
(1961) 08 CAL CK 0025
In the Calcutta High Court

Case No : Appeal from Original Order No's. 22, 29 and 30 of 1959

Jaffar Imam and Others

APPELLANT

Vs

Calcutta Dock Labour Board and Others

RESPONDENT

Date of Decision : 04-08-1961

Acts Referred:

Constitution of India, 1950 — Article 226
Dock Workers (Regulation of Employment) Act, 1948 — Section 4(1)

Citation : AIR 1962 Cal 411 : (1962) 2 ILR (Cal) 299

Hon'ble Judges : H.K. Bose, C.J.; Debabrata Mookerjee, J

Bench : Division Bench

Advocate : Kashi Kanta Maitra, for the Appellant; Subimal Roy, for the Respondent

Final Decision : Allowed

Judgement

Debabrata Mookerjee, J.—These three appeals raise a common question of law and have accordingly been heard together and are disposed of by this judgment.

2. Two of the appeals Nos. (22 of 1959 and 30 of 1959) by Jaffar Imam and Jambu Patra respectively are from orders of Sinha, J. made under Article 226 of the Constitution refusing Writs of Certiorari to remove to this Court and quash orders of termination of their services made by the Deputy Chairman and affirmed on appeal by the Chairman of the Calcutta Dock Labour Board. The other appeal (No. 29 of 1959) by Brindaban Nayak is brought from the order of P.B. Mukherji, J. summarily dismissing an application for a similar Writ in respect of a similar order made against him by the same authority.

3. The three appellants were dock workers attached to the Port of Calcutta and registered in the Reserve Pool. They were taken into preventive detention under an order of the Commissioner of Police, Calcutta made on the 12th August, 1955. Despite the representation made by each of them to the Advisory Board appointed under the Preventive Detention Act, they were kept in detention for a period of about eleven months. After release, they applied for allocation to

registered dock employers, but instead of orders being made in their favour, proceedings were commenced calling upon them to show cause why their services should not be terminated on fourteen days' notice in terms of Clause 36(2) (d) of the Calcutta Dock Workers (Regulation of Employment) Scheme, 1951, on the ground that they had been detained for acts prejudicial to the maintenance of public order. The appellants showed cause against the proposed orders but the Deputy Chairman of the Calcutta Dock Labour Board terminated their services on December 17, 1956 on giving them fourteen days wages in lieu of notice for the equivalent period. Thereafter, each of them took an appeal to the Chairman of the Dock Labour Board who by an order dated April 4, 1957 dismissed the appeals.

4. These decisions were challenged in this court under Article 226 of the Constitution. The application of Brindaban Nayak was dismissed summarily by P. B. Mukherji, on February 4, 1958 but a Rule Nisi was granted by Sinha, J. in the case of each of the other two appellants Jaffar Imam and Jambu Patra but the applications were eventually dismissed and the relative Rules discharged by the learned Judge on July 18, 1958.

5. The proceedings against the appellants were taken under The Calcutta Dock Workers (Regulation of Employment) Scheme, 1951 but they were carried on and concluded under a revised scheme of the same name which came into force on the 8th October, 1956. These schemes were promulgated by the Central Government for the Port of Calcutta in pursuance of powers conferred by Sub-section 1 of Section 4 of the Dock Workers (Regulation of Employment) Act, 1948. That Act provides for promulgation of scheme for registration of Dock Workers with a view to secure greater regularity of employment, to control their recruitment and entry into the scheme and for various other matters connected with the employment of labour in Dock areas. The scheme of 1951 was replaced by the scheme of 1956 which introduced several amendments in disciplinary procedure affecting Dock Workers. It contained a provision to the effect that any order made or anything done or any action taken under the scheme of 1951 would be deemed to have been made, done or taken under the scheme of 1956. This provision of repeal and savings is contained in Clause 56 of the amended scheme.

6. As we have indicated the proceedings against these appellants were commenced under the scheme of 1951 but were continued and concluded under the scheme of 1956. The procedure for taking disciplinary action against Dock workers in the Reserve Pool had undergone change. For example in the scheme of 1951 a registered dock worker in the Reserve Pool who committed an act of indiscipline might be reported in writing to the Special Officer who was authorised to take certain forms of disciplinary action including termination of service on fourteen days notice. Similarly, a registered dock worker aggrieved by an order of termination of employment was given the right to appeal to a Tribunal. These provisions were amended by the scheme of 1956. It is

unnecessary for the purpose of these appeals to notice the changes in detail since no serious complaint has been made that by reason of such changes, the appellants have been prejudiced. It is, however, to be observed that! the proceedings actually taken in these cases were made to approximate to the amended provisions as closely as possible, and no just grievance can be made on the score of prejudice caused by the alteration in the procedure during the pendency of these proceedings. It would therefore be necessary only to confine attention to a few provisions of the scheme of 1956 in order to be able to appreciate some of the points canvassed in these appeals.

7. The scheme of 1956 makes frequent references to the Board which according to the interpretation clause is the Calcutta Dock Labour Board constituted under Clause 4 thereof. The Chairman and the Deputy Chairman are Officers of that Board. A "Personnel Officer" is an officer appointed by the Board under Clause 6 of the scheme; there are under the Scheme registers of dock workers and dock employers and a Reserve Pool is maintained of registered workers who are available for work and are not for the time being employed as monthly workers. Regulation of recruitment into and discharge from the Scheme and allocation of Workers in the Reserve Pool to registered employers are amongst the functions of the Board.

8. Clause 45 of the Scheme deals with disciplinary procedure and Sub-clause 2 provides that a registered dock worker in the Reserve Pool who commits an act of indiscipline or misconduct may be reported to the Personnel Officer, who may after investigating the matter, take any of the several steps enumerated in that sub-clause. Sub-clause 4 says that where in the opinion of the Personnel Officer a higher punishment than that provided in Sub-clause (2) is merited by the worker, he shall report his case to the Deputy Chairman. Then follows Sub-clause (5) which says that on receipt of a written report from the Personnel Officer that a registered dock worker in the Reserve Pool has committed an act of indiscipline or misconduct, the Deputy Chairman may make or cause to be made such further investigation as he may deem fit and thereafter impose any of the several penalties enumerated in the sub-clause, one of which is termination of service of the worker concerned after giving fourteen days" notice or fourteen days" wage in lieu thereof. Sub-clause (6) then provides that

"before any action is taken under this clause the person concerned shall be given an opportunity to show cause why the proposed action should not be taken against him."

Clause 47 provides that the employment of a registered dock worker in the Reserve Pool shall not be terminated except in accordance with the provisions of the scheme. By Clause 48 an appeal is provided. A worker in the Reserve Pool aggrieved by an order passed by the Deputy Chairman, may prefer an appeal against the order to the Chairman of the Dock Labour Board. A qualified right of audience before the appellate authority is given under Sub-clause (6) to the person aggrieved.

9. "Indiscipline" or "misconduct" has not been defined in the Scheme. Reference is required to be made in this context to the standing orders of the Calcutta Dock Labour Board issued under the Industrial Employment (Standing Orders) Act, 1946 which provides for the issue of such orders. Section 2(g) defines standing orders as rules relating to matters set out in the schedule to the Act. Item 8 of that schedule relates to termination of employment and item 9 to suspension or dismissal for misconduct. Clause 24 of the Standing Orders of the Calcutta Dock Labour Board speaks of disciplinary procedure and gives power to the appropriate officer to give the worker concerned 14 days notice of termination of service and: repeats the provision contained in the Scheme requiring the worker proceeded against to show cause against the proposed action. Section III of Clause 24 gives a long list of acts and omissions which are directed to be treated as misconduct. Riotous and disorderly behaviour, wilful and habitual absence without leave and assaulting supervisory staff or co-worker are amongst the acts of misconduct enumerated. These are followed by provisions relating to appeals which need not be noticed since they do not appear to have been brought into line with the revised scheme of 1956. These are, in the main, the statutory provisions with which we are concerned in these appeals.

10. As we have indicated the three appellants were taken into preventive detention by virtue of an order made by the Commissioner of Police, Calcutta in August 1955. The grounds of detention with which the appellants were served were three in number. They related to diverse acts of violence alleged to have been committed by the appellants on stated dates which were said to be indicative of the appellants intention to bring about chaotic conditions in the dock.

11. It appears that the appellants exercised their right of making representation against the orders of detention; but on the recommendation of the Advisory Board before which they were given personal hearing, the detention orders were confirmed; and when upon release they applied to resume their duties, the proceedings were started which ended in termination of their employment.

12. The notice dated the 3rd August, 1956 calling upon the appellants to show cause against the proposed orders of termination of service was to the effect that since they had been detained for a stated period for "an act prejudicial to the maintenance of public order" they were required to show cause why their services should not be terminated on fourteen days notice in terms of Clause 36(2) (d) of the Scheme of 1951.

13. Pursuant to these notices the appellants showed cause, asked for personal hearing and to be allowed to appear through competent representatives for calling evidence and! "cross-examining any witnesses" who may be examined against them.

14. A complaint was made that the Deputy Chairman (Respondent No. 3) denied them personal hearing and opportunity to appear and substantiate their defence. It was also alleged that the proceedings were disposed of ex parte behind the

back of these appellants. This statement appears in the petitions for the issue of Writs filed in this Court. But the statement was challenged by the. Secretary of the Calcutta Dock Labour Board in his Affidavit-in-Opposition, where a denial was given that the proceedings had been conducted ex parte behind the back of these appellants. It was however asserted that! the Deputy Chairman was not required under Clause 45 (6) of the Scheme of 1956 to give a personal hearing. As regards the contention that the Deputy Chairman was not required under the law to give a personal hearing to the person proceeded against, it seems to us that the contention is right and the appellants could not insist upon being personally heard in terms of Sub-clause (6) of Clause 45 of the Scheme of 1956. It merely says that before any action is taken, the person concerned shall be given an opportunity to show cause why the proposed action should not be taken. That only means that the Deputy Chairman is obliged to provide opportunity to the person proceeded against to show cause and it cannot be said that a fair hearing which an Administrative Tribunal is required to give would always include the right of personal hearing. We. think on the available materials that opportunity was given in terms of Sub-clause 6 to the appellants to show cause against the proposed action; and whatever may be said of the materials on which action was taken, there occurred no abridgment of procedure applicable to a Tribunal bound only by rules of natural justice,

15. It is to be observed that the notices requiring the appellants to show cause why their services should not be terminated merely stated that they were being proceeded against on the ground of having been detained for an act," prejudicial to the maintenance of public order. Obvious, the proceedings were taken on the sole ground that they had been detained under the Preventive Detention Act. It does not appear that besides the order of detention and the implied grounds thereof, any evidence was called or any material produced before the Deputy Chairman in proof of the allegation of indiscipline or misconduct. The Deputy Chairman who dealt with the proceedings in the first instance and the Chairman of the Dock Labour Board who dealt with them on appeal, proceeded on the footing that since the appellants had been detained for "an act" prejudicial to the maintenance of public order, a case of misconduct or indiscipline had been established against each of them. Thus the orders of termination of the appellants" services were founded on the sole circumstance that they had been detained under the Preventive Detention Act. Reference was made to the fact that the grounds of detention disclosed the appellants" complicity in violent and riotous acts and to the circumstance that the orders of detention made by the Commissioner of Police had been confirmed by the State Government on the report of the Advisory Board consisting of persons who had been or were qualified to be appointed Judges of the High Court. The appellants" continued detention for a period of about 11 months was held to amount to proof of "charges of violent and riotous conduct prejudicial to the maintenance of public order which established that they had been guilty of acts of indiscipline or misconduct. This was the sole basis on which the Deputy Chairman proceeded to

find against the appellants.

16. On appeal the Chairman of the Pock Labour Board proceeded on the same footing that "riotous and disorderly behaviour" which was an act of indiscipline or misconduct in terms (SIC) Clause 24(III)(1) of the standing order had been established by the fact of continued detention of the appellants under the Preventive Detention Act. Reliance was placed on the circumstance that since the Advisory Board had held that there was sufficient cause of the appellants' detention, no further proof of misconduct or indiscipline was called for. Thus, the opinion of the Advisory Board was considered conclusive proof of the appellant's complicity in riotous and disorderly behaviour and no further material was found necessary to support the order of termination of the appellants' services.

17. This view taken by the authorities of the Dock Labour Board was challenged by the appellants in their applications to this Court for issue of appropriate Writs under Article 226 of the Constitution. It was sought to be maintained that the order of termination of the appellants' services could not properly be based upon extraneous considerations and the authorities concerned were required to find against the appellants, if at all, on proper materials which would justify a conclusion that they were guilty of acts of indiscipline or misconduct.

18. The learned Judges who dealt with the applications commented on the delay that had occurred in moving this Court; but they disposed of the applications on the merits and did not rest their decisions on the ground that the appellants having failed to be diligent, had disentitled themselves to relief by invoking the court's special jurisdiction for extra-ordinary remedy by writs. Both P.B. Mukharji, J. and Sinha, J. found that the applications made before them were devoid of merits and accordingly dismissed them. Although counsel for the Respondents has urged that the delay has remained unexplained, we do not feel called upon to dispose of these appeals on that ground since the learned trial Judges themselves did not see reason to do so. We think therefore that the delay that occurred in making the applications should not bar relief if the appellants are otherwise found entitled to it.

19. At the hearing of these appeals a number of points were made by Counsel on behalf of the appellants. It was argued that the procedure adopted at the enquiry contravened the provisions of the Scheme and that the appellants were deprived of the opportunity of making adequate representation against the proposed action to terminate their services. It was said that the Deputy Chairman did not give a personal hearing to the appellants and the proceedings were held ex parte. As we have indicated that position was challenged on behalf of the Dock Labour Board. We are satisfied on the materials on record that the proceedings were not conducted ex parte or that the appellants were, in that sense, deprived of opportunity of showing cause against the proposed action. A faint attempt was made on behalf of the appellants to show that the procedure actually adopted in conducting the enquiry was not warranted by the Scheme of 1956, or at any rate, a sort of hybrid procedure was adopted which partook of the features of the

Scheme of 1953 as well as of the Scheme of 1956. This was said to have resulted in prejudice to the appellants. This contention cannot prevail. As we have said the proceedings were commenced under the Scheme of 1951; and when during their pendency the Scheme of 1956 came into force, steps were taken by the authorities to conform as closely as possible to the new procedure. Whether there was "a valid complaint" in terms of Clause 36 of the Scheme of 1951 appears to us to be immaterial in view of the fact that no essential preliminary was dispensed with to secure conformity with the provisions of the Scheme of 1956 relating to initiation of proceedings for disciplinary action. We have no hesitation to say that the proceedings were conducted in accordance with the prescribed procedure and no just complaint can be made on that account.

20. The principal point made on behalf of the appellants is that the whole approach in determining the question involved before the authorities of the Dock Labour Board was vitiated by reason of the fact that they considered the appellant's detention to be a circumstance sufficient to establish indiscipline or misconduct proof of which rendered them liable to disciplinary action. We have indicated that the Deputy Chairman as well as the Chairman of the Dock Labour Board proceeded on the footing that no further material was necessary to establish indiscipline or misconduct beyond the bare fact of the appellants continued detention under the Preventive Detention Act, The present complaint is that the learned Judges of this court who dealt with the applications also took the same view and disposed of them solely on the ground that the appellants detention was proof enough of their misconduct.

21. The writ petition of appellant Brindeban Nayak was summarily dismissed by P.B. Mukharji, J. who held that the Dock Labour Board was

"entitled to take into consideration the fact that the applicant was detained under the Preventive Detention Act for 11 months under charge of violent and riotous conduct prejudicial to the maintenance of public order, (2) the fact that the statutory Advisory Board under the Preventive Detention Act and the Constitution of India consisting of persons of the rank of High Court Judges advised his continued detention beyond ten weeks and (3) the fact of the grounds of detention showing that the applicant was responsible for widespread disorder in the Dock area and holding thereupon that the applicant's conduct amounted to an act of indiscipline and misconduct under Clause 36(2)(d) of the Calcutta Dock Workers" (Regulation of Employment) Scheme 1951 read with Clauses 46 (5) and (6) thereof."

The Writ petitions of Jambu Patra and Jaffar Imam were disposed of by Sinha, J. who held that the Dock Labour Board properly proceeded on the footing that the applicants had been heard by a very responsible body, namely, the Advisory Board and the inquiring authorities were accordingly justified in thinking that the appellants had been guilty of the charges. The learned Judge observed that it was

"notorious that under the Preventive Detention Act matters are decided to a certain extent upon suspicion and without legal proof. Similar action on the part of the authorities administering the Scheme would not necessarily amount to any illegality."

"The learned Judge added that he did not see any reason

"why the authorities should not take action upon suspicion. Work at an important place like the Docks does not entail the question of public security and the authorities cannot be too vigilant to ensure that subversive elements should not enter the pool of workers. Too strict an interpretation of the Scheme will defeat its object and purpose. In my opinion, this point fails and I hold that the findings of the Deputy Chairman and the Chairman upon this question are right and should not be interfered with."

The learned Judge also observed that the Scheme and the standing orders were dealt with by an Administrative Body and it could not be said that their procedure of enquiry must be akin to the procedure followed in the court of law for the purpose of deciding whether a worker had been guilty of indiscipline or misconduct. "There is no provision of law" the learned Judge said "that misconduct was to be decided upon evidence taken in accordance with the provision of the Indian Evidence Act".

22. It will thus be seen that the learned Judges took the same view as had been taken by the authorities of the Board that the charge of indiscipline or misconduct was proved by the fact of detention itself and that no further material was needed in aid of the conclusion that the appellants had been guilty of acts or indiscipline or misconduct. The question therefore is whether the fact of detention alone, without more, could be the sole basis upon which the orders of termination of service could properly be founded.

23. There can be no doubt that the proceedings before the authorities of the Dock Labour Board were not judicial proceedings. They were an Administrative Body and the technical rules of evidence cannot possibly be made to apply to their proceedings. No one can say that they were bound by strict rules of procedure or by technical rules of evidence. But the provisions of the Scheme make it incumbent upon the authorities charged with the duty of administering it, to give the person proceeded against a fair hearing. As is well known an Administrative Body though not bound by technical rules of evidence, are yet bound by rules of natural justice. Having regard to the provisions of the Scheme which we have reviewed, there can be no question that the authorities of the Dock Labour Board were acting in a quasi-judicial capacity in conducting the proceedings against these appellants. A well known rule of natural justice is that the proceedings must be conducted without bias. The reason for this rule clearly is that, having to adjudicate as between two or more parties, the authority concerned must come to its own decision with an independent mind without any inclination or bias. That would imply that the decision has to be rendered on

material, unfettered by technical rules of evidence, which will allow of an independent decision to be reached. While it can never be right to insist on technicalities where an Administrative Body is charged with the duty of giving a decision, still the decision which it gives, must be its own decision based on materials produced before it. The rules of natural justice require that there should be full, open and direct disclosure of the incriminating facts so as to allow of them to be tested by the party proceeded against. But where the facts are assumed and the opinion of another authority is held conclusive of the appellants complicity in charges of indiscipline or riotous conduct, the proceedings must be held to amount to denial of natural justice. Thus the only material produced before the inquiring authority was the opinion of the Advisory Board reflected in the appellants continued detention. However eminently constituted the Advisory Board might have been, it was none the less an outside authority. Even assuming that the fact of detention was an element in the consideration, surely it could not be the whole of the consideration. As we have said there was no material produced before the Dock Labour Board¹ upon which they could, apart from the fact of previous detention, reasonably come to the conclusion of the appellants' complicity in any of the charges of violent activity upon which the orders of detention were said to have been based.

24. Sinha, J. seems to have held that the authorities of the Dock Labour Board might well act on suspicion and orders of termination of service may be made by them much in the same way as orders of preventive detention are made. The exigencies of employment of labour in dock areas are such that in the opinion of the learned Judge the provisions of the Scheme cannot, consistently with public safety, be construed too strictly. The Scheme under which the Administrative Body is charged with the duty of giving its decisions on complaints of indiscipline or misconducts does not encourage the view that their decisions can be rendered on suspicion. The Scheme directs a fair hearing to be given which must conform to rules of natural justice. Natural justice dispenses with technicalities but abhors a decision based on suspicion. It is not a question of strict or liberal construction of the Scheme. The Scheme authorises an inquiry, unfettered by technicalities, but controlled by the rules of natural justice and no abridgment of them can be permitted on grounds of expediency.

25. As was observed by the Supreme Court in the case of Dr. Ram Krishan Bhardwaj Vs. The State of Delhi and Others, , Preventive Detention is a serious invasion of personal liberty and such meagre safeguards as the Constitution has provided against the proper exercise of the power must be jealously watched and enforced by the court. The courts of the country do not even possess the power to enquire into the truth or otherwise of the allegations upon which an order of preventive detention is based. The courts have only the power to see whether the grounds of detention are such as to allow of a representation to be made by the detenu against his detention. The information in the possession of the detaining authorities may fall short of proof, and the decision to detain may eventually be based on unverified information. Courts are precluded from

investigating the truth or otherwise of such information and even the sufficiency of the particulars conveyed to the detenu by the detaining authority are not justiciable.

26. The mere fact that in the opinion of the detaining authority preventive action was deemed necessary or that in the opinion of the Advisory Board there was cause for continued detention would not, in our view, relieve even an Administrative Body of its duty to consider independently, upon materials produced before it, to give its decision required to be given in a proceeding of a quasi-judicial nature. Such decision has to be free from bias. In these cases, however the appellants started with heavily loaded dice in the sense they were called upon not to demolish facts, which they might reasonably be expected to do; but they were called upon to shake the foundations of an opinion entertained against them by an outside authority like the Advisory Board a creature of another statute. The eminence of the men who held that opinion seems to us to be utterly irrelevant.

27. The Constitution and the laws of the land may have sanctioned preventive detention. The relative procedure and machinery for such abridgement of personal liberty may be justified in the larger interests of the community or the security of the State. But can the fact of such detention alone be relied upon to affect livelihood? We are clearly of the view that preventive detention alone cannot justify orders of termination of employment. Even an Administrative Body, untrammelled by technical rules of evidence or procedure, cannot be permitted to act entirely on extraneous material provided by the opinion of an outside authority.

28. It may perhaps be said! that since the appellants were aware of the grounds of detention, it behoved them to produce evidence in rebuttal which would demonstrate their falsity. In our view, it would be contrary to all notions of justice to put the appellants to the proof of something in support of which there was, legal evidence apart no material whatever before the authorities of the Dock Labour Board. It is true that disciplinary proceedings were not a trial before a judicial authority; nevertheless there was the charge of prejudicing the maintenance of public order against each of the appellants and they were called upon to answer on its basis. The notices requiring them to show cause merely mentioned that they had been detained for "an act prejudicial to the maintenance of public order" and did not even contain an express reference to the grounds on which the opinion of the detaining authority had been based. It is true the detention order is referable to the grounds; but the notices merely mentioned in a vague way "an act" which was said to be prejudicial to public order. It seems to us reasonably clear that the whole enquiry was concluded on the footing that the appellants having, in the opinion of other Authorities, been found to have acted in a manner prejudicial to the maintenance of public order, were guilty of indiscipline or riotous conduct and their services were for that reason alone liable to be terminated. We are of the view that even an

Administrative Body acting in a quasi-judicial capacity, bound only by rules of natural justice, was required to form its own conclusion independently of the opinion of an outside Authority. Some material of some kind, capable of independent and unbiased assessment would have sufficed and rendered the decisions immune from attack by any kind of Writ. There was no such material.

29. We are not unmindful of the fact that a court issuing a Writ of Certiorari acts in the exercise of supervisory and not appellate jurisdiction. One consequence of this is that the court is not empowered to review the evidence and reverse the findings of the inferior court or tribunal even if they be erroneous. But in these cases there was no material beyond the ipse dixit of an outside body. It is well settled that a Writ of Certiorari can be issued to correct an error of law which is manifest on the face of the record. Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, . In these cases there has been violation of the principles of natural justice and the error is apparent on the face of the record; it is evident that there was complete want of evidence or lack of material of any kind capable of independent and unbiased assessment. The Authorities Of the Dock Labour Board as well as the learned Judges of this court proceeded wholly on the footing that the appellants continued detention on the recommendation of the Advisory Board was proof enough, of the appellants complicity in charges of violent activity establishing misconduct or indiscipline on their part. We hold that this was a wrong approach and it constitutes an error on the face of the record which would justify interference with the proceedings and the resultant orders of termination of the appellants' services.

30. The appeals are accordingly allowed, and the relative rules are made absolute. We direct the writs in the nature of Certiorari do issue and we quash the proceedings and orders out of which these appeals arise.

31. Nothing that we have said will, however prevent the authorities of the Dock Labour Board to institute, if so advised, fresh inquiries into the allegations of indiscipline or misconduct against these appellants and conduct the proceedings in accordance with law and the principles of natural justice.

32. The appellants will be entitled to costs in this court,

Pose, C.J.

33. I agree.