
(1953) 09 GAU CK 0001
In the Gauhati High Court
Case No : Civil Rule No. 174 of 1953

G.C. Bezbarua

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 19-09-1953

Acts Referred:

Assam Civil Rules, 1953 — Rule 144
Assam General Clauses Act, 1915 — Section 4(17)
Bengal, North- Western Provinces, Agra and Assam Civil Courts Act, 1887 — Section 3
Civil Procedure Code, 1908 (CPC) — Order 19 Rule 3, 2
Constitution of India, 1950 — Article 14, 19(1), 226, 236
General Clauses Act, 1897 — Section 3(15)
Industrial Disputes (Appellate Tribunal) Act, 1950 — Section 34, 7
Industrial Disputes Act, 1947 — Section 10, 15, 17, 17A, 17A(1)

Citation : (1953) 09 GAU CK 0001

Hon'ble Judges : Sarjoo Prosad, C.J;H. Deka, J

Bench : Division Bench

Advocate : N.N. Phukan and S.R. Khaund, for the Appellant; S.M. Lahiri, A.G., D.N. Medhi, Sr. G.A. and R.K. Goswami, Jr. G.A., for the Respondent

Judgement

Sarjoo Prosad, C.J.—This application has been presented under Articles 226 and 227 of the Constitution of India.

The Petitioner, Sri G.C. Bezbarua, is the proprietor of the Narayanpur Tea Estate in the District of Sibsagar. He prays for a Writ directing the Opposite Party not to enforce an award, dated. 19-9-52, which, according to the Petitioner, is null and void and, without jurisdiction.

The award in question was given by the Industrial Tribunal of Assam presided over by one Mr. U.K. Gohain, a retired Additional District Judge The Tribunal is not a party to this petition, but the persons impleaded as Opposite Party are the State of Assam and two of the workmen in the Tea Estate in whose favour the award was obtained.

2. The facts stated in the petition are somewhat obscure and confused and they

have to be gleaned from the award itself and the various annexures which form part of the petition.

Briefly put, it appears that the Narayanpur Tea Estate, of which the Petitioner claims to be the owner, originally formed part of a larger tea estate, called Panbari Tea Estate, jointly owned by the Petitioner and another co-sharer. Owing to differences between these co-sharers, there was a conciliation proceeding on 17-12-51 held by the Labour Commissioner, as a result of which the parent estate was divided and the present tea estate was parcelled out and allotted to the Petitioner. The workers in the original tea estate were also distributed between the parties. This was done apparently with the consent of all the parties concerned.

The Opposite Party, Boloram Saikia, the Hazari Mohori, and Damborudhar Saikia, the Typist, fell in the group of employees allotted to the estate of the Petitioner. On 31-3-52, the Petitioner passed an order transferring the Typist, Damborudhar Saikia, to Govindapur Tea Estate, another tea estate under the Petitioner's management, and on the employee's refusal to carry out the order the Petitioner dismissed him with effect from 1-5-52. The Petitioner later also served a discharged notice on 6-5-52 on the Opposite Party, Boloram Saikia, terminating his service with effect from the 1st of July 1952 and offering him one month's pay.

The Petitioner alleges that he suspected these workmen of fostering discontent amongst the labourers working in the tea estate and of being responsible for all the disputes which arose from time to time and which even led to the closing of the tea garden for a period. The reason evidently given for the discharge notice was lack of finance in the tea estate.

The Union, Jorhat Jila Chah Mazdoor Sangha, representing the workmen, protested against the aforesaid steps taken by the management, and a dispute having thus arisen, the Labour Commissioner held Conciliation Proceedings at Jorhat on 26-1-52. The attempt at conciliation failed.

The dispute was then referred by the State Government to the industrial Tribunal for adjudication. The Tribunal gave its award on 19-9-52 directing the employees to be reinstated on the terms stated therein, and further that they should be paid their wages due by the management from April, 1952. The award was published in the local official Gazette on 15-10-52.

3. It appears that the tea estate had been already mortgaged by the Petitioner to the Assam Co-operative Apex Bank Ltd., which took possession of the garden and had been managing the same through the East India Planters' Co-operative Ltd., from the beginning of the year, 1953. Annexure "C" of the petition shows that the Petitioner agreed that until the entire dues of the Bank were liquidated or until such other earlier date as the Bank might agree, the proprietor should not interfere with the management of the garden.

4. For the purpose of implementing the award, a series of correspondence took place between the Labour Commissioner, Assam, on the one hand and the Assam Co-operative Apex Bank Ltd., on the other. Annexures "A" and "B" show that by a letter, dated 2-9-53, the Bank suggested that the Petitioner who had no interest in the proceedings before the Tribunal, did not defend the case properly, and that the Bank should have been made a party before any award could be given, and that in view of the changed circumstances, the Government should refer the award to the Industrial Tribunal for a fresh decision as contemplated by Clause (4) of Section 19, Industrial Disputes Act (Act 14 of 1947). The Government did not agree to the procedure suggested.

The Bank then made a further representation to the Minister in charge of the Labour Department praying for such reference to the Tribunal for re-consideration and modification of the award, but failed to obtain a favourable response. In that petition also the Bank alleged that the award in question was passed ex parte because the proprietor of the Narayanpur Tea Estate, Sri G.C. Bezbarua (meaning the Petitioner) "deliberately neglected the proceedings presumably with the idea that he might not have to abide by any award that may be passed". This representation (Annexure "C") does not appear to bear any date.

5. On the 14th of August last the Labour Officer moved the Government of Assam to lodge a complaint for the prosecution of the Petitioner u/s 29, Industrial Disputes Act for breach of the terms of the award which was binding on him.

It then appears that the Apex Bank Ltd., wrote to the Chairman of the East India Planters Co-operative Ltd., in connection with the reinstatement of the workmen concerned (vide Annexure D). As it is stated in the counter-affidavit filed on behalf of the Government, the Bank asked Government for time up to 30-9-53 within which to implement the terms of the award, and Government accordingly instructed their Legal Adviser to move the Court for an adjournment in the case instituted against the Petitioner, and if the management implemented the terms of the award, to withdraw the prosecution with the permission of the Court.

But, instead of complying with the terms of the award, the Petitioner presented this application on the 23rd November last and obtained a Rule nisi. Counter-affidavits have also been filed on behalf of the workmen concerned controverting some of the allegations made against them.

6. The learned Advocate-General has raised several preliminary objections to the maintainability of the application and pointed out that the Tribunal whose award is challenged is not a party to this application, nor have the Apex Bank Ltd. and the East India Planters Co-operative Ltd. been impleaded as parties.

He submits that the Tribunal was a necessary party if the Writ was to go to the Tribunal concerned quashing its award. He relies upon a decision of this Court in-- Ghanashyam Das and Others Vs. The State of Assam and Others, where it

was pointed out that the authority whose order was called in question was a necessary party to an application under Article 226 of the Constitution. A reference was made in that case to a passage in Ferris' "Extraordinary Legal Remedies", where the learned author observed thus:

Those parties whose action is to be reviewed and who are interested therein and affected thereby and in whose possession the record of such action remains, are not only proper but necessary parties. It is to such parties that notice to show cause against the issuance of the Writ must be given, and they are the only parties who make return or who may demur. The omission to make parties those officers whose proceedings it is sought to direct and control, goes to the very root of the relief sought. But, in order that the Court may do ample and complete justice and render a judgment which will be binding on all persons concerned, all persons who are parties to the record, or who are interested in maintaining the regularity of the proceedings of which a review is sought, should be parties Respondent.

The principle underlying that decision cannot be gainsaid. That was a case where the order of the Excise Minister was sought to be challenged and it was held that the Minister who passed the orders and the existing Appellate Authority which succeeded the Revenue Minister were both necessary parties to the application.

In the present case, it is urged in reply that the Tribunal need not be made a party at all, firstly, because the records have already been brought to this Court, and, secondly, because the award, by itself, is of no avail unless the appropriate Government proceeds to publish it within the terms of Section 17, Industrial Disputes Act. The law contemplates that the appropriate Government in its discretion, may refuse to give effect to the whole or any part of the award. It is, therefore, the action of the Government which directly affects the Petitioner and makes the award binding on him, and in those circumstances, the fact that the Government of Assam is a party to the application should be considered to be quite adequate.

Moreover, it is the Petitioner who is adversely affected by the Award and against whom criminal prosecution has been launched for its non-implementation. Therefore so long as he can effectively sue for his remedy against those responsible for enforcing it the fact that some other persons have not been also joined as parties will not defeat his application. These distinctions are not without their due force; but even if the defects pointed out above were fatal to this application, it was open to this Court to allow the Petitioner to make necessary amendments by impleading those persons as parties.

7. Mr. Lahiri then contends that the affidavit of the Petitioner is not in order. The verification to the affidavit shows that whatever is stated in paragraphs 1-12 of the petition is true to the "knowledge, belief and information" of the deponent. It does not indicate what part of it is true to the knowledge of the deponent and what part of it is true to his belief and information; nor does it disclose the

source of his information, if any.

I regret to observe that the affidavit and even the facts stated in the petition have been drawn up in a perfunctory manner and without due observance of the rules of procedure. It has been repeatedly pointed out that verification ought not to be slipshod and should invariably be modelled on the lines of Order 19, Rule 3, Code of Civil Procedure, whether the Code applies in terms or not; and when the matter deposed to is not based on the personal knowledge of the deponent, the source of information should be clearly disclosed. Omission to observe these formalities may be visited with the consequence of rejection of the affidavit. See, for instance,-- *The State of Bombay Vs. Purushottam Jog Naik*, The Court would have been justified in throwing out the application on this ground in limine, but since a Rule nisi had already been obtained and the defect could be cured by giving an opportunity to the Petitioner to swear a fresh affidavit clarifying the position, we decided to hear the application on merits.

At the same time, the fact cannot be ignored that although the award was notified in October 1952, the Petitioner made no effort to present this application until as late as 19-11-1953.

8. Mr. Phukan, on behalf of the Petitioner, has pressed the application with confidence and tenacity. He has raised several points in support of his application, some of which I did not find it easy to comprehend because of there being no adequate foundation for them on the facts stated in the petition. I shall, however, proceed to deal with them, in so far as I find them necessary for the disposal of this application.

9. The substantial question which he urged for our consideration is that the constitution of the Industrial Tribunal was bad and, as such, it could not render any valid award. This objection has a two-fold aspect. The first aspect relates to the competence of Mr. Gohain to be a member of the Tribunal.

Section 7 of the Industrial Disputes Act deals with the constitution of industrial tribunals and the relevant provisions of that Section which require consideration, omitting the rest, may be quoted thus:

7. Industrial Tribunals.--(1) The appropriate Government may constitute one or more Industrial Tribunals for the adjudication of industrial disputes in accordance with the provisions of this Act.

(2) A Tribunal shall consist of such number of independent members as the appropriate Government may think fit to appoint and where the Tribunal consists of two or more members, one of them shall be appointed as the Chairman thereof.

(3) Where a Tribunal consists of one member only, that member, and where it consists of two or more members, the Chairman of the Tribunal, shall be a person who:

- (a) is or has been a Judge of a High Court; or
- (b) is or has been a District Judge; or
- (c) is qualified for appointment as a Judge of a High Court.

Provided that no appointment under this Sub-section to a Tribunal shall be made of any person not qualified under Clause (a) or Clause (b) except with the approval of the High Court of the State in which the Tribunal has, or is intended to have, its usual seat....

It is argued that Mr. Gohain was not a District Judge at all and did not fulfil the requirements of Clause (b) of Sub-section (3) of that Section.

It is not disputed that Mr. Gohain retired as an Additional District Judge, but it is contended that an Additional District Judge is not a District Judge, as contemplated by the Section. The word "District Judge" has not been denned in the Act itself and reliance is, therefore, placed on the General Clauses Act, Section 3(15), for the interpretation of that expression. There it has been denned to mean the Judge of a principal Civil Court of original jurisdiction, but not including a High Court.

In the Assam General Clauses Act, Section 4(17), (Act 2 of 1915), "District Judge" means the Judge of a District Court. The CPC (Act 5 of 1908) defines a "District" as meaning the local limits of the jurisdiction of a principal Civil Court of original jurisdiction, hereinafter called a District Court and a "Judge" means the Presiding Officer of a Civil Court (vide Clauses (4) and (8) of Section 2 of the Code).

None of these Definitions, in my opinion, restrict the meaning of the term "District Judge" so as to exclude an Additional District Judge from its denotation. In Section 3 of the Bengal, Agra and Assam Civil Courts Act, 1887 (Act 12 of 1887), classes of Civil Courts under the Act have been specified and the Court of an "Additional Judge" is, of course, put under a separate classification. But at the same time Section 8 of the Act very clearly provides that when the business pending before any District Judge requires the aid of Additional Judges for its speedy disposal, Additional Judges may be appointed, and the Additional Judges so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to them, and in the discharge of those functions they shall exercise the same powers as the District Judge.

It may be that for certain administrative purposes and for purpose of transfer, the Court of the Additional District Judge may be subordinate to that of the District Judge. Nevertheless it is apparent that the Additional District Judge exercises the same judicial powers and is, for judicial purposes, an officer of co-ordinate jurisdiction.

Mr. Phukan, of course, desires us to put a restricted meaning on the term "District Judge" as used in Section 7, Industrial Disputes Act, but I do not feel

sufficiently persuaded to do so. The Act is a beneficent measure meant to provide for speedy and convenient disposal of Industrial disputes in order to help the economic growth of the country, and it should be the endeavour of the Court to give an interpretation to the legislation so as to help it achieve its purpose. The Act contemplates that with the advance and progress of industrial projects, the State Government may be called upon to constitute several Industrial Tribunals. If, therefore, a narrow interpretation is given to the section, the choice of the Government, in constituting such Tribunals, would be unduly curtailed, specially in such States as the State of Assam where the number of District Judges is so few.

Chief Justice Patanjali Sastri, in-- State of Madras Vs. C.P. Sarathy and Another, made the following memorable observation:

In view of the increasing complexity of modern life and the interdependence of the various sectors of a planned national economy, it is obviously in the interest of the public that labour disputes should be peacefully and quickly settled within the frame-work of the Act rather than by resort to methods of direct action which are only too well calculated to disturb the public peace and order and diminish production in the country, and Courts should not be astute to discover formal defects and technical flaws to overthrow such settlements.

It seems to me that the whole object of the enactment was to provide, amongst others, for officers of the experience and status of a District Judge to preside over such Tribunals and it would be, therefore, unreasonable to exclude an Additional District Judge from that category, who as I have shown, for all practical purpose discharges the same judicial functions as a District Judge.

It is somewhat significant that there are no decisions or precedents directly in point. Mr. Lahiri on behalf of the Petitioner submits that there are various cases where notifications of this kind appointing Additional District Judges to be members of such Tribunals have been issued and no exception has been taken to the constitution of such Tribunals.

He refers, for instance to a decision of the Federal Court in-- AIR 1949 148 (Federal Court) . It appears from the notification in that case that the Governor was pleased to appoint under Sections 7 and 10 of the Industrial Disputes Act an Additional District Judge, to be the Tribunal for adjudication of the disputes arising therein, and although various other objections were taken to the notification, yet no objection was taken on this ground. He also refers by way of illustration and analogy to another decision of the Supreme Court in- Rameshwar Bhartia Vs. The State of Assam, where an attempt to make a distinction between a Deputy Commissioner and an Additional Deputy Commissioner was held to be without any warrant.

I have already held, there is no cogent reason for adopting the contention advanced by the learned Counsel for the Petitioner. In my opinion, Mr. Gohain was fully competent within the meaning of Section 7(3)(b) of the Act and he

could validly constitute the Tribunal without the approval of the High Court having been obtained to his appointment.

10. The second aspect of the case refers to the manner in which the notification making the appointment has been made. The body of the application before us does not contain the relevant facts on the point. The Annexures to the petition, however, give the various notifications making the appointment.

Annexure E shows that under Notification No. GLR 126/51/10, dated 26-4-51, published in the Gazette of May 2, 1951, the Governor of Assam, in exercise of the powers conferred by Sub-section (1) of Section 7, Industrial Disputes Act, 1947 (Act 14 of 1947), appointed "on retirement, Sri Umakanta Gohain, Additional District Judge, to constitute an Industrial Tribunal for the adjudication of Industrial disputes in Assam". This notification cancelled an earlier notification, dated 5-10-1949 which is not on the record. I have, however, taken judicial notice of it as published in the Gazette.

It shows that in exercise of the powers conferred by Sub-section (1) of Section 7 of the Act, the Governor of Assam had. appointed Sri I.P. Barua, Additional District and Sessions Judge (retired) to constitute an Industrial Tribunal for the adjudication of industrial disputes in Assam. The notification, dated 26-4-1951, in its turn was cancelled by another notification No. GLR.126/51/27, dated 28-5-1951, published in the Assam Gazette of 6-6-1951 (vide Annexure F). The notification runs thus:

Whereas the services of Sri I.P. Barua, Additional District and Sessions Judge (retired) with whom an Industrial Tribunal for the adjudication of the industrial disputes in Assam was constituted under Sub-section (1) of Section 7 of the Industrial Disputes Act, 1947 (Act XIV of 1947) in this Department Notification No. GGN. 219/46/48 dated the 5th October, 1949 are not available with effect from the 1st April, 1951:

Now, therefore, in exercise of the powers conferred by Sub-section (2) of Section 8 of the said" Act, the Governor of Assam is pleased to appoint, on retirement, Sri Umakanta Gohain, Additional District Judge, in place of Sri I.P. Barua to constitute the said Tribunal. The appointment of Sri Umakanta Gohain takes effect from the 2nd May 1951.

This cancels notification No. GLR.126/51/10 dated 26th April, 1951.

Mr. Phukan's contention, if I understand him aright, is that the two earlier notifications constituting the Tribunal having been cancelled, there was no Tribunal in existence and there was evidently no warrant for the last notification u/s 8(2) of the Act which relates to filling of vacancies. The manner in which these notifications have been made is undoubtedly confusing and Government would have been well advised to apprehend the true legal position before issuing such notifications.

It may be stated that Sub-section (1) of Section 7 authorises Government to

constitute one or more Industrial Tribunals for the adjudication of industrial disputes. Sub-section (2) of Section 8 provides that if for any reason a vacancy occurs in the office of the Chairman or any member of the Tribunal, the appropriate Government may appoint another independent person in accordance with Section 7 of the Act to fill the vacancy. The reference to Section 8(2) in the last, notification is, therefore; clearly misleading. The notification, however, proceeds to say that Sri Gohain is appointed to constitute the Tribunal

It is to be noticed that the Tribunal consists of only one member and the confusion may be partially attributable to this factor. The learned Advocate-General submits that the power to appoint a Tribunal is clearly independent of the power to appoint its members, and by virtue of the earlier notifications, which were of a composite character, the Tribunal had already come into existence and, therefore, the reference to Section 8(2) of the Act was not altogether inapposite.

The cancellation of the notification, according to the learned counsel, affected only the personnel of the Tribunal, and not the existence of the Tribunal itself. Be that as it may, one has to look to the substance of the notification, and not merely to its form. The Court has to read the order as a whole. Essentially the notification shows that Mr. Gohain is not merely appointed a member of the Tribunal but constitutes the Tribunal itself. Composite notifications of the character mentioned above constituting the Tribunal and simultaneously appointing the member thereof are not unknown and have been held to be valid in several cases (see, for instance, the decision in--"AIR 1949 PC 148 (D)).

If Government have the power to constitute the Tribunal, as Government certainly have, and if that power has been in effect exercised, the reference to any irrelevant Section in the notification or the omission to refer to any relevant Section is hardly material. In fact, the notification need not have referred to any Section at all. It is laid down in Section 9(1) of the said Act that an order of the, appropriate Government appointing any person as a member of the Board or Tribunal shall not be called in question in any manner. Though the language of the Section is somewhat broadly worded and cannot override the powers of this Court to question the appointment of persons not possessing the requisite statutory qualification, the Section is at any rate a conclusive answer to the contention that the form of the notification affects the validity of the order appointing Mr. Gohain to constitute the Tribunal. This aspect of the case, therefore, is also without any substance.

The reference of the present dispute to the Tribunal was certainly made long after this last notification shown in Annexure P. The reference was made by notification No. GLR. 61/51/159, dated 11-8-1952. The Tribunal, therefore, was in existence when this reference was made and Mr. Gohain who constituted the Tribunal had complete jurisdiction to adjudicate and give an award deciding the industrial dispute between the parties. The application itself shows that the mortgagee Bank, in its correspondence with Government, did not challenge the

constitution of the Tribunal. On the contrary, it requested the Government to refer the award back to the Tribunal for a review or reconsideration thereof. The Petitioner has not said that the Bank had no authority to represent him or that it was acting in derogation of his interest. The Bank is said to be actually in charge of the Management so long as the mortgage dues are not paid, and u/s 18(c), Industrial Disputes Act, the award is binding on all heirs, successors and assigns of the Petitioner. It is only when the Bank failed to induce Government to reconsider the matter and prosecution was launched against the Petitioner that the latter thought it necessary, almost at a very late stage, to file this application challenging the award and the constitution of the Tribunal on the grounds aforesaid.

11. It is then urged that the award was opposed to natural justice, the dispute having been heard ex parte on a date which was not the date fixed for hearing.

Here again the facts are not available from the petition, but the attack is based on the recitals in the Award itself. The Award shows that the first date fixed for the sitting of the Tribunal to deal with the dispute was 11-9-1952. This date was duly notified to the parties, but subsequently Government declared it to be a holiday. The Tribunal after a short sitting on the date and at the appointed place, there being no time to notify the parties, adjourned to the following day, i.e. the 12th. On that date, both parties appeared; the 1st party Respondents filed their was and served a copy thereof on the Petitioner's authorised agent. The Petitioner applied for time and the sitting adjourned for the 13th, the next day.

On that date, no one appeared for the Petitioner and no steps were taken on his behalf. The 1st party was present and after waiting for some length of time, the Tribunal had no alternative but to proceed to hear the dispute ex parte. In adjudication under the Industrial Disputes Act where speedy settlement of such disputes is the very essence of the matter, it is futile to expect that long and elaborate adjournments would be granted for any small step that a party may intend to take, as litigants quite illegitimately have been accustomed to in other civil proceedings. In the present case, the Tribunal did sufficiently accommodate the Petitioner and he has to thank himself if on account of his non-appearance the Tribunal had to adjudicate the dispute and give the award ex parte. He cannot now complain that the award is opposed to natural justice. Indeed the Annexure "C" to his petition, on which he himself relies, recites that the Petitioner deliberately neglected the proceedings. This objection, therefore, is altogether baseless.

12. Mr. Phukan also contends that the Award has not been validly published and it having expired long since, it cannot have any legal effect. The argument appears to be based on some misconception of the true legal position.

The Award is dated 19-9-52 and was published in the local official Gazette on 15-10-1952. Section 15 of the Industrial Disputes Act defines the duties of Tribunals. As the Section originally stood, it contained various Sub-section but by

Section 34 read with the schedule to the Industrial Disputes (Appellate Tribunal) Act of 1950, the Section was amended & the various Sub-sections were omitted. It also introduced a new Section 17A, which is relevant to the present discussion. Exception is taken to the manner of amendment by a separatg statute, but the statute in question is a complementary legislation and so long as it covers the appropriate field of legislation it cannot be effectively challenged.

Section 15, as it stands now, enacts that when an industrial dispute has been referred to a Tribunal for adjudication, it shall hold its proceedings expeditiously and shall, as soon as practicable on the conclusion thereof submit its award to the appropriate Government Section 17 provides for publication of the award. It says that the award of the Tribunal, together with any minute of dissent, shall, within a period of one month from the date of its receipt by the appropriate Government, be published in such manner as it thinks fit.

Section 17A, Sub-section (1), says that the Award shall become enforceable on the expiry of thirty days from the date of its publication u/s 17. X need not refer to the proviso. Sub-section (3) of that Section further says that the Award shall come into operation with effect from such date as may be specified therein, but where no such date is specified, it shall come into operation on the date when the Award becomes enforceable under Sub-section (1).

Here, the Award was published within one month of its date by the appropriate Government and became enforceable and came into operation, on the clear terms of the above provisions, on the expiry of thirty days from the date of its publication. I do not see how any other inference is possible. Mr. Phukan seems to place his reliance on the terms of the old Section 15 which no longer exists and upon some notification relating to some other case which is supposed to be based on the old Section.

We are not concerned to see whether the Govt. has or has not followed the correct procedure in any other case. We have only to see whether the present publication is in order, and I can see nothing wrong about it. I thought at one stage it was even suggested that the notification publishing the Award was bad as being discriminatory under Article 14 of the Constitution. The learned Counsel has incidentally also referred to Section 19(3) of the Act to show that the Award has expired and is now dead for all purposes. The Section says that an Award shall, subject to just exceptions, remain in operation for a period of one year. The period of one year may have expired but the liabilities or obligations incurred under the Award may still continue to subsist. It would be too much to assume that with the expiration of the Award liabilities already incurred are at an end.

13. Mr. Phukan Anally attacks the validity of the legislation itself. He argues that the Industrial Disputes Act is an inroad upon the right of a person to follow his trade, business or avocation according to his choice without any interruption toy outside agency. He submits that it is open to the Petitioner to dismiss or order about his employees according to his will and what he considers to be in the

interest of the tea estate; and inasmuch as the legislation purports to take away this freedom of action of the Petitioner, it is an unwarranted interference with his fundamental right and is bad under Article 19(1)(g) of the Constitution. Clause (6) of the Article itself provides a just exception to the fundamental right guaranteed under Sub-clause (g) and enacts that nothing in the Clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said Sub-clause (g).

The Industrial Disputes Act is a legislation calculated to ensure social justice to both employers and employees and advance the progress of industry by bringing about the existence of harmony and cordial relationship between the parties. The legislation in question has held the field ever since 1947 and has not been pronounced to be ultra vires.

In answer to the above contention of the learned counsel, one is tempted to quote a significant passage from Julian Huxley. Julian Huxley, on the Economic Man and Social Man" says:

Many of our old ideas must be retranslated, so to speak into a new language. The democratic idea of freedom, for instance, must lose its nineteenth century meaning of individual liberty in the economic sphere and become adjusted to new conceptions of social duties and responsibilities. When a big employer talks about his democratic right to individual freedom, meaning thereby a claim to socially irresponsible control over a huge industrial concern and over the lives of tens of thousands of human beings whom he happens to employ, he is talking in a dying language.

The above-quoted passage has already received the hall-mark of judicial approval see- *The Sree Meenakshi Mills Ltd. Vs. The State of Madras and Others*, and-- *Dindigul Skin Merchants' Association and Others Vs. The Industrial Tribunal, Madurai and Others*, In another recent decision of the Madras High Court in-- *Indian Metal and Metallurgical Corporation Vs. Industrial Tribunal, Madras and Another*, the learned Judges, while construing Article 19(1)(g) of the Constitution with reference to the Industrial Disputes Act, stated thus:

We think it is equally clear that in the interests of a large Section of the public, namely, industrial workers, Legislature may provide, whether directly or indirectly through administrative bodies for the fixing of reasonable and adequate wages and generally regulate the condition of service. The Industrial Disputes Act is evidently such piece of legislation. We fail to see how the Act, as such, and in toto can be held to be void as being inconsistent with the Constitution. In the absence of a guarantee of the freedom of contract, we do not think it unreasonable to presume that the freedom of contract can, to a certain extent, be curtailed if such curtailment is reasonable and in the general interests of the general public. This may be necessary in regard to the relationship between the

employer and employees in a large industrial concern where it is clear that the contracting parties, namely, the employer and the employee, do not stand on the same level.

It may be that in some cases the Labour Unions have not appreciated the true spirit and purpose underlying this wholesome piece of legislation and have taken advantage of it to foster strikes and encourage indiscipline, insubordination and inefficiency. It cannot be gainsaid that these Unions have to realise their responsibility in the present social order and the power which they possess for the good of the community.

In the larger interest of Labour and Industry, it is obligatory upon these Unions to see that the legislation is not abused. While the legislation seeks to protect their rights and privileges, it is equally their duty to co-operate with the management in suppressing any tendency to insubordination and indiscipline which may undermine the efficiency of the workers and lead to a collapse of industrial organisations to the detriment of both the employers and employees. These considerations, however, have nothing to do with the validity of the Legislation itself & it cannot be said to be unreasonable because it provides an adequate machinery for speedy and satisfactory settlement or adjudication of industrial disputes between employers and employees.

14. The learned Advocate General has rightly contended that the Petitioner had a right of appeal u/s 7 of the Industrial Disputes (Appellate Tribunal) Act, 1950 (Act 48 of 1950). This right is provided by Section 7 of the Act which enacts, subject to the conditions mentioned therein, that an appeal shall lie to the Appellate Tribunal from any award or decision of an Industrial Tribunal provided the appeal involves a substantial question of law.

The Petitioner's counsel suggests that the award being an *exparte* award, he had no right of appeal. There is no such limitation provided in Section 7 itself. There is, therefore, absolutely no justification for the Petitioner not having availed himself of the remedy by way of appeal which the law provided, instead of applying to this Court for the issue of a Writ. It has been repeatedly observed that Article 226 is an extraordinary remedy and is not intended to be a substitute for other effectual and normal remedies available to a party.

15. For the reasons stated above, I hold that the application is belated and misconceived and without any substance whatsoever. It is accordingly rejected and the Rule nisi obtained by the Petitioner is discharged. The Petitioner is liable for the costs of this application; hearing fee Rs. 100/-.

Deka, J.

16. I agree with my lord the Chief Justice, but would like to add a few lines.

17. Two points of some importance have been raised by Mr. Phookan on behalf of the Petitioner--(1) in connection with the competence of Mr. U.K. Gohain as a retired Additional Judge to fill up the official position as a member of the

Industrial Tribunal and (2) whether the notification appointing him to constitute the tribunal in the alleged vacancy caused by the resignation of Mr. I.P. Barua, the outgoing Tribunal was proper.

18. My lord the Chief Justice has dealt at" length with regard to the first point, namely as to whether the Additional Judge could come within the category of a District Judge as provided in Section 7 of Act 14 of 1947, the Industrial Disputes Act.

Looking to the definition of "District Judge" as given in the General Clauses Act, 1897 or in the Provincial General Clauses Act,--or even in the CPC or Civil Courts Act (Act 12 of 1887)--we might hold that the Additional Judge does not hold the identical position as a District Judge so far the administrative duties are concerned but he enjoys the identical status strictly as a judicial Officer or so far judicial works are concerned.

The Indian Constitution which came into force later and now holds the field, in Chapter 6 dealing with Subordinate Courts and judicial officers, says in Article 236, that for that chapter the expression "District Judge" includes "an Additional Sessions Judge." Examining the purpose of the Industrial Disputes Act, as my lord the Chief Justice had done--and the provision of Article 236 of the Constitution, we may safely hold that "Additional District Judge" comes within the definition of "District Judge" for the purpose of the impugned Act.

19. The other point namely as to whether the inaccuracy in the Gazette notification of 28-5-51 as quoted in the judgment of the Hon"ble the Chief Justice gives any valid ground for interference,--I must say without hesitation that it does not. I have expressed in--"Civil Rule 144 of 1953 (Assam) (I)"--"Ghanashyam Das v. The Excise Appellate Authority Assam" in a Division Bench case not yet reported that when the Government had certain powers to do a particular thing the non-reference to the correct rule in the notification to that purpose, was not such an irregularity as would entitle this Court to interfere on that basis in exercise of its powers under Article 226 of the Constitution.

A similar matter connected with the Industrial Disputes Act came up before the Supreme Court-- Minerva Mills Ltd. Vs. Their Workers, where it was held that where the life of the first tribunal came to an end by efflux of time, no question of vacancy in the office really arose falling u/s 8(2) but the situation fell within Section 7 and in case of reference to both Sections 7 and 8, in a notification published in this connection, the mention of Section 8 was considered to be a surplusage and a result of confused thinking on the part of those responsible for the notification. Here, the situation was identical on the retirement of Mr. I.P. Barua, the outgoing Tribunal and the notice" may be construed to be one u/s 7 of the Act, the intention of the Government being quite clear.

The reference of the, particular case to Mr. Gohain by virtue of the Gazette notification of 11-8-1952 is a reasonable inference as to his jurisdiction in connection with this matter and this will find support from the decision of the

Federal Court reported in-- AIR 1949 148 (Federal Court) . The parties had as a matter of fact submitted to his jurisdiction, and the present petition questioning the same is the result of an afterthought.

20. The other points are not of much substance and my lord the Chief Justice has dealt with them adequately and I entirely, agree.