
(1951) 01 BOM CK 0008

In the Bombay High Court

Case No : Criminal Appeals No"s. 675 to 677 of 1950

Raja Kulkarni

APPELLANT

Vs

State of Bombay

RESPONDENT

Date of Decision : 08-01-1951

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 27A, 30, 95(2)
Constitution of India, 1950 — Article 14, 19(1)
Industrial Disputes (Appellate Tribunal) Act, 1950 — Section 16, 24, 25, 27, 7
Trade Unions Act, 1926 — Section 15

Citation : AIR 1951 Bom 105 : (1951) 53 BOMLR 333 : (1951) ILR (Bom) 318

Hon'ble Judges : Dixit, J;Bavdekar, J

Bench : Division Bench

Advocate : Purshottam Tricumdas, Naushir Bharucha and M.P. Vyas, for the Appellant; H.M. Choksi, Govt. Pleader, N.K. Petigara, Public Prosecutor, for the Respondent

Judgement

Bavdekar, J.—The applts. in these three appeals are the president & the secretaries of the Mill Mazdoor Sabha, a union of the textile workers in Bombay registered under the Indian Trade Unions Act. There are two other unions with which we will be concerned in the present appeals. They are, the Rashtriya Mill Mazdoor Sangh, which has been registered as a representative union of the textile workers in Bombay under the provisions of Section 13 of the Industrial Relations Act, 1946, (Bom. XI [11] of 1947), & the Girni Kamgar Union. It appears from the evidence that towards the end of 1949 there was a dispute between the textile workers & the Millownera" Assocn. with regard to bonus claimed by the former for the year 1949 to make up as they put it the deficit in the living wage & in order to obtain an adequate share in the profits of the industry. The dispute was referred to the Industrial Tribunal, which made an award after hearing as the representatives of labour the Rashtriya Mill Mazdoor Sangh, which was entitled to represent the textile workers under the provisions of Section 30 of the Bombay Industrial Relations Act. At the time when the

disputo was referred to arbitration, there was no provision for any party aggrieved by the award filing an appeal; but during the pendency of the dispute there came into force the Industrial Disputes (Appellate Tribunal) Act, 1950, under which a party aggrieved by the award made by the Industrial Ct. could appeal to the Appellate Tribunal constituted under the provisions of the Industrial Disputes (Appellate Tribunal) Act, 1950, which it would be convenient for the purpose of the present appeals to refer to as the Appellate Tribunal Act. The Industrial Ct. made its award on 7-7-1950, & the Millowners' Assn. filed an appeal to the Appellate Tribunal on 9-8-1950. During the pendency of these appeals on 14-8-1950, the three appls. made speeches, which, it is no longer in dispute, exhorted the audience composed principally of the members of the Mill Mazoor Sabha & other unorganised workers of the textile industry inciting them to go on strike. The prosecution case was that the appls. consequently committed an offence punishable u/s 27 of the Appellate Tribunal Act. That section provides :

"Any person who instigates or incites others to take part in, or otherwise acts in furtherance of, a strike or lock out, which is illegal under this Act shall be punishable."

An illegal strike has been defined by Section 25 of the same Act as a strike declared, commenced or continued in contravention of the provisions of Section 24, & Section 24 prohibits any workman who is employed in any industrial establishment from going on strike during the pendency of an appeal before the Appellate Tribunal. The prosecution case is that a strike commenced or continued during the pendency of the appeal before the Appellate Tribunal would be an illegal strike, & inasmuch as the appls. incited the workers of the textile industry to take part in such a strike, they have committed an offence u/s 27 of the Appellate Tribunal Act.

2. Now, the appls. did not specifically admit that they had incited the workers in the textile industry to go on a strike during the pendency of the appeal before the Appellate Tribunal; but it is no longer in dispute that they had done so, & the principal defences which have been pressed before us on behalf of the appls. are those of law. It is contended by Mr. Purshottam, on behalf of the appls., that, in the first instance, there was no valid appeal pending before the Appellate Tribunal at the time when the appls. made the speeches inciting workers in the textile industry to go on a strike. It is said, in the second instance, that the Industrial Relations Act is now void of the Constitution, inasmuch as it contravenes the fundamental right of the workers under Article 19(1)(c) of the Constitution to form a Trade Union. It is not in dispute that there is nothing in the Industrial Relations Act which prevents any one from forming any Trade Union. As a matter of fact, the Union, of which the appls. are the President & the Secretaries has been registered as a Trade Union under the Indian Trade Union Act, 1926, & there is nothing in the Industrial Relations Act which invalidates the registration of the Trade Union or renders the Union an illegal

Union. It is contended, however, that the right to form a Trade Union includes a right to form a living Union. In order that the Union should be living, it must have a right to represent before a conciliator, a conciliating board, in any arbitration proceedings & before the Industrial Tribunal those workers who are members of the Union. It must also have a right to represent those workers upon the joint Committees which are provided for under the Industrial Relations Act. The Act denies to the members of any Union which is not a representative Union, these rights. The scheme of the Act is that the labour in any industry should be represented in the matters which have been mentioned above by a Union which has been registered as a representative Union. The principal qualification for being registered as a representative Union is that it must have the largest membership of the workers organised in Trade Unions in the industry, & in the second instance, such membership must not be less than 15 per cent. of the total number of workers employed in the industry. It is said that such a Union obviously represents a very small minority of the workers employed in the industry, & the result of allowing such a Union to represent labour whether in conciliation proceedings, arbitration proceedings or before the Industrial Ct. is practically to disfranchise in the matter of re-presentation before such bodies the majority of the workers employed in the industry. II Unions other than Trade Unions registered as representative Unions cannot represent their own workers before the conciliator, the conciliation board, the arbitrator or the Industrial Ct. in matters before them, for which provision is made in the Act, there is nothing very much which the Unions other than representative Unions can do. It is pointed out that there are other provisions of the Act under which a Union other than a representative Union need not be given by the employers a notice of change. The employers, can, if they wish to give a notice of a change, give it only to the representative Union. If a member of a Union other than a representative Union wishes to give notice of a change to an employer, he must give the notice through the representative Union. Otherwise, it is not valid as a notice of a change under the Industrial Relations Act. It is contended before us on behalf of the applicants that in such a case the right which remains to the workers to organise themselves into Unions other than the representative Unions is an illusory right, & the Bombay Industrial Relations Act is invalid, in as far as it renders the right to form Unions illusory so far as the workers who are not members of the representative Unions are concerned.

3. It is said next that even if we are not prepared to accept the contention that the whole of the Industrial Relations Act is void as contravening the provisions of Article 19(1)(c), & Section 27A & Section 30 of the Act are void on that account : Section 30 of the Act says :

"The following shall be entitled to appear or act in the order of preference specified as the representative of employees in an industry in any local area-

(1) a Representative Union for such industry"

There are other representatives contemplated by the section ; but the words "in

the order of preference" entitle those persons to appear or act as the representatives of employees in an industry in any local area only when there is no representative Union registered in the industry. It is said that the provision is void, inasmuch as all Unions are entitled to represent their own employees before, among others, the Industrial Ct. But the Industrial Relations Act does not stop with Section 30. By Section 27A it is provided :

"Save as provided in Sections 32 and 33, no employee shall be allowed to appear or act in any proceeding under this Act except through the representative of employees."

Representative of employees is defined as the representative of employees entitled to act as such under Section 30. This provision therefore prevents even the Industrial Ct from accepting as representatives of employees other persons if they find them to be representatives of other sections of labour. Both the sections are thus ultra vires as depriving a Trade Union of its right to represent its members & rendering consequently the right which remains after the provisions of these two sections an illusory right. It is contended further that the idea underlying Section 25 of the Appellate Tribunal Act which provides that a strike declared, commenced or continued during the pendency of an appeal before the Appellate Tribunal is an illegal strike is that the award is binding until it is set aside by an order of the Appellate Tribunal, because it was obtained after both the parties were heard with regard to an industrial dispute by the Industrial Ct. before making its award. But this presumption is not warranted in the case of awards made by an Industrial Ct. under the Industrial Relations Act because so far as the employees are concerned, the award is made not after hearing the representatives of all the workers employed in the industry, but after hearing only some of them. It is said that consequently Section 27 of the Appellate Tribunal Act is void of the Constitution as abridging the fundamental rights of the workers to organise themselves in a Trade Union.

4. The next point which is made is that whereas the Industrial Relations Act provides for the representation of each individual employer before the Industrial Ct. in case such an employer is not a member of an Assoen. of Employers, or is not going to sign in writing that he is willing to be represented by any Assoen. of Employers, so far as the employees are concerned, there is no provision made with regard to such employees as are not organised in a representative Union to be represented before the Industrial Ct. It is said that there must be equality before the law between employers & employees. It is said, in the second instance, that there was no reason why if a representative Union was entitled to appear & act for the employees before, for example, an Industrial Ct. the other Unions should not also have been allowed to appear before the Ct. as representing the employees who were their members. Section 30 & Section 27A, therefore, contravene the article of the Constitution with regard to the equality before the law & the equal protection of laws. Both the sections are, therefore, void of the Constitution on that ground. Finally, it is contended that Section 27,

which prohibits an incitement of a strike is void of the Constitution as contravening the provisions of Article 19(1)(a), which guarantees to every citizen of the Union freedom of speech.

5. It would be convenient to deal first with the contention that the applts. are not guilty of any offence inasmuch as, even though there was at the time of the incitement with which they are charged an appeal pending before the Appellate Tribunal, the appeal was not competent & consequently it could not be said that the incitement was during the pendency of an appeal.

6. The ground upon which it is said that the appeal which was filed before the Appellate Tribunal was not competent is that at the time when the industrial dispute from which the appeals arose was refd. to the Industrial Ct. the award of the Industrial Ct. was final & there was no provision made anywhere with regard to the filing of an appeal against the award made by the Tribunal. The right of appeal was given for the first time by the Industrial Disputes (Appellate Tribunal) Act, & it is said that such a right cannot avail any person aggrieved by the decision of the Industrial Tribunal anything in a matter pending before it at the time of the coming into force of the Act, because the Act would not enable an aggrieved party to file an appeal from an award in such a proceeding. It is contended on behalf of the applts. that just as a right of appeal is a substantive right when there is a reference to the Industrial Ct. pending, the right to compel the other party to the dispute to abide by the award of the Ct. as a final award is also a substantive right, & such a right vested in both the parties to the dispute when there was a reference made to the Industrial Ct. To hold that the provisions with regard to an appeal enacted by the Industrial Disputes (Appellate Tribunal) Act apply to an award made in such a reference would be to read the provision of the Appellate Tribunal Act retrospectively, & that in the absence of express words or words of necessary implication cannot be done.

7. Now, the provision of the Appellate Tribunal Act, under which an appeal lay to the Appellate Tribunal, is Section 7 of the Act, Sub-section (1) of which says :

"Subject to the provisions of this section, an appeal shall lie to the Appellate Tribunal from any award or decision of an industrial tribunal if-

(a) the appeal involves any substantial question of law ; or

(b) the award or decision is in respect of any of the following matters"

Then, Sub-section (2) of that section provides ;

"No appeal shall lie from any award made by the Industrial Tribunal set up under the Industrial Disputes Act, 1947 (XIV [14] of 1947), by the notfn of the Govt. of India in the Ministry of Labour, No. L. R.--2 (205), dated the 13-6-1949, or"

Now, the usual rule with regard to the construction of statutes is that a statute must be read prospectively unless it is retrospective either expressly or by necessary implication. It is not in dispute that the statute is not retrospective by

express provision. It is true that the words of the statute can be read retrospectively as they can be read prospectively; but that is when the rule with regard to the prospective construction of statutes applies. It says that in such a case the statute must be read prospectively unless in doing so one would be doing violence to the language of the enactment, & we do not think that there are any words in Section 7 to which we would be doing any violence if we read the statute prospectively. It is impossible to say, therefore, that if there is an invasion of a substantive right which was vested in the parties to the industrial dispute upon the matter being referred to the Industrial Ct., then there are any words in Section 7 owing to which it could be said that such a vested right has been taken away by the Legislature either by express enactment or by necessary implication. The question which arises, however, is whether, as a matter of fact, there was any vested right in the parties to the industrial dispute when a reference was made to the Industrial Ct. The right which, it is claimed, was vested in them at the time when the Appellate Tribunal Act came into force is the right to compel the opposite party to abide by the decision of the Industrial Ct. which was to be regarded as final. Now, if before the Industrial Appellate Tribunal Act came into force the Industrial Ct. had made its award, the award would vest rights in the party in whose favour it was; no appeal could be preferred from the award after the coming into force of the Appellate Tribunal Act. No authority need be cited for this proposition; but if one is needed, it is to be found in the decision of their Lordships of the P. C. in AIR 1927 242 (Privy Council) & the decision of this Ct. in *Emperor v. Hasan Abdul Karim* 46 Bom. L. R. 470 : AIR 1944 Bom 252 : 46 Cri. L. J. 328. It is contended, however, on behalf of the appellts. that a right to compel the other party to look upon a judgment as final does not arise for the first time upon a decision which was final at the time when it was given. It is said that such a right exists in those parties from the date when the litigation, in this case, the reference, commences. The learned Govt. Pleader, who appears on behalf of the State, has tried to suggest that the principle of vested rights & interference with them does not apply to proceedings before the Industrial Ct. & appeals from the award made by it, because Industrial Tribunal does not deal with rights of the parties. When it makes an award, it does not decide what the rights of the parties are; but it makes an order when there is a dispute between labour & the employers which, in the circumstances of the case, it regards as a fair & an equitable order. It is not in dispute that the Industrial Ct. is not confined to the rights of the parties under any agreements which may be obtaining between them at the time of the reference. The learned Govt. Pleader contends, therefore, that the whole of the proceedings before the Industrial Tribunal & the Appellate Tribunal being of the nature of arbitration proceedings, in which the Tribunal is entitled to make any order as it deems fit, notwithstanding the rights of the parties subsisting till then, the principle of vested rights & any enactment not being allowed to affect the rights which are vested cannot possibly be applied to appeals which are filed from the decisions of the Industrial Ct. to the Appellate Tribunal. In our opinion, there is force in this contention; but it is not necessary to go into it for the purpose of the present

appeal, because we think that we can dispose of the question as to whether an appeal lay or not, & as a matter of fact, even the question as to whether assuming an appeal did not lie, an appeal could be said to be pending without deciding the general question which has been raised by the learned Govt. Pleader. It is true that in *Colonial Sugar Refining Co. v. Irving* 1905 A. C. 369 : 74 L. J. P. C. 77 their Lordships of the P. C. pointed out that a right of appeal to a Tribunal from the decision of a lower tribunal was a substantive right & could not be regarded as a mere matter of procedure; but that is where at the time when a suit or other legal proceeding is commenced there is in the parties to the suit or legal proceeding a right given by the statute to appeal to a higher Ct. The present is the opposite case. At the time when the proceeding commenced there was no right of appeal provided; but pending the proceedings there came into force an Act by which parties are entitled to file an appeal from the decision in the type of proceedings which were then pending. The learned counsel who appears on behalf of the applts. says that a right of appeal cannot be regarded as a substantive right when it is taken away, but a matter of procedure when it is conferred. Xhat may be accepted, & I to not intend to suggest that when the appellate Tribunal Act conferred upon the parties to the industrial dispute a right to take the decision of the Industrial Ct. to the Appellate Tribunal what was conferred upon them was not a substantive right but was a matter of procedure. That is obvious because if a subsequent Act took away the right it will have to be read if possible prospectively. But that is not the question before us. The question is whether we would be reading the statute retrospectively if we were to hold Chat an appeal lies & that depends upon whether a vested fight is affected. It is not sufficient to say that the statute interferes with an existing right, because as has been pointed out again & again Parliament or Legislature continually interferes with existing rights by its legislation. It is only when a right is vested that it is presumed that there is no intention to interfere with it & the statute must be read prospectively, if that can be done without doing violence to its language.

8. Now, the learned counsel who appears on behalf of the applts., relies in support of nis contention that no appeal lay in the present case upon the case of *Nana Aba v. Sheku Andu* 10 BOM. L. R. 330 : 32 Bom. 337 & this case has subsequently been followed in cases which may be regarded as similar. In that case the order which was passed by a Mamlatdar in a suit under the Mamlatdars" Cts. Act, 1876, was final in accordance with the law as it was on 24-2-1906, on which cate the suit was tiled. Subsequently, there came into force the Mamladars" Cts. Act, 1906, which repeal-oil the former Act, & for the first time gave an aggrieved party a right to pein, for revn. to the Collector. It was held that the repealing Act could not give the right of revn in respect of proceedings commenced under the Act of 1876. Now, there is an apparent analogy between this case & the case before us, but the case of *Nana Aba v. Sheku Andu* 10 Bom. L. R. 330 : 32 Bom. 337 was really disposed of because of the provisions of Section 7 of the Bombay General Clauses Act, a provision which may also be

found in the Central General Clauses Act. That provision provided that when an Act was repealed any legal proceeding in respect of a right which had accrued under the original enactment was to be continued as if the repealing Act had not been passed. The words "as if the repealing Act had not been passed" necessarily made inapplicable the provisions of the repealing Act under which an appeal or an application for revision was provided for the first time. In the case before us there is no question of any Act being repealed. The position under the Industrial Relations Act was that there was no appeal provided from the award of an Industrial Ct. Such an appeal was provided for for the first time by the Appellate Tribunal Act; but this Act did not repeal any provisions of the Industrial Relations Act. The principle upon which the case of *Nana Aba v. Sheku Andu* 10 Bom. L. R. 330 : 32 Bom 337, was decided cannot, therefore, be applied to the present case. The learned Govt. pleader contends as against this that in *AIR 1927 242 (Privy Council)* their Lordships of the P. C. based their decision that no appeal lay upon the fact that the decision sought to be appealed from had become final at the date on which it was given, there being no right of appeal at the time. He says that if the position was as was contended on behalf of the applts. in the present case, their Lordships of the P. C. would surely have based their decision not upon vested rights having come into being upon the decision sought to be appealed from being given, but upon the principle that if a right of appeal was given for the first time pending a proceeding, the right would interfere with an existing vested right & cannot be availed of by any party to the pending proceeding. There is force in this contention; but Cts. usually decide matters which it is necessary for them to pronounce upon. In the case before their Lordships of the P. C. rights had vested in favour of one of the parties in whose favour the decision was, because the decision could not be appealed from at the time when it was given & had, therefore, become final. They, therefore, could base their decision on that ground, & it was not necessary for them to consider as to whether even if the decision had not been given before the right of appeal was conferred, an appeal would have lain. There are, however, three cases which would show that, as a matter of fact, an appeal would lie even in a pending proceeding from a decision given after the coming into force of the provisions with regard to an appeal. The first of them is the decision of their Lordships of the P. C. in *AIR 1925 91 (Privy Council)*. In that case a claimant under the Land Acquisition Act appealed from a decision under the Act confirming an award of the Land Acquisition Officer to the H. C. of Lahore, which varied the judgment of the Dist. J. in favour of the applt. & increased the allowance made to the claimant to about Rs. 3000 per kanal. The applt. then once more appealed to His Majesty in Council. Prior to 1921 there was no appeal to His Majesty in Council from a decision of the H. C. as was decided in *Rangoon Botatoung Co. v. The Collector, Rangoon* 39 I. A. 197 : 40 Cal. 21 but in the year 1921 an amending Act provided that Section 26 of the Land Acquisition Act should be re-numbered as Section 26(1) & added a Sub-section (2) to that section, which was to the following effect :

"(2) Every such award shall be deemed to be a decree & the statement of the grounds of every such award a judgment within the meaning of Section 2, 01. (2) & Section 2, Cl. (9), respectively, Civil P. C. 1908."

It has got to be remembered that not only the land acquisition proceedings, as a result of which the award was made, had been commenced before the amending Act came into force, but even the Dist. J. had made his order upon the reference confirming the award on 15-4-1919. It was held nevertheless that inasmuch as the award must be deemed to be a decree, the provisions with regard to appeals to His Majesty in Council would apply. The, learned counsel, who appears on behalf of the applts., says that it was quite true that in this case a right of appeal was given for the first time pending the proceedings which had not yet terminated when the amending Act came into force; but he says that the right of appeal was not given expressly. It was given by constitutiong the award which was made by the Land Acquisition Officer into a decree, & he saya that consequently the case has no application to the facts of the present case where the right of appeal is not given by making what was sought to be appealed from a decree. Now, we do understand that the right of appeal which was conferred by Sub-section (2) of the amending Act of 1921 did provide for an appeal by constitutiong the land acquisition award into a decree; but we fail to understand that that makes any particular difference to the principle.

9. Besides there are two cases of English Cts. which leave no doubt that in auch a case an appeal will lie. It is true that the cases of English Cts. are not binding upon this Ct. It has also been pointed out to us that the decision of their Lordships of the P. C. in Colonial Sugar Refining Co. v. Irving 1905 A. C. 869 : 74 L. J. P. C. 77 is binding upon us; but the latter decision does not expressly decide the question which is before us, & even though the decisions of the English Cts. are not binding, they are of weight, especially because the questions as to whether a piece of legislation provides merely for a matter of procedure or allows vested rights are obviously questions of general principle in regard to which the law could not possibly be different in England & in India. The first of these cases, Rathbone v. Munn (1868) 18 L. T. 856 : 9 B & S 70 has besides the authority of Blackburn J. In that case Section 13 of the County Cts. Act 1867 (30 & 31 vic, c. 142) allowed an appeal from the decision of a County Ct., "with the leave of the Judge" in actions in which an appeal was not previouly provided. It was held that the enactment affected only the mode of procedure, & therefore, applied to actions pending at the time when the Act came into operation, Blackburn J., observed in dealing with the point (p. 857) :

"The general rule is, that a statute, in the absence of express words shall not be held to be retrospective so as to alter the vested rights of parties; but a statute merely altering the mode of procedure shall be held to be retrospective unless there is something in it to show a contrary intention on the part of the Legislature. I look at an appeal as merely affecting the mode of procedure, & not as altering the rights of the parties; & therefore, I think that Section 13 does not

apply to actions pending at the time the Act came into operation, & that we must hear the appeal."

The other learned Judge, Lush J., agreed in that opinion.

10. The next case relied upon in support of the retrospective operation of Section 7 of the Appellate Tribunal Act is *Theo. Conway Ltd. v. Henwood I. L. R.* (1934) 50 474. In that case by Section 1, Sub-section (1), Administration of Justice Act, 1932, it was provided :

"As from the date on which this section, the following provisions shall have effect with respect to appeals from decisions of Official Referees in causes, matters, questions & issues which have been ordered u/s 89, S. C. of Judicature (Consolidation) Act, 1925, to be tried before an Official Referee :--

(a) An appeal shall lie to the Ct. of Appeal from any decision of an Official Referee on a point of law ;

(b) Subject as aforesaid no decision of an Official Referee shall be called in question either by appeal or otherwise. . . ."

It was contended on behalf of the resps. that the Act of 1938 was not retrospective in the sense that it had no application to actions which had been started & references to an Official Referee which had been made under an order of the Ct. before the Act came into operation. It was held that where the substantive rights of a party were altered by a statute, it was necessary to look very carefully at the statute to see whether there had been an express alteration of substantive rights which had accrued to a party before the Act was passed; but that did not have any reference to a right which had not accrued or to a question of procedure. Section 1 (1) of the Act of 1932 applied, therefore, to any appeal sought to be brought in respect of a decision either interlocutory or final, which had been given in any cause or matter by an Official Referee and which had been referred to him u/s 89, S. C. of Judicature (Consolidation) Act, 1925.

11. With respect, we are in agreement with the view which has been taken in both these English cases, & we distinguish the case of *Colonial Sugar Refining Co. v. Irving* 1905 A. C. 369 : 74 L. J. P. C. 77 on the ground that where from a decree or an order which was not appealable a right of appeal was given for the first time an appeal can be filed even with regard to a decision & orders made in actions which were pending at the date when the right was given, & that is because no party has got a vested right to compel the other party to take as final a decision in a pending action of a Ct. from whose decision subsequently an appeal is provided to a higher Ct. The Act which provides it merely affects procedure.

12. It has been contended on behalf of the State that even if there is a vested right to compel the opposite party to abide by the decision of an inferior Ct. there are express words in the Appellate Tribunal Act under which a right to appeal is expressly conferred even in pending actions, & in support of this contention

reliance is placed upon the words "an appeal shall lie to the Appellate Tribunal from any award or decision of an industrial tribunal" & on Section 7 (2) which says :

"No appeal shall lie from any award made by the Industrial Tribunal set up under the Industrial Disputes Act, 1947 (XIV [14] of 1947), by the notfn. of the Govt. of India in the Ministry of Labour, No. L. R.-2 (205). dated the 13-6-1949."

In our view, there is nothing in this section which would show, in case there was any question of a right of appeal which was duly conferred altering a vested right, that the intention was to give retrospective operation to Section 7 of the Appel. late Tribunal Act. So far as Sub-section (2) is concerned, it prevents from the operation of Sub-section (1), Section 7, certain awards. There is nothing in that section which would show as to whether Sub-section (1), Section 7 was intended to affect a vested right. So far as Section 7 (1), is concerned, it is undoubtedly true that that section can be construed retrospectively. But as I have already mentioned, if any construction of a statute is likely to affect vested rights, the question before the Courts is not whether the construction which affects vested rights can be fairly read from the language employed, but whether it would be doing violence to the language of the section if the statute is read prospectively. In our view, there is nothing in Section 7 (1) to which violence will be done if we were to hold that a vested right is affected and yet were to read the section prospectively.

13. The learned Govt. Pleader contends besides that effect will have to be given to the provision contained in Section 7 of the Appellate Tribunal Act with regard to an appeal lying because of the provisions of Section 3 of the Act. That section says :

"The provisions of this Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such, law."

He says that Section 7 provides for an appeal and that section, therefore, overrides other laws ; but that is, in our view, begging the question. If because of the provisions of Section 7 an appeal lies, then, undoubtedly if no appeal lay under the provisions, of any other law the provisions of Section 7 will have to prevail. But the question is not whether the section is overridden by any other section, but the question is what is the meaning to be given to it. It is contended on behalf of the applts. that it should not be given a retrospective meaning, because otherwise a vested right of the parties to the industrial dispute will be affected. That may be a good contention or it may be an invalid one. But if the contention is good, then, an appeal will not lie, not because any other law overrides Section 7 nor because that section is not allowed to override any other law, but because by following the ordinary rules of construction Section 7 has got to be read prospectively and not retrospectively. Section 7 would not then have

the meaning which the State wants us to hold that it has and the provision that it overrides other laws would not help the State.

14. In our view, an appeal was competent to the Appellate Tribunal, however, from the decision of the Industrial Court in the present case because Section 7 does not interfere with any vested right.

15. But even if this interpretation was not correct, it appears to us that that would not affect the illegality of the strike which the applicants in these three appeals incited. When Section 24 says that no workman who is employed in any industrial establishment shall go on strike during the pendency of an appeal before the Appellate Tribunal, it does not exclude from the appeals during the course of which it is not permissible for an employee to go on strike, appeals which are not competent. Section 7 shows that sometimes the question whether an appeal lies to the Appellate Tribunal or not may be a question of some difficulty. For example, Clause (a) of Sub-section (1) of that section will show that an appeal lies only when any substantial question of law is involved. That means that an appeal will not lie if the question of law which is involved is not substantial, and the question as to whether any decision of law is or is not substantial is not an easy question, and we would be surprised if we were to find that the Legislature provided that the question of the legality or illegality of a strike should depend upon a subsequent finding which was recorded whether by an Appellate Tribunal or by any Court of law which may have to decide whether the strike is or is not illegal as to the substantiality of the question of law involved. Similarly, an appeal will lie to the Appellate Tribunal if the award or decision is in respect of certain matters. Now, we can quite understand that in a particular case the question as to whether the award is in respect of one or more of the matters referred to in Clause (b), Section 7, Sub-section (1), would again be a matter of difficulty, and it could not have been intended that the question as to whether the strike is legal or illegal should be determined by a subsequent finding as to whether the appeal involved any such question. It is true that we obviously cannot hold that the appeal referred to in Section 24, Clause (b), means an appeal which has been filed in fact. If we were to accept that interpretation, it would be open to either the employers or employees to file an appeal from an old decision from which an appeal may not have been preferred or from which an appeal was preferred & decided & make it illegal for the other side to embark upon a strike or a lock-out. But that would merely require our confining the word "appeal" to an appeal which is not mala fide; but the question as to whether an appeal lies must necessarily be determined by the Appellate Tribunal, & we think that the intention of the legislature, where an appeal was filed in time, was that there should not be either a strike or lock-out during the pendency of the appeal whether the appeal was not incompetent. The Legislature would want that question to be decided by the Appellate Tribunal itself & prohibit any strikes until the Appellate Tribunal decided the question both on the merits & also as to whether an appeal was competent as falling within the purview of Clause (a) or Clause (b), Section 7 (1).

16. The learned Govt. Pleader, who appears on behalf of the State, contends on the other hand that even if we were to come to the conclusion that an appeal was, as a matter of fact, incompetent, the Appellate Tribunal has decided the question as to whether an appeal lies or not in favour of the applt. in the appeal, & he says that u/s 16, Appellate Tribunal Act the decision of the Appellate Tribunal shall have effect for all purposes in the same manner & in accordance with the same law under which the award or decision of the Industrial Tribunal was made as if the Industrial Tribunal made the award or decision as modified by the decision of the Appellate Tribunal. Then he says that u/s 95(2), Industrial Relations Act no order, decision or award of the Industrial Ct. shall be called in question in any civil or criminal Ct. He says that as a matter of fact, the Appellate Tribunal having decided the question whether an appeal was competent, if we were to allow that question to be raised, we are, as a matter of fact, allowing to be called in question the decision of the Appellate Tribunal which is to have effect for all purposes, in the same manner & in accordance with the same law under which the award or decision of the Industrial Tribunal was made as if the Industrial Tribunal made the award or decision as modified by the decision of the Appellate Tribunal, because the award of the Industrial Tribunal is now to be regarded as an award of the Industrial Ct., & u/s 95(2) no Ct. will allow any one to call in question the award of the Industrial Ct. In our view, in allowing counsel to argue before us that an appeal was incompetent, we are not allowing him to call in question the decision of the Industrial Ct. We shall assume for the purpose of argument that the effect of Section 16 of the Appellate Tribunal Act, which says that an award or decision of the Appellate Tribunal is to have the same effect as if it was an award of an Industrial Tribunal rendering it impossible for any one to call in question that decision because of the provisions of Section 95(2), Industrial Relations Act. The reason why we say that in allowing the question to be raised before us we are not allowing the decision of the Appellate Tribunal to be called in question is that there is no question in this case as to whether an award of the Appellate Tribunal was a valid award or not. All that counsel argues is that the strike was not an illegal strike, because there was no competent appeal before the Appellate Tribunal. It is true that the Industrial Ct. has taken a contrary view; but what cannot be called in question, assuming that the decision of the Appellate Tribunal cannot be called in question is the decision itself not any point of law which may have been decided by the Ct. in order to arrive at the decision. This argument, therefore, fails.

17. It is said, however, that the idea underlying the prohibition of the strikes during the pendency of an appeal was that there had been obtained an award, an award of a Ct., which had heard the dispute between the parties and made a decision. It is contended that if the award was obtained without hearing the parties, the award would not be an award which was binding on them, & consequently even if an appeal was filed, a strike would not be illegal on the ground that it was embarked upon during the pendency of an appeal. This raises the question as to whether, assuming even that there was no proper

representation of either one side or the other before the Industrial Ct. it could be said that on that ground the provisions of the Industrial Appellate Tribunal Act that there shall be no strike or lockout during the pendency of an appeal were rendered nugatory ; but we think that it is not necessary to go into that question in the present case for the reason that it cannot possibly be said that the award in this case was obtained without hearing the employees.

18. Mr. Parshottam, who appears on behalf of the applts. says that in this case the labour was represented before the Industrial Ct. by a Representative Union. That was the Rashtriya Mill Mazdoor Sangh. It is not in dispute that they represented approximately 15 per cent. of the employees engaged in textile industry. Counsel says that in that case the persons chosen by the Representative Union to present the case of the employees before the Industrial Ct. represented only a small minority of the employees in the textile industry & the remaining approximately 85 per cent. of the employees were not represented ; but it appears to us that merely because the method which the Legislature provided for representing the labour in this case rendered the voice of 85 per cent. of industrial labour employed in the textile industry ineffective, it cannot possibly be said that the employees were not properly represented before the Industrial Ct. We have no doubt that other more effective ways may have been found of representing labour before the Industrial Ct. Section 27A is particularly open to criticism in so far as the method of representation during the compulsory arbitration by the Industrial Gfc. is concerned. We can understand that where the method of conciliation or voluntary arbitration is sought to be employed, it would make for smooth working in case the people who represent labour speak with one voice, & if the representatives were chosen by a single transferable vote or by other kinds of proportional representation, it can easily happen that different groups of workers in the textile industry would have one or more representatives each before the conciliator, & it would be difficult for the conciliator to bring about any conciliation if not only the employers & the employees were at loggerheads, but the employees did not speak with one voice & there was a greater contest between them inter se than between the employers & the employees. But where the question is of compulsory arbitration & the Industrial Ct. has to act on grounds of equity, a better method of representing labour could possibly have been devised ; but that is after all a question for the Legislature. It is not in dispute before us that if instead of the present method of ensuring representation of labour before the Industrial Ct. the Legislature had provided for election of only one person from a sort of electoral college to represent labour, no exception could have been taken, In that case, the result may have been indistinguishable from the one which is brought about at present. It is quite conceivable that each one of the different Unions would put forward a candidate of their own. It may well happen that the representative who secured the largest number of votes would be really speaking the representative of the largest Trade Union. It could then hardly be contended that the provision by which such a result was brought about violated any particular provision of the

present Constitution. It has got to be remembered that there is no provision in the Constitution which would necessitate that all the sections of labour should be represented before the Industrial Ct. The provisions of Section 30 & Section 27A are attacked only on the ground that they contravene Article 14 of the Constitution which guarantees to every person equality before the law as well as the equal protection of the laws. We have no doubt that the word "person" in Article 14 also includes corporations ; but in this case even if there is a distinction made between Union & Union, inasmuch as only a Representative Union is held to be entitled to represent labour before the Industrial Ct. that cannot be said to be a provision which violates the principle of equality before the law of the Unions. The Unions are not the persons seeking redress from the Ct. The dispute is between the employers on the one hand & the employees on the other. The Unions are merely seeking to represent before the Industrial Ct. that section of the labour which comprises their membership. But even if they are not allowed to represent them, that does not mean that the provisions of Article 14 of the Constitution are contravened. Counsel says that even if the Unions are not parties to the dispute in their corporate capacity, the Industrial Disputes Act makes a difference between the employers on the one hand & the employees on the other, because whereas a method of election is provided if even a single employer is not a member of an assoen. of employers, so far as the employees are concerned, it is taken as enough if provision is made for representing the labour before the Industrial Ct. by the representatives of a Representative Union. He says that that contravenes the article of the Constitution with regard to the equality before the law & equal protection of the laws. But it is no breach of the article of the Constitution providing for equality before the law & equal protection of the laws for the Legislature to make a classification on rational grounds. It is obvious when provision had to be made for having before the Industrial Ct. the representatives of the employers & employees, a classification could be made on the ground that there was an enormous difference between the employers & the employees. The employers are a well to do class, & speaking generally, likely to be both more articulate & more capable of looking after their own interests, whereas so far as the employees are concerned, for the most part they are likely to be poor & uneducated & unable to look after their own interests. In our view, therefore, different methods of having before the Ct. the representatives of the employers & of the employees could properly be devised without contravening the article of the Constitution with regard to equality before the law & equal protection of the laws. Whether the method which has been sought to be provided for for the representation of employees achieves the result aimed at is undoubtedly a different matter; but the classification cannot possibly be attacked on the ground that it contravenes the provisions of the Constitution.

19. If it is said, however, that the provisions of Section 30 & Section 27A of the Industrial Relations Act are ultra vires of the Legislature, inasmuch as they exclude from representation before the Industrial Ct. all Unions other than the

Representative Unions. Mr. Purshottam who appears on behalf of the applts. contends that the Constitution guarantees by Article 19, Clause (1), Sub-clause (c), the right to form associations or unions. He says that the right to form Trade Unions is, therefore, guaranteed by the Constitution, & as a matter of fact provision is made by the Indian Trade Unions Act, 1926, for industrial labour forming itself into Trade Unions, & he says that every Trade Union so formed is entitled, in an industrial dispute which is referred to a Tribunal for compulsory arbitration, like the Industrial Ct, to represent those employees who are on the list of their membership. Such a right is not to be found specifically provided either by the Constitution or by the Indian Trade Unions Act, 1926 ; but Mr. Purshottam says that the right to form a trade Union necessarily carries with it the right to form a Union which can function actively as a Union, & he says that a Union cannot act effectively as a Union if in an industrial dispute it cannot represent its own members.

19a. We shall have to deal with the larger aspect of the question which counsel thus raises a little later ; but it would be sufficient to say at present that even if the right to form a Trade Union is guaranteed by the Constitution, it does not follow therefrom that such a Trade Union is entitled to represent labour even its own members before an Industrial Ct. As I have already mentioned, labour will have to be represented not only before the Ct. of compulsory arbitration like the Industrial Tribunal, but before an arbitrator in voluntary arbitration or before a conciliator, & it could hardly be contended that in case provision was made for election of persons to represent employees before the arbitrator or before the conciliator or Industrial Ct. such a provision is ultra vires of Article 19(1)(c). Provision could for example be made for an electoral college which would elect representatives of the employees by a method of single transferable vote or any other kind of proportionate representation. If such a provision is made, the Unions would not be representing their own members. The argument that each industrial Trade Union has got, therefore, a right which is guaranteed by the Constitution to represent in an industrial dispute their own members is, therefore, not sound.

20. Then we come to the argument that the whole of the Industrial Act is void as contravening Article 19(1)(c). As I have already mentioned, it is contended before us that it is no use the Constitution guaranteeing to all citizens the right to form among others a Trade Union, in case the right is rendered illusory. That we are prepared to accept. If a Legislature were at any time to enact a law which, while nominally allowing formation of a Union, would make the right to form a Union illusory by preventing the Union from doing anything in the interests of the members, then the legislation would be rendering the right which was guaranteed by Article 19(1)(c) illusory & the legislation could be impugned on the ground that it would affect the fundamental right referred to. But in this case all that the Industrial Relations Act has done is that it made compulsory, in the first instance, a recourse before either a strike or a lock-out is embarked upon to methods of conciliation or voluntary or compulsory arbitration. During the

pendency of an industrial dispute before an Industrial Tribunal or the Appellate Tribunal it has made a strike or lock-out illegal. Similarly, it has made the strike or lock-out illegal for a certain period after settlement of an industrial dispute is reached by the method of conciliation or voluntary or compulsory arbitration. In achieving such a settlement, it has made provision for labour being represented by what is called a representative Union. Mr. Purshottam says that in case it is only a representative Union which can represent industrial labour before the conciliator or before the Cts. of voluntary or compulsory arbitration, there is nothing very much which Unions which are not representative Unions can do. He says, in the second instance, that the Industrial Relations Act does not stop with giving the representative Unions a sole right to represent labour in a particular industry before the conciliator or Courts of voluntary or compulsory arbitration. He points out rightly that the Act provides for the formation of joint committees of representatives of both employers & employees, & the representative Union is the only Union which is entitled to elect representatives of employees to serve upon the joint committees. He points out similarly that if an employer wants to give a notice of a change, he is not required to give a notice of a change to a Union other than a representative Union, & notice to a representative Union is considered sufficient. Similarly, if a notice of a change has got to be given by an employee, he is bound to give it through the representative Union, & he cannot give it through the Trade Union to which he belongs. He says that consequently the Act renders the right to form a Trade Union guaranteed by the Constitution illusory.

21. Now, in the first instance, in our view, there is no particular reason why we should consider the two questions, representation of the employees before the conciliator or Cts. of voluntary or compulsory arbitration, & the question of the representation of labour on joint committees & for the purpose of receiving or giving a notice of change. In this appeal we are only concerned with the question as to whether the strike which was incited by the applts. could be said to be legal notwithstanding the prohibition of such a strike by Section 24 of the Appellate Tribunal Act during the pendency of the appeal before the Appellate Tribunal, & we think, therefore, that the question which has been raised with regard to the way in which labour is represented before an Industrial or an Appellate Tribunal, or, for the matter of that, before the Allied Tribunals or bodies, namely, the conciliator, the board of conciliation or aB arbitrator to whom the parties have voluntarily reld. their dispute, can be separated from the other questions, namely, who is to serve as the representatives of the labour on joint committees & who is to give or receive a notice of change. But even if in order to find out as to whether the Industrial Relations Act is void of the Constitution as contravening the provisions of Article 19(1)(c) we have to consider all these matters together, in our view, the Act does not render illusory the right guaranteed by the Constitution to form Trade Unions. It is true that on the questions which have been just mentioned the representative Union is made by the Act all in all, & once a Union has obtained a membership of not less than 15 per cent. of the

total employees engaged in an industry, the other Unions cannot represent the labour before the conciliator or the Courts of voluntary or compulsory arbitration ; nor can it send representatives to joint committees or give or receive a notice of change. But, in the first instance, the Unions can themselves obtain a membership greater than that of an erstwhile representative Union & be itself registered as a representative Union. To start with, at any rate, a representative Union need have only upon its members" list 15 per cent. of the total of the employees engaged in industry. That leaves 85 per cent. unorganised, & we do not think that it should be impossible, or practically impossible, as counsel calls it, for any Union to obtain a membership greater than that the Union which has been registered as a representative Union has obtained, It is true that where the Trade Union movement is in its infancy, it is not an easy matter to organise labour; but, on the other hand, when a large portion of the labour is not organised, as 85 per cent. would be unorganised upon our hypothesis, we fail to understand why it should be regarded as impossible to obtain membership of 15 per cent. It may undoubtedly take time; it would probably take more expenditure of energy than the Unions which are not representative Unions are prepared to spend. But we fail to understand that it is impossible or practically impossible for the other Unions to do so. On the other hand, a Legislature may think it desirable as a matter of fact that there should be this competition between Unions to have themselves registered as representative Unions in order that as large a portion of labour should be organised in Trade Unions as possible. There would be incentive for doing so, where as a result of doing so a right could be obtained to represent labour before the conciliator or before the Cts. of voluntary or compulsory arbitration. It is true that once one Union is registered as a representative Union, the tendency would be for those employees who are prepared to join an organisation of labour to join the Union which is registered as representative. The Act does provide certain incentives for them to do that, because as the learned counsel, who appears on behalf of the applts., has pointed out if a notice of change has got to be given on behalf of an employee, it can only be given u/s 42(2) of the Industrial Relations Act through a representative Union. It is true that even if a person does not belong to a representative Union & wishes to give a notice of change, he has merely got to address the notice to the employer through a representative Union, & the representative Union is not entitled to withhold it or say that it would not forward the notice of change to the employer concerned, because Section 42(2) makes it obligatory upon the representative Union to send the notice to the addressee. But all the same there is force in the contention that there would be a greater incentive for an employee to join a representative Union than to join any other Union. But then on the other hand there is nothing undesirable about it. We fail to understand that if the representative Union were so to speak to sell labour, the mere fact that there are some advantages in joining it would persuade any fresh employees who are prepared to organise themselves & form part of the Trade Union movement to join the representative Union. We think that if at any time a representative Union failed to represent the views of the

employees as a whole any employee who wants to join afresh the Trade Union movement would join the rival Union & as a matter of fact a representative Union would come in the way of further organisation of industrial labour only in case ifc represented fairly the interests of labour before the conciliator or before Cts. of voluntary or compulsory arbitration. We have no doubt whatsoever that if a representative Union were to fail in the obvious duty to safeguard the interests of the employees, not only would fresh recruits who desire to join the Trade Union movement join other competitive Unions, but there would be a growing tendency among other industrial employees to join the Trade Union movement itself in order thaftc other Trade Unions should supersede the Union which has so far been registered as representative Union & has failed to guard the interests of labour. In our view, therefore, there is nothing in the Industrial Relations Act which renders the right guaranteed by Article 19(1)(c) to form an assocn. or Union illusory.

22. Learned counsel who appears on behalf of the applts. contends further that even if it cannot be said that the Industrial Relations Act renders the right to form assocns. or Unions illusory, it abridges the right inasmuch as the Unions are not entitled fco represent their own members before a conciliator or Cts. of voluntary or compulsory arbitration. We have dealt with this argument before in considering the question of the infringement of Article 14. Here we propose to deal with it as infringing the rights guaranteed by the Constitution by Article 19(1)(c), & here again, in our view the right to form Union does not carry with it the right to represent when there is an industrial dispute before a conciliator or the Ct. of voluntary or compulsory arbitration those persons or members o f the Trade Union. There is consequently no abridgment of the right guaranteed by Article 19(1), Clause (c), by Sections 27A & 30 of the Industrial Relations Act.

23. It is said, however, that Section 27 of the Appellate Tribunal Act, contravenes the right conferred by Article 19(1)(c), because it prohibits the incitement to a strike which is a right guaranteed by the Constitution when it provided for the right to form assocns. or Unions. Counsel argues that it is no use forming a Trade Union if the Trade Union is to be prohibited from calling a strike of the workers, when it finds that the employers are not amenable to their reasonable demands. The argument is that the right to form Unions carries with it the right to strike. The proposition is arguable ; because even though a strike is recognised to be the most potent weapon which labour has got in order to obtain better conditions of employment, it cannot possibly be said that it has ever been recognised that the right to strike is a fundamental right the abridgment of which would render illegal any act of Legislature which puts restrictions upon the rights. Before the present Constitution, there was a right to strike recognised in the sense that there was nothing preventing any person from going on a strike, provided by doing so he did not commit a breach of a contract. Even if he were to commit a breach of contract, he would be guilty of a civil wrong ; the right could be said to be a right in the same manner in which every person has gob a right to do what he likes, provided it does not infringe the right of any other person. But even

assuming that the right to strike is guaranteed by the present Constitution, it cannot possibly be denied that under Clause (4), Article 19 the operation of laws which were in existence at the time of the Constitution & which imposed reasonable restrictions on the exercise of the right conferred by Clause (1), Article 19(c) in the interests of public order was saved. Counsel says that a strike may be peaceful. There is no reason whatsoever why the mere fact that all employees went or contemplated going on a strike should threaten public order, & in any case the Legislature would not have any right to pass an Act merely because public order was likely to be threatened by a strike. In our view, that is not the correct interpretation of Clause (4), Article 19. If we were to apply our mind to the lessons of history in the recent past both in this country & elsewhere, it would be quite clear that too many strikes would endanger public order & we think, that the Legislature would be entitled to pass a law reasonably restricting the right to strike, assuming it was guaranteed, in the interests of public order. The Industrial Relations Act does not prohibit strikes altogether; nor does Section 27, Appellate Tribunal Act, prohibit strikes altogether. Confining ourselves to Section 27 of the latter Act, it prohibits a strike only during the pendency of an appeal. The prohibition is temporary aimed at keeping industrial peace during the pendency of an appeal which ought not to take long. The whole idea underlying both the Industrial Relations Act & the Appellate Tribunal Act is as far as possible negotiation & arbitration should prevail, & that too not permanently but during a certain period in which recourse is had to the machinery of conciliation or arbitration & for some time afterwards. In our view, the law which seeks to obtain industrial peace for a limited period by prohibiting strikes cannot be said to be an unreasonable restriction on a right to go on a strike, if such a right was guaranteed by the Constitution.

24. The next contention is that Section 27, Appellate Tribunal Act, is ultra vires of the Constitution inasmuch as it contravenes Article 19(1)(a) of the Constitution which guarantees the right of freedom of speech & expression. In our view there is no substance in this contention. It is perfectly true that the Constitution guarantees to every citizen freedom of speech & expression. But that can hardly be said to be affected by a law which prohibits incitement to an illegal act. As has been well said, the most liberal interpretation of right of freedom of speech and expression cannot possibly permit an incitement to murder or the publication of movement of shipping in war-time contravening an Act which prohibits the publication of news of such movement during war-time. It is true that Courts have got to be vigilant and when construing the laws beware that the Legislature does not pass laws contravening the right of freedom of speech and expression by prohibiting either mere expression of views or by rendering illegal an act which ought not to be rendered illegal. For example, if the Legislature were to pass an Act stating that it would be illegal for anybody to criticise the policy of Government, the Act would be ultra vires as contravening the right of freedom of speech or expression. But what is prohibited in this case is incitement to an illegal strike. It is true that the definition of illegal strike is to some extent an

artificial one, because Section 25 says a strike is illegal if it is embarked upon during the pendency of an appeal before an Appellate Tribunal. But we do not think that a provision which renders such a strike illegal and prohibits incitement to such a strike can be said to be void of the Constitution. It is true that Sub-articles (3) to (6), Article 19 enable the State to make laws imposing reasonable restrictions on the exercise of the right conferred by Sub-clauses (b) to (g), Article 19(1), whereas Clause (2) of Article 19 merely saves from the operation of Sub-clause (a), Clause (1), Article 19 laws on certain subjects. It may not be possible to say in this case that the law which is impugned is on one of the subjects which is referred to in Clause (2), Article 19. The only words which would appear to have any possible application are any matter which undermines the security of or tends to overthrow the State. But in our view there is no contravention by the Industrial Relations Act of the fundamental right guaranteed by Article 19(1) on the ground that whenever there is an incitement to commit the act which is prohibited by any law the question does not rest with mere freedom of speech or expression. When a person incites somebody else to do something which is illegal, he goes beyond exercising the right of freedom of speech and if only the Courts take care to see that the Legislature does not infringe the right given by Article 19(1)(a) by making laws rendering things which would otherwise be legal, illegal there would be no scope for legislation to abridge the right of freedom of speech and expression. In this case what the Legislature has rendered illegal is to go on a strike during a limited period during which the machinery of conciliation and arbitration is brought into operation and for some time thereafter which is reasonable enough. There has been therefore no abridgment of the right of freedom of expression.

25. It is said, however, that the Industrial Relations Act even if it is not rendered void of the Constitution as affecting any fundamental right, is void in so far as it prevents a Trade Union from representing its members before a conciliator or a Court of voluntary or compulsory arbitration, because it contravenes Section 15(d) of the Indian Trade Unions Act, 1926. That subsection is to the following effect :

"The general funds of a registered Trade Union shall not be spent on any other objects than the following, namely :.....

(d) the conduct of trade dispute on behalf of the Trade Union or any member thereof ; " Now, this section shows that the general funds of a Trade Union may be spent on the conduct of a trade dispute on behalf of a Trade Union or any member thereof. The learned counsel contends that in case a Trade Union cannot appear before an Industrial Court in a dispute between the employers and the employees, there is no way in which it can spend any of the general funds of the Union upon the trade dispute concerned. If it were to go to the representative Union offering help in the conduct of the dispute, the representative Union may say that it would look to the conduct of the dispute itself, and it would not accept any help even as a matter of fact any funds from the Union who made the

approach. Now, that is undoubtedly what may happen ; but it does not appear to us that there is any contravention of Section 15(d), Indian Trade Unions Act by Section 30, Bombay Industrial Relations Act or any other section of the Act disentitling any Trade Union from appearing before a conciliator or before the Court of voluntary or compulsory arbitration. Section 15(d) merely renders lawful the expenditure of money belonging to a Trade Union on the conduct of a trade dispute. It does not render obligatory upon a Trade Union to expend any portion of its general funds upon such conduct. It cannot possibly be said, therefore, that in so far as Section 30 & Section 27A disentitle any Trade Union from appearing before an Industrial Ct. or any other Ct. these sections contravene Section 15(d).

26. The learned counsel, who appears on behalf of the applta. says besides that even if we were to accept that the employees were properly represented before the Industrial Ct. by a representative Union which was entitled to appear & to act under the provisions of Section 30, Industrial Relations Act for the employees, in this case the award was not binding upon the employees, because the Union was not authorised by any act of the employees to appear before it, & if the award was not binding, then, the applts. will not be committing any offence if they incited the employees to go on a strike ; but it appears to us that in the first instance Section 24 prohibits a strike during the pendency of an appeal. That has no reference to the binding character of the award ; nor are we prepared to say that a representative Union before it can bind the employees by any award which may be passed by the Industrial Ct. must obtain an authorisation from the employees for appearing before the Industrial Ct. In our view, the meaning of the words "is entitled to appear & to act" used in Section 30, Industrial Relations Act is that the representative Union will be entitled to both appear & to act for the employees before the Industrial Ct. without any authorisation from the employees. Ordinarily authorisation will be necessary ; but Section 30 enables the representative Union to dispense with such authorisation.

27. In our view, therefore, the applts. were rightly convicted. We, therefore, confirm the conviction of the applts. of the offence with which they were charged but reduce the sentence passed upon them to simple imprisonment for a period of three months. The order as to the payment of fine will be set aside.

28. The applts. are the president & secretaries of an important Union in the textile industry. The president is besides a member of the Municipal Corporation of Bombay. The president as well as one of the applts. secretaries are both educated persons. In our view, therefore, they should all be classified as Class I prisoners.

29. Dixit J.--In this case (criminal Appeal No. 675 of 1950) the applt. who is a secretary of the Mill Mazdoor Sabha was prosecuted for an offence u/s 27 of the Industrial Disputes (Appellate Tribunal) Act (XLVIII [48] of 1950). He was convicted by the Presidency Magistrate, 5th Ct. Dadar, & sentenced to suffer rigorous imprisonment for six months & to pay a fine of Rs. 1000 in default,

rigorous imprisonment for six weeks. The accused appeals.

30. The facts leading up to the prosecution of the accused are briefly these. It appears that there are, in Bombay, three labour unions representing a portion of the textile workers. They are (1) Rashtriya Mill Mazdoor Singh, (2) Mill Mazdoor Sabha & (3) Girni Kamgar Union. The applt. is connected with the second of these unions. The first named union represents, on its roll, 15 per cent membership of the textile workers, the second about 10 per cent. & the third even less, so that the first named union has the largest membership on its roll, & is a recognised representative union for the purpose of the Bombay Industrial Relations Act, 1946. The Rashtriya Mill Mazdoor Sangh gave a notice of change claiming bonus for the year 1949. This notice was given to the Millowners' Assoen. & the dispute was refd. to the Industrial Ct. on 23-12-1949, u/s 73A of the Bombay Industrial Relations Act, 1946. The Industrial Ct. issued notices to the millowners concerned & gave an award on 7-7-1950, which was published on 13-7-1950. At the date when this dispute was refd. to the Industrial Ct. there was in the Act no provision by way of an appeal. However, on 20-5-1950, the Industrial Disputes (Appellate Tribunal) Act, 1950, came into force. This Act allowed an appeal to be preferred as provided in Section 7 of the Act. On 8-5-1950 an Appellate Tribunal was constituted & on the next day viz. on 9-5-1950, the Millowners' Assocn. preferred an appeal against the award. On 14-8-1950, the applt. made a speech exhorting the workers to continue the strike which had commenced some time before. That the applt. made the speech in question is not in dispute. Nor is it in dispute that he advocated the continuance of the strike. On 14-8-1950, the Comr. of Labour filed against the applt. a complaint alleging that the applt. had committed an offence u/s 27 inasmuch as he had on 14-8-1950, instigated & incited the textile workers to continue the strike.

31. The learned Presidency Magistrate held that the provisions of the Bombay Industrial Relations Act on which the defence relied were not ultra vires on account of Article 19 of the Constitution, that those provisions were not ultra vires of Article 14 of the Constitution & that the strike advocated by the applt. was an illegal strike. In accordance with these conclusions he convicted & sentenced the applt. as mentioned earlier in the judgment.

32. The first question is whether it is shown that the applt. is guilty of the offence charged against him. It is contended on behalf of the applt. that inasmuch as there was no valid appeal pending at the date when the applt. made the speech, the applt. cannot be convicted of the charge u/s 27. In order to understand the contention it is necessary to refer to S3. 7, 24, 25, 26 & 27 of the Act. Section 27 runs as follows :

"Any person who instigates or incites others to take part in, or otherwise acts in furtherance of a strike or lock-out, which is illegal under this Act shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

An "illegal strike" is defined in Section 25 which provides that a strike or lockout shall be illegal, if it is declared, commenced or continued in contravention of the provisions of Section 24. Section 24 provides that notwithstanding anything contained in any law for the time being in force, no workman who is employed in any industrial establishment shall go on strike & no employer of any such workman shall declare a lock-out (a) during the period of thirty days allowed for the filing of an appeal (Section 10,) or (b) during the pendency of an appeal before the Appellate Tribunal. Section 26 provides for penalty for illegal strikes & lock-outs & need not be set out in detail. The material part of Section 24 is, so far as this case is concerned, Clause (b) of the section & appeal reld. to in that section is an appeal preferred u/s 7. Section 7 provides for an appeal to the Appellate Tribunal from an award or decision of an industrial tribunal if the conditions mentioned in the section are satisfied. It is not in dispute that an appeal was preferred by the Millowners' Assn. It is also not in dispute that the strike is an illegal strike if it is continued in contravention of the provisions of 3. 24. The contention of the applt. is that the strike is not an illegal strike because there was no valid appeal pending at the date of the speech complained of. This contention is based upon the submission that the proceedings which ended in the award were commenced before the Industrial Disputes (Appellate Tribunal) Act came into force, so that the award dated 7-7-1950, will not be subject to an appeal. It is apparent that the proceedings resulting in the award had commenced before 20-5-1950, when the Act came into force. It is clear that the award was made after the Act came into force. Mr. Purshottam for the applt. argues that there was no provision for an appeal being preferred at the date when the proceedings commenced & any award made after the Act came into force cannot, therefore, be subject to an appeal. This raises the question whether the granting of a right of appeal is a vested right or is a mere matter of procedure. In the Ct. below the argument was that the Mill Mazdoor Sabha of which applt. is a secretary was not bound by the award & therefore any appeal preferred by the Millowners' Assn. would be of no avail. In this Ct. the argument has taken a different form.

33. There is no doubt that if at the date when proceedings are commenced the right of appeal is granted by a statute, then it is a vested right & it cannot be taken away unless the statute says so in express words or by necessary implication. This is illustrated in the leading case of *Colonial Sugar Refining Co. v. Irving* (1905) A. C. 369 : 74 L. J. M. C. 77. This case was followed by this Ct. in *Nana Aba v. Sheku Andu*. 10 Bom L. R. 330 : 32 Bom. 337. The present is a case not of a right of appeal already granted having been taken away. This is a case in which a right of appeal is granted, but it is argued that this makes no difference in the application of the principle. Now, it is well settled that nobody has a vested right in a mere matter of procedure. But Mr. Purshottam argues that under the Bombay Industrial Relations Act there was a finality attached to an award & that finality cannot be disturbed by providing an appeal against the award in a case where the provision of an appeal was made after the proceedings had started. I

doubt if a finality is at all given to an award made under the Act. Sections 116 & 116A illustrate this point. The case of a decree of a civil Ct. is different from that of an award & this is explained in *Industrial Tribunal Madura v. Chrome Leather Co. Ltd.* ILR (1949) Mad. 924. In support of Mr. Purshottam's contention there is, however, authority of the Rangoon H. C. This will be found in *Sakeena Bibi v. Stephens A. I. R.* 1926 Ban 205 : 4 Ran 221. It is to be noted that the Rangoon H. C. relied upon the case of *Colonial Sugar Refining Co. v. Irving* 1905 A. C. 369 : 74 L.J M.C. 77 & its decision was based upon the view that if the taking away of a right of appeal is not a mere matter of procedure, the giving of a right of appeal is equally not such a matter. The remarks in *Subramama v. Namasioaya A. I. R.* 1918 Mad. 162 : 45 I.C. 11 also go to support that view.

34. In this case the award had not been given before 20-5-1950, when the Act came into force. It cannot, I think, therefore, be urged that anybody had got any vested right. If the award had been given before 20-5-1950, it could not have been urged that it was open to reconsideration by way of an appeal. Assuming that an award has a finality attached to it, what then is the position ? As soon as an award is given two positions arise. The first is the position that a party in whose favour an award is given has obtained certain rights under the award. Secondly, there is also a liability created by reason of the making of the award upon the other side. That the date of the making of an award is a material point of time will be apparent from the observations of their Lordships of the P. C. in AIR 1927 242 (Privy Council) . Again, in AIR 1925 91 (Privy Council) their Lordships of the P. S. entertained an appeal which was granted for the first time in 1921 by an amendment of the Land Acquisition Act, 1894, in respect of proceedings started before the date when the right of appeal was given.

35. There are two English decisions reported in *Rathbone v. Munn* (1868) 18 L. T. 856 : (9 B & S 708) and *Theo Conway Ltd. v. Henwood*, I.L.R (1934) 50 474. These two cases show that the granting of a right of appeal is not a vested right but is a mere matter of procedure. It is true that the leading authority of *Colonial Sugar Refining Co. V. Irving* 1905 A. C. 369 : 74 L. J. M. C. 77 is of the year 1905, while the two English decisions are of the years 1868 & 1934. It may be a debatable question whether it is correct to say that the granting of a right of appeal is a mere matter of procedure. The case of *Colonial Sugar Refining Co. v. Irving* 1905 A. C. 369 : 74 L.J.M. C. 77 was not a case where a right of appeal was given for the first time. It was a case where a right of appeal had already existed & the same was sought to be taken away. It seems to me, therefore, that in view of the above authorities it is not unreasonable to hold that the award in this case was subject to an appeal. Mr. Bharucha relies upon a decision of this Ct. reported in *Emperor v Hasan Abdal Rarim* 46 BomL. R. 470 : A. I. R. 1944 Bom. 252 46 Cri L. J. 328 but that case has no application. That was a case in which the provisions of Section 411A, Criminal P. C. 1898 gave for the first time a right of appeal from the decision of a single Judge presiding at a criminal sessions of the H. C. it was held that the provisions were not retrospective. In that case the convictions complained of were recorded on 12-10-1943, & the right of appeal

was given for the first time by an amending Act which came into force on 27-11-1943. In my view, there was a valid pending appeal at the date when the applt. made the speech on 14-8-1950, so that his conviction u/s 27 is clearly right.

36. Apart from this consideration, it may be observed that at the date when the applt made the speech there was in fact a pending appeal; whether the appeal was competent or not is quite another matter. On this limited ground also, I think the applt's conviction is clearly right.

37. In dealing with the remaining contentions taken on behalf of the applt it is necessary to bear in mind the scheme underlying the Bombay Industrial Relations Act, 1946. It is apparent from the preamble to the Act that one of the objects in enacting the Act was to provide for the regulation of the relations of employers & employees in certain matters. The scheme appears to be that it is not each & every union that is entitled to the status of a representative union. There are certain conditions which must be satisfied before a union acquires the status of a representative union. This will be apparent from Section 13 of the Act. It appears that there are about 2 lacs of textile workers & the Rashtriya Mill Mazdoor Sangh represents 15 per cent. of the membership. It is, therefore, contended that the Rashtriya Mill Mazdoor Sangh does not represent the remaining 85 per cent. of the membership & has therefore, no right to represent the workers before the Industrial Ct. The Mill Mazdoor Sabha of which the applt. is a secretary does not possess the test of 15 per cent. membership of the textile workers & so is not a representative union under the Act. The contention on behalf of the applt. is that even so, it has a right to appear before the Industrial Ct. This right is denied by virtue of certain provisions of the Act & it is contended that the provisions are consequently bad, having regard to Article 19(1)(c) of the Constitution. It is also contended that the provisions of the Act are void, having regard to Article 19(1)(a) of the Constitution. Similarly, the contention is that some of the provisions are void, having regard to Article 14 of the Constitution.

38. Mr. Purshottam for the applt. contends that Section 27 of the Industrial Disputes (Appellate Tribunal) Act, 1960, is void, having regard to Article 19(1)(a) of the Constitution. Article 19(1)(a) of the Constitution says that all citizens shall have the right to freedom of speech & expression. Section 27 is directed against a person who instigates or incites others to take part in, or otherwise acts in furtherance of, a strike or lock-out, which is illegal under the Act. Therefore, if a person instigates or incites another to take part in a strike which is illegal, then he is liable to punishment u/s 27. Now, u/s 26 a workman who commences, continues, or otherwise acts in furtherance of, a strike which is illegal under the Act is liable to punishment u/s 26. An act which is made punishable by law is an offence. Therefore, if a person happens to instigate or incite another to commit an offence, it seems to me that it is idle to contend that the provisions of Section 27 are void, having regard to Article 19(1)(a) of the Constitution. I am not, therefore, prepared to accept the argument urged on behalf of the applt. The

right to freedom of expression carries with it certain duties & responsibilities & expressions which incite persons to commit criminal acts can hardly have been intended to be covered by Article 19(1)(a) of the Constitution.

39. It is contended that Section 13, 14, 37A & 30 of the Act are void, having regard to Article 19(1)(c) of the Constitution which says that all citizens shall have the rights to form assocns. or unions. Article 19(1)(c) of the Constitution is controlled by Article 19(4) of the Constitution. Before a union is registered under the Act certain requirements must be fulfilled. It is not aa if that the moment a union has 15 per cent. membership on its roll, it is entitled to the status of a representative union. Section 14 of the Act shows that if there are two or more unions fulfilling the conditions necessary for registration, then that union which has the largest membership of employees employed in an industry shall be registered. In order to ensure that a union should be representative of the textile workers provision is made in Section 15 for the cancellation of registration when it is found that a particular union does not satisfy the requirements of the Act. Then again, provision is made in Section 16 for the registration of a union which has a larger membership of employees employed in an industry. So that the Act has made adequate & salutary provision in order to ensure effective labour representation before an Industrial Tribunal. It is said that provisions as to a representative union laid down in the Act create a sort of an artificial representation. That may or may not be so. What the Act aims at is the representation of labour & capital before an Industrial Tribunal & it is in that spirit that provision has been made in Sections 13, 14, 15 & 16 for recognition of a union as a representative union which satisfies the requirements of the Act Mr. Purushottam argues that the Sabha of which the applt. is a secretary is denied the right of representation before the Industrial Tribunal & this indirectly violates Article 19(1)(e) of the Constitution. Article 19(4) excepts from the operation of Article 19(1)(c) those laws which impose reasonable restrictions in the interests of public order or morality. I do not think that it is a sound argument to advance that every union must be represented before an Industrial Tribunal. After all, both capital & labour have to put forward their points of view before an Industrial Tribunal & so their representation before that authority is to be secured & the Act aims at a workable method of representation before a Tribunal. It may be that the method laid down in the Act is not an ideal method of representation. But that is no ground for saying that, therefore, Sections 13, 14, 27A & 30 of the Act are void in view of Article 19(1)(c) of the Constitution. As has been already pointed out there are still about 85 per cent. of the textile workers which are outside the ambit of the Rashtriya Mill Mazdoor Sangh & it is open to the Sabha of which the applt. is a secretary to secure membership of the textile workers greater than that secured by the Rashtriya Mill Mazdoor Sangh & thus to acquire the status of a representative union for the purpose of the Act. It is said that a distinction is made in Section 27 (2) between representation of millowners before labour & representation of an Industrial Tribunal. I do not think that this contention is justified. It is true that the Sabha of which the applt. is a secretary

is not entitled to appear before an Industrial Tribunal in the name of labour, but that is because the Sabha of which the applfc. is a secretary does not represent that percentage of membership of the textile workers which the Act says it should represent in order to enable a union to claim the status of a representative union. In my opinion, the restrictions, if any, imposed by the Act are reasonable restrictions &, therefore, Article 19(1)(c) is not infringed. Since in my view Article 19(1)(c) is controlled by Article 19(4) & the restrictions are reasonable, the contention made on behalf of the applt. that these sections are void must be rejected.

40. Nor am I prepared to accept the argument urged on behalf of the applt. that Sections 27A & 32 of the Act are void, having regard to Article 14 of the Constitution. Article 14 of the Constitution says that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. "Equality before the law" does not mean an absolute equality of men but it postulates that there shall not be any special privilege by reason of birth or creed or the like in favour of an individual. "Equal protection" must mean that there will not be arbitrary discrimination made by the laws themselves in their administration. It is true that under the proviso to Section 32 an individual reld. to in Section 32 will not be permitted to appear in any proceedings in which a representative union has appeared as a representative of employees. But this is so because the Act aims at a method of representation both on the part of capital & labour in a particular manner, & where a representative union is entitled to appear, it is only proper that an individual employee should not be permitted to appear in a proceeding. What Article 14 of the Constitution contemplates is that no discrimination can be made between the same set of persons, In my view, this contention must also be rejected.

41. Mr. Purshottam on behalf of the applt. points out that the Sabha of which the applt. is a secretary has got certain rights under the Indian Trade Unions Act, 1926 & he relies, in particular, upon Section 15(d) of the Act, He says that the artificial representation created by the Bombay Industrial Relations Act denies his client the right conferred by Section 15(d). But I am unable to see how the right conferred by Section 15(d) of the Trade Unions Act is interfered with by the provisions made under the Bombay Industrial Relations Act. Section 15(d) which is negative in form provides that the general funds of a registered Trade Union shall not be spent on objects other than those indicated in several clauses including Clause (d). It is unfortunate that, as observed by the learned trial Mag., the actual representation of labour in the three unions is less than 40 per cent. So that 60 per cent. of the textile workers have not been represented by one union or another. But that is a fault of the workers. If the Sabha of which the applt. is a secretary desires that the Sabha should be heard before an Industrial Tribunal, it is within its power to win the support of the remaining workers sufficient to claim membership greater than that enjoyed by the Rastriya Mill Mazdoor Sangh. As matters stand, however, the position is that the majority of workers seem to be indifferent & the applt. is not entitled to take advantage of

this situation in order to escape from the consequences of the penal provisions enacted in Section 27 of the Industrial Disputes (Appellate Tribunal) Act, 1950.

42. For the above reasons, I think, the applt's. conviction is correct & I agree in the order proposed by my learned brother. In the other appeals also the appls'. convictions are correct & I agree an the order proposed by my learned brother.