entitled to deal with a shopkeeper who opens a shop without their permission, (c) that no outsider is allowed to deal with a shopkeeper who opens a shop without their permission and (d) that no weighman is allowed to deal with an outsider.

18. The Court further finds that the rule about the election of the members twice a year once in Kuar and once in Phagun, doesnot entail the consequence that every one is compelled to become a member

19. The lower appellate Court winds up its analysis of evidence with the following remarks:

There can be no doubt then that there is some sort of pressure brought to bear on members of the association, be they capitalist (the traders) or be they the labourers (weighmen) . . . Such of those traders who are members of the committee and who wished to deal with non-members are told by the committee that if they so wish they have to cease to become members. Similarly such of the weighmen who are members of the weighmen's association (part of the Traders' Association) and who wish to weigh for non-members are told that if they so wish they have to cease to become members and are further told that the patronage of the members of the Traders' Association shall be withdrawn from them.

20. From the evidence discussed above it would appear that this capitalistic combination and combination of labour puts before its members a choice between two alternatives. They put this question to the members:

Do you wish to deal with outsiders and thus be obliged to cease to be members of the association, or do you wish to continue to be members and cease dealings with outsiders?

21. Considering the many advantages by remaining as members of the Sabha as detailed in the evidence of Lachmi Narain defendant witness 1, the secretary of the Sabha, they choose the second alternative and refuse to deal with non-members. If they choose the other alternative they are first fined and then if necessary boycotted. The question is whether this is illegal. After discussing the evidence the Court dealt with the case in its legal aspect and answered the question in the negative. We agree with the view.

22. Dealing with the plaintiffs' claim for damages, the Court next proceeded to examine whether the defendants had procured certain breaches of contract with third parties for supply of goods to the plaintiffs. As to this the Court observes as follows,

The plaintiffs have given details of these several purchases but with the exception of one purchase they have not been able to prove any other. On the other hand the defendants have produced those persons whom the plaintiffs alleged to have been their vendors and these persons have denied that they

entered into any contract of sale of goods. The plaintiffs' case therefore has not been proved.

23. As regards one of the purchases referred to above it is to be observed that the Court did not intend to find and as a matter of fact did not find that the defendants procured a breach of the contract. There is no room for cavil or criticism in the finding of the Court below which appears to us to be perfectly clear and legitimate:

The question in other words is whether the defendants actually asked the vendors of the plaintiffs not to deliver goods to plaintiffs.

My answer is "not." I have already found that what the association did was that it distinctly told the plaintiffs' vendors that if they supplied goods sold to the plaintiffs they would cease to be members of the association. It must therefore be said that there was no absolute negation in this case. There was no conspiracy on the part of the association to compel the plaintiffs' vendors not to supply goods to the plaintiffs. Now there is a great deal of difference between a third person asking a party to a contract to break the contract and a third person telling the same party to contract:

You may supply goods to the plaintiffs if you wish, but if you do so we will fine you, we will boycott you and we will turn you out of the association." And this latter act was all that the defendants did.

24. Upon these findings the Court below came to the conclusion that there was no cause of action for a suit for damages or injunction against the defendants. We agree with this view. The following passage from Erle on Trade Unions, page 12, will bear quotation:

Every person has a right under the law as between himself and his fellow subjects to full freedom in disposing of his own labour or his own capital according to his own will. It follows that every other person is subject to the correlative duty arising therefrom and is prohibited from any obstruction to the fullest exercise of this right which can be made compatible with the exercise of similar rights by others. Every act causing an obstruction to another in the exercise of the right comprised within this description done, not in the exercise of the actor's own right but for the purpose of obstruction, would if damage should be caused thereby to the third party obstructed, be a violation of this prohibition.

25. We are of opinion that what is wrong in the case of an individual continues to be a wrong if committed by an association of individuals by preconcert or conspiracy and that a conspiracy consists in the agreement of two or more persons to do an unlawful act by unlawful means. This was the view taken in *Mulcahy v. Reg* [1868] 3 H.L. 306 We agree with this view.

26. We do not think that any useful purpose will be served by embarking on a critical examination of the authorities dealing with the law relating to actions for conspiracy. While the cases have a common denominator, the case-law on the

subject is very vast and the features of each case vary with the kaleidoscopic turn of circumstances. We shall however indicate the principles laid down in the important and oft-cited cases.

27. In *Limley v. Gye* 2 El. & B.L. 216, it was held that an action would lie for malicious procurement of the breach of any contract, if by the aforesaid procurement, damage was intended to result and did result to the plaintiff. Crompton, J., observed:

Where two or more parties were concerned in inflicting such injury, an indictment, or a writ of conspiracy at common law, might perhaps have been maintainable and where a writ of conspiracy would lie for an injury inflicted by two, an action on the case in the nature of conspiracy will generally lie; and in such action on the case, the plaintiff is entitled to recover against one defendant without proof of any conspiracy, the malicious injury and not the conspiracy being the gist of the action.

28. In the great case of *Allen v. Flood* [1898] A.C. 1, it was decided:

that an act lawful in itself is not converted by a malicious or bad motive into an unlawful act, so as to make the doer of the fact liable to civil action; and therefore where the appellant had violated no legal right of the respondent, done no unlawful act and used no unlawful means in procuring the respondent's dismissal, his conduct was not actionable however malicious or bad his motive might be.

29. According to Lord Watson, there are only two grounds of legal liability: (1) If a person knowingly and for his own ends induces the commission of an actionable wrong; and (2) where the act induced is within the right of the immediate actor but may be to the detriment of a third party and the inducer procured his object by the use of illegal means directed against the third party.

30. Lord Macnaghten expressed his opinion in *Quinn v. Leathern* [1901] A.C. 495 that if all matters of merely passing interest be eliminated, *Allen v. Flood* [1898] A.C. 1 had merely repeated what had been laid down in *Stevenson v. Newnham* [1853] 13 C.B. 285 namely, that an act which does not amount to a legal injury cannot be actionable because it is done with a bad intent.

31. In *Mogul Steamship Co. Ltd. v. MacGregor* [1889] 23 Q.B.D. 598 it was held by the majority of the Judges that the association being formed by the defendants with the view of keeping the trade in their own hands and not with the intention of ruining the trade of the plaintiffs, or through any personal malice or ill will towards them, was not unlawful, and that no action for conspiracy was maintainable. Bowen, L.J., enunciated the law in the following terms:

There seems to be no burdens or restrictions in law upon a trader which arise merely from the fact that he is a trader and which are not equally laid on all other subjects of the Crown. His right to trade freely is a right which the law recognizes and encourages, but it is one which places him at no especial

disadvantage as compared with others. No man whether trader or not, can however justify damaging another in his commercial business by fraud or misrepresentation. Intimidation, obstruction and molestation are forbidden; so is the intentional procurement of a violation of individual rights, contractual or other, assuming always that there is no just cause for it.

32. Again, at p. 617:

The truth is that the combination of capital for the purposes of trade and competition is a very different thing from such a combination of several persons against one, with a view to harm him, as falls under the head of indictable conspiracy. There is no just cause or excuse in the latter class of cases. There is such a just cause or excuse in the former.

33. We have no hesitation in holding that this view does not militate against the provisions of Section 27, Contract Act and that the basic principle of the two is not divergent.

34. In *Temperton v. Russell* [1893] 1 Q.B. 715, Lopes, L.J., observed:

I will state shortly what I believe to be the law on the subject. The result of the authorities appears to me that a combination of two or more persons to induce others not to deal with a particular individual, or enter into contracts with him, if done with the intention of injuring him is an actionable wrong if damage results to him therefrom.

35. The same rule was laid down in *Quinn v. Leathern* [1901] A.C. 495, which has already been referred to Lord Macnaghten observed (at p. 510).

Speaking for myself, I have no hesitation in saying that I think the decision in *Allen v. Flood* [1898] A.C. 1, was right, not on the ground of malicious intention—that was not, I think, the gist of the action but on the ground that a violation of legal right committed knowingly is a cause of action and that it is a violation of legal right to interfere with contractual relations recognized by law if there is no sufficient justification for the interference.... The only other question is this: Does a conspiracy to injure, resulting in damage, give rise to civil liability? It seems to me that there is authority for that proposition and that it is founded on good sense...A man may resist without much difficulty the wrongful act of an individual. He would probably have at least the moral support of his friends and neighbours; but it is a very different thing (as Lord Fitzgerald observes) when one man has to defend himself against many combined to do him wrong.

36. Lord Brampton with his characteristic force and clearness expresses himself as follows:

Much consideration of the matter has led me to be convinced that a number of actions and things not in themselves actionable or unlawful, if done separately without conspiracy may, with conspiracy, become dangerous and alarming just as a grain of gunpowder is harmless but a pound may be highly destructive, or the

administration of one grain of a particular drug may be most beneficial as a medicine but if administered frequently and in larger quantities with a view to harm may be fatal as a poison.

37. In *South Wales Miners Federation v. Glamorgan Coal Co., Ltd.* [1905] A.C. 239, it was held

that procuring a breach of contract is an actionable wrong unless there be justification for interfering with the legal right. According to Lord Lindley malice was not the gist of the action.

38. Where the word "malice" has been used in some of these cases, it must be held to connote no more than an intention to commit an unlawful act without reference to spite or ill-feeling, *Conway v. Wade* [1909] A. C. 506 and *Hodges v. Webb* [1920] 2 Ch. 70, are not very helpful cases since they turned more particularly upon a construction of certain words in Section 3, Trade Disputes Act of 1906. But the last mentioned case is relevant in so far that it was held therein that in the absence of conspiracy or unlawful combination, a firm or even emphatic statement by one person that unless the person whom he is addressing consents to the adoption of a particular course which he can lawfully take, the speaker would do that which he was lawfully entitled to do, was not a threat for which the speaker could be held liable at law.

39. In *Larkin v. Long* [1915] A. C. 814, Lord Atkinson is reported to have observed:

The fact that members of a trade union are merely acting in obedience to a rule of their union believed by them to be for their benefit is no defence to an action for the breach of any contracts they have entered into and still less is it a defence to the wilful and malicious infringement in combination of legal right of personal freedom of action which they claim for themselves, but which others are entitled to quite as fully and as absolutely as they are.

40. In *Ware & De Freville, Ltd. v. Motor Trade Association* [1921] 3 K.B. 40, the finding was that the evidence produced by the plaintiffs was quite insufficient to establish the case of a conspiracy to injure. The following observation finds a place in the judgment:

The decisions in *Moquel Steamship Co. Ltd., v. McGregor*, *Allen v. Flood* and *Quinn v. Leathern* are all in agreement to this extent, that a combination of persons to do some act, the object of which is to injure some third person is wrongful and actionable; so too is a combination of persons to do some act by unlawful means which will have the effect of injuring some third person.

41. If there is a combination made and threats used for the legitimate protection of trade interests no action would lie.

42. In *Reynolds v. Shipping Federation Ltd.* [1924] 1 Ch. 28, it was held that where an agreement is entered into, not from a malicious desire to inflict loss on

an individual or class of individuals, but from a desire to advance the business interests of employers and employed alike by maintaining the advantages of collective bargaining and control it was not unlawful and no action for conspiracy was maintainable by the plaintiff:

The agreement or combination was not against a particular individual but merely operated to exclude such individuals as might not from time to time satisfy a qualification which was within the reach of anyone who desires employment.

43. In *Sorrell v. Smith* [1925] A. C. 700, it was ruled that a combination of two or more persons for the purpose of injuring a man in his trade is unlawful, and if it results in damage to him is actionable. If the real purpose of the combination is not to injure another but to forward or defend the trade of those who enter into it then no wrong is committed and no action will lie although damage to another ensues, provided that the purpose is not affected by illegal means. Viscount Cave, L.C., observed:

There is some authority for the view that what is unlawful in two is not lawful in one, and that the circumstance that two or more persons combine to cause the injury, while it may be very relevant, as evidence of the purpose and, as an aggravation of the damage, is not itself an essential element in the cause of action.

44. There exists no uncertainty as to the legal principles regulating the rights of the parties to this action and the following propositions may be taken to be the settled law:

(1) Every person has a right to a free course of trade and to conduct his business upon his own lines even though it results in an interference with the business of another person to his detriment. (2) If a person or a combination of persons unlawfully procure a breach of contract, the matter is actionable, provided that damage accrues therefrom: (3) Malice in the sense of spite or ill-feeling is not the gist of the action. An act that is legal in itself does not become illegal because it is prompted by an indirect or sinister motive. (4) Even though the dominating motive in a certain course of action may be the furtherance of one's business or of one's interest, one is not entitled to interfere with another man's method of earning his living by illegal means. Illegal means may either be means that are illegal in themselves or that may become illegal because of conspiracy where they would not have been illegal if done by a single individual. (5) An unlawful interference with the business of another person with intent to hurt that person is actionable provided that damage results from interference. A lawful interference by unlawful methods with the same object and producing similar results is equally actionable.

45. We have set out in detail the findings of the learned Judge and his reasons in support thereof. It is perfectly clear that the defendants did not unlawfully or by illegal means procure any breaches of contract in favour of the plaintiffs. There was no conspiracy on the part of the defendants to compel the plaintiffs' vendors

not to supply goods to the plaintiffs. A certain amount of pressure was brought to bear upon their constituents the object of which was that if the latter wished to continue to be members of the association they had to obey the edicts of the association and to cease to deal with outsiders. These persons had a choice of action. They were not the victims of any coercion on the part of the defendants. Where a person has a choice of one or other of two courses with their attendant advantages or disadvantages, coercion is not necessarily one of the elements involved in the transaction. There was no organized conspiracy on the part of the defendants to do harm to the plaintiffs. The association of the defendants was formed with the primary object of keeping the trade in their own hands and not with the intention of ruining the trade of the plaintiffs. The association therefore was not unlawful and there was no cause of action for a claim founded upon conspiracy. The plaintiffs are therefore not entitled to the relief claimed.

46. We accordingly dismiss this appeal with costs, including in this Court fees on the higher scale.