(1962) 05 PAT CK 0004

In the Patna High Court

Case No : Misc. Judicial Case No''s. 475 and 498 of 1959

Rohtas Industries Staff Union and Others APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 02-05-1962

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10A, 18, 2, 22, 23
Trade Unions Act, 1926 — Section 18

Citation : AIR 1963 Patna 170 : (1962) 2 LLJ 420

Hon'ble Judges : Ramaswami, C.J;N.L. Untwalia, J

Bench : Division Bench

Advocate : Jaleshwar Prasad, Shankar Kumar, B.C. Ghose, T.K. Prasad and J.K. Das, for the Appellant; C.B. Sahay, Ram Narain Tewary, B. Nath, Additional Government Pleader, Addl. Solicitar General of India, Government Advocate, A.B.N. Sinha, Ramji Sharan and Krishna Prakash Sinha, for the Respondent

Final Decision : Allowed

Judgement

Ramaswami, C.J.—In Miscellaneous Judicial Case No. 498 of 1959, petitioner No. 1 is a registered trade union, called the Rohtas Industries Mazdoor Sangh. Petitioners Nos. 2 and 3 are employees of respondent No. 2, the Rohtas Industries Limited, which have many units of production at Dalmianagar, namely; cement, paper, sugar, etc. etc., and a large number of workers are employed therein. For disputes regarding non-payment of bonus and non-implementation of Shree Jee Jee Bhoy''s award, there was a strike-notice served by petitioner No. 1 on respondent No. 2. The strike was started in the factories of the Rohtas Industries Limited on the 3rd September, 1957, and it was called off on the 3rd October, 1957, on the basis of an agreement between the management and the workers dated the 2nd October, 1957.

By this agreement the parties agreed to refer certain matters in dispute to arbitration. u/s 10-A of the Industrial Disputes Act the Government of Bihar published the arbitration agreement in the Bihar Gazette. The arbitration agreement is to the following effect :

"Agreement u/s 10-A of the Industrial Disputes Act, 1947, between Rohtas Industries Limited and its workmen.

Representing Employers --Rohtas Industries Ltd., Dalmianagar. Representing Workmen. -

(1) Rohtas Industries Mazdoor Sangh, Dalmianagar,

(2) Rohtas Industries Staff Union, Dalmianagar,

(3) Dalmianagar Staff Employees'' Union, Dalmianagar,

(4) Dalmianagar Mazdoor Seva Sangh, Dalmianagar,

It is hereby agreed between the parties to refer the following industrial disputes to the arbitration of Shri J. N. Mazumdar, Ex. Judge, Calcutta High Court, and Ex. Chairman, Labour Appellate Tribunal of India, 63/1/2, Lansdown Road, Calcutta, and Shri R. C. Mitter, Ex. Judge, Calcutta High Court and Ex. Chairman, Labour Appellate Tribunal of India, 5-A, Old Mayors Court, Calcutta :

(i) Specific matter in dispute ...

Issues arising out of para-graph 7 of the Agreement dated 2nd October, 1957. reproduced below :

"The employees'' claim for wages and salaries for the period of strike and the Company''s claim for compensation for losses due to strike shall be submitted for arbitration of Shri J. N. Mazumdar and Shri R. C. Mitter, Ex. High Court Judges and Ex. Members of the Labour Appellate Tribunal of India as Joint Arbitrators and their decisions on the two questions shall be final and binding on all the parties."

(ii) Details of the parties to the dispute ...

The Rohtas Industries Ltd. Dalmianagar and their workmen.

(iii)

Name of the Unions representing the workmen

... 1.

Rohtas Industries Maz-door Sangh, Dalmianagar,

2.

Rohtas Industries Staff Union, Dalmianagar,

3.

Dalmianagar Staff Em-ployees'' Union, Dalmianagar.

4.

Dalmianagar Maadoor Seva Sangh, Dalmianagar.

(iv)

Total number of work men employed in Rohtas Industries Limited

... About 5,500

(v)

Estimated number of workmen likely to be affected by the dispute

... About 5,500"

According to Clause 7 of the agreement, the claim of the workers for wages and salaries for the period of the strike and the claim of the Company for compensation for loss of production due to strike were to be submitted for arbitration of Sri J. N. Mazumdar and Sri R. C. Mitter, former High Court Judges and Ex. Members of the Labour Appellate Tribunal of India, as joint arbitrators. On the 20th April, 1959, the arbitrators gave an award and sent the same for publication to the Government of Bihar. In this award the arbitrators decided all the issues against the trade unions and held that compensation should be paid by the workers who had gone on strike to the Rohtas Industries Limited to the extent of Rs. 6,90,000/- and to the Ashoka Cement Works Limited to the extent of Rs. 80,000. The arbitrators also decided that the cost of arbitration should be divided equally between the employers and the trade unions concerned.

The petitioners have obtained a rule from the High Court asking the respondents to show cause why the award of the arbitrators dated the 20th April, 1959, should not be quashed by a writ in the nature of certiorari under Article 226 of the Constitution. Cause has been shown by the Additional Solicitor General of India on behalf of respondent No. 2, to whom notice of the rule was ordered to be given. On behalf of respondent No. 1, the State of Bihar, the Additional Government Pleader, supported the contention of the petitioners that the award of the arbitrators is ultra vires and illegal in so far as it directs compensation to be paid by the workmen going on strike to the management: of the Company for loss of production and business due to the strike.

2. In Miscellaneous Judicial Case No. 475 of 1959 petitioner No. 1 is a registered trade union, called the Rohtas Industries Staff Union, and respondents Nos. 2, 3, 4, 5 and 6 are the Rohtas Industries Limited, Ashoka Cement Limited, Sri Krishna Gyanoday Sugar Limited, Ashoka Marketing Limited and Bharat Collieries Limited. The material facts in this case are identical to those in Miscellaneous Judicial Case No. 498 of 1939, and the question of law presented for determination in this case is of the same character.

3. I shall first deal with the argument addressed on behalf of the petitioners that the question of the award of compensation by workman to employers for the loss of business caused by the strike is beyond the scope of Section 10-A of the Industrial Disputes Act which is in the following terms :

"10-A. (1) Where any industrial dispute exists or is apprehended and the employer and the workmen agree to refer the dispute to arbitration, they may, at any time before the dispute has been referred u/s 10 to a Labour Court or Tribunal or National Tribunal, by a written agreement, refer the dispute to arbitration and the reference shall be to such person or persons (including the presiding officer of a Labour Court or Tribunal or National Tribunal) as an arbitrator or arbitrators as may be specified in the arbitration agreement.

(2) An arbitration agreement referred to in Sub-section (1) shall be in such form and shall be signed by the parties thereto in such manner as may be prescribed.

(3) A copy of the arbitration agreement shall be forwarded to the appropriate Government and the conciliation officer and the appropriate Government shall, within fourteen days from the date of the, receipt of such copy, publish the same in the Official Gazette.

(4) The arbitrator or arbitrators shall investigate the dispute and submit to the appropriate Government the arbitration award signed by the arbitrator or ail the arbitrators, as the case, may be.

x x x x Reference was made in this connection to Section 2(k) of the Act which defines "industrial dispute'''' to mean

"any dispute or difference between employers, and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

It was submitted on behalf of the petitioners that compensation by the workmen to the employer has no direct connection with the employment or non-employment or the condition of employment of any workman and so does not come within the definition of Section 2(k) of the Industrial Disputes-Act.

The opposite view point was presented by the Additional Solicitor General and it was contended, that the definition of Section 2(k) of the Industrial Disputes Act was wide enough to cover the question of compensation to be paid to the employer by the workmen for the loss caused to business by the launching of the strike. Reference was made by the Additional Solicitor General to the decision of the Federal Court in Western India Automobile Association v. Industrial Tribunal, Bombay AIR 1949 F C 3, where it was held by the Federal. Court that the question of reinstatement of a workman is covered by the definition of "industrial dispute" in Section 2(k) of the Industrial Disputes Act. I consider that there is much force in the contention put forward on behalf of the petitioners that the question of compensation payable by the workmen to the employer for the loss caused by a strike does not come within the purview of Section 10-A of the Industrial Disputes Act, and such a claim of the employer cannot fall within the definition of "industrial dispute" u/s 2(k) of the statute.

It should be noticed that Section 25-C of Chapter VA provides for compensation to workmen who are laid-off. Section 25-FF similarly provides for compensation to workmen in case of transfer of undertakings. Section 25-FFF in the same manner provides for compensation in case of closing down of undertakings. There is no similar provision in the Act for compensation payable to employers by workmen for interference with the business. It is true that the language of Section 2(k) is wide, but it is a well established canon of construction that the language of any section must be interpreted in the setting and in the context of other sections of the Act. In other words, the meaning of the section must be subject to the qualifying effect of subjectae materies. I do not propose, however, to express any concluded opinion on this question in the present case. I shall proceed on the assumption that the claim of the employers for compensation from the workmen falls within the scope of Section 2(k) of the Industrial Disputes Act, and the reference to arbitration u/s 10-A of the Indus-trial Disputes Act of this question is intra vires.

4. I shall now consider the main argument addressed on behalf of the petitioners that the award of the Arbitrators is illegal and ultra vires because they committed a mistake of law apparent on the face of the record. It was contended by learned counsel on behalf of the petitioners that the arbitrators were erroneous in lading that the workers had committed the tort of conspiracy and were accordingly liable for paying compensation to the Companies concerned. It was also submitted that the arbitrators Lad committed an error of law in holding that the workers were not protected by the immunity granted u/s 18 of the Trade Unions Act. It was submitted on behalf of the petitioners that the award of the arbitrators so far us the question of compensation is concerned is vitiated by error of law and must be quashed by grant of a writ in the nature of certiorari under Article 226 of the Constitution.

5. The law with regard to the tort of conspiracy is now well established. Conspiracy as a tort must arise from a combination of two or more persons to do an act. It would be actionable if the real purpose of the combination is the inflicting of damage on A, as distinguished from serving the bona fide and legitimate interests of those who so continue and there is a resulting damage to A. In the leading case of Sorrell v. Smith 1925 AC 700, Lord Cave, L.C. remarked as follows :

" ..... I deduce as material for the decision of the present case two propositions of law which may be stated as follows : (1) A combination of two or more persons wilfully to injure a, man in his trade is unlawful and, if it results in damage to him, is actionable. (2) If the real purpose of the combination is, not to injure another, but to forward or defend the trade of those who enter into it, then no wrong is committed and no action will lie, although damage to another ensues. The distinction between the two classes of case is sometimes expressed by saying that in cases of the former class there is not, while in cases of the latter class there is, just cause or excuse for the, action taken."

In a subsequent case, Crofter Hand-woven, Harris Tweed Co. v. Veith 1942-1 All

ER 142 the House of Lords applied the principle of the Mogul''s case, (Mogul S. S. Co. v. Me. Gregor Gov. and Co.) 1892 AC 25 to labour relations. It was observed by Viscount Simon, L. C. in this case as follows :

".....the predominant object of the respondents in getting the embargo imposed was to benefit their trade, union members by preventing under-cutting & unregulated competition, and so helping to secure the economic stability of the island industry. The result they aimed at achieving was to create a better basis for collective bargaining, and thus directly to improve wage prospects. A combination with such an object is not unlawful, because the object is the legitimate promotion of the interests of the combiners....."

In the course of his judgment in the same case Lord Wright observed as follows:

"It cannot be merely that the appellants'' right to freedom in conducting their trade has been interfered with. That right is not absolute or unconditional. It is only a particular aspect of the citizen''s right to personal freedom'', and, like other aspects of that right, is qualified by various legal limitations, either by statute or by common law. Such limitations are inevitable in organized societies, where the rights of individuals may clash. In commercial affairs, each trader''s rights are qualified by the right of others to compete. Where the rights of labour are concerned, the rights of the employer are conditioned by the right of the men to give or withhold their services. The right of workmen to strike is an essential element in the principle of collective, bargaining."

6. In the case of a "mixed motive" or a "mixed purpose" for the conspiracy, the tent is what is the dominant motive or the dominant purpose of the conspiracy. The test to be applied in a case of this description is--was the dominant motive of the combiners to benefit the funds of the Union, or was the dominant motive to cause the injury to the employer? The test is not what is the natural result to the employers of such combined action or what is the resulting damage to the employers, but what is in truth the object in the minds of the workmen when they acted as they did. It is well established that if there is more than one purpose actuating a combination, the liability must depend on ascertaining what is the predominant purpose.

The matter is clearly put by Viscount Simon, L.C. in 1942-1 All ER 142 as follows:

"The test is not what is the natural result to the plaintiff of such combined action or what is the resulting damage which the defendants realise, or should realise, will follow, but what is in truth the object in the minds of the combiners when they acted as they did. It is not consequence that matters, but purpose. The relevant conjunction is not, ''so that'' but, ''in order that.'' Next, it is to be borne in mind that there may be cases where the combination has more than one ''object'' or ''purpose''. The combiners may feel that they are killing two birds with one stone, and, even though their main purpose may be to protect their own legitimate interests notwithstanding that this involves damage to the plaintiffs, they may also find a further inducement to do what they are doing by feeling that it serves the plaintiffs right. The analysis of human impulses soon leads us into the quagmire of mixed motives, and, even if we avoid the words ''motive'', there may be more than a single purpose or object, It is enough to say that, if there is more than one purpose actuating a combination, liability must depend on ascertaining the predominant purpose. If that predominant purpose is to damage another person and damage results, that is tortious conspiracy. If the predominant purpose is the lawful protection or promotion of any lawful interest of the combiners, it is not a tortious conspiracy, even though it causes damage to another person."

7. In the present case the arbitrators have failed to apply this principle in adjudicating the liability of the workers to pay compensation. It is conceded by the arbitrators that the workers commenced the strike because their demands for payment of bonus had not been complied with. It is also stated by the arbitrators in the award that the reason for the strike was the non-implementation of Shri Jee Jee Bhoy''s award with regard to the wages of casual workmen and also non-implementation of the settlement dated the and May, 1957. But the arbitrators have said that the strike was resorted to by each of the Unions "for ulterior objects of their own''''. The arbitrators have not found what were the "ulterior objects" for which the Unions entered into a strike. Even assuming that there were ulterior objects impelling the Unions to enter into a strike, it was the duty of the arbitrators to go into the question as to what was the dominant purpose of the strike and whether the dominant purpose was not promotion of the legitimate interest of the. Trade Unions for better wage conditions for the workers concerned. In failing to apply the principle of law laid down by the House of Lords in 1942-1 All ER 42 the arbitrators have misdirected themselves in law, and the award of compensation to the Companies granted by the arbitrators must be quashed on this ground.

8. I shall then proceed to consider the argument of Counsel for the petitioners that the arbitrators have committed an error of law in holding that the workers were not protected by Section 18(1) of the Trade Unions Act, which is to the following effect.

"18. (1) No suit or other legal proceeding shall be maintainable in any Civil Court against any registered Trade Union or any officer or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the Trade Union is a party on the ground only that such act induces some other person to break a contract of employment, or that it is in interference with the trade, business or employment of some other person with the right of some other person to dispose of his capital or of his labour as he wills."

In paragraph 27 (c) of the award the arbitrators have said that in their opinion the provisions regarding immunity u/s 18 are not attracted to the facts and circumstances of the present case where the strike was found illegal and not in furtherance of trade dispute. It was further stated by the arbitrators that an illegal strike cannot in any event be regarded as one "in furtherance of trade dispute". In my opinion the arbitrators misdirected themselves in law in holding that the workers cannot claim the immunity u/s 18 of the Trade Unions Act, because the strike is illegal u/s 24(i) of the Industrial Disputes Act for the contravention of Section 23(b) and Section 23(c) of that Act. Section 23 is to the following effect:

"23. No Workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out.

X X XX (b) during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and two months after the conclusion of such proceedings; or

(c) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award," Section 24(1) states as follows :

"24. (1) A strike or a lock-out shall be illegal if-

(i) it is commenced or declared in contravention of Section 22 or Section 23; or

X X X X" Section 26(1) provides penalty for illegal strikes and lock-outs and is to the following effect :

"26. (1) Any workman who commences, continues or otherwise acts in furtherance of, a strike which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both."

It is manifest that the question whether the strike was legal or illegal u/s 24(1) of the Industrial Disputes Act has no bearing on the question of immunity furnished by Section 18 of the Trade Unions Act.

The view I have expressed is borne out by a, comparison of the English law on this point, Section 4 of the Trade Disputes Act, 1906, provides that no action for a tort of any kind shall lie against a trade union so as to charge the union funds. It is also provided by Section 3 of that Act that

"An act done by a person in contemplation by furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment or that it is an interference with the trade, business, or employment of some other person, or with the right of some other person to dispose of his capital or his labour as he will."

Section 5 (3) defines the expression "trade dispute" as "any dispute between employers and work-men, or between workmen and workmen, which is connected with the employment or non-employment or the terms of the employment, or with the conditions of labour, of any person", and the expression ''''workmen'''' means '"all persons employed in trade or industry, whether or not in the employment of the employer with whom a trade dispute arises."

With regard to the interpretation of Section 3 of the Trade Disputes Act it was held by the Court of Appeal in Dallimore v. Williams and Jesson (1914) 30 TLR 432 that if there is an existing trade dispute the act need not be done solely or even honestly in contemplation or furtherance thereof to obtain the protection of that section. It was further held in Fowler v. Kibble (1922) 1 Ch 487 that an act is not deprived of the protection of Section 3 of the Trade Disputes Act because it is punishable u/s 7 of the Conspiracy and Protection of Property Act, 1875. It is manifest in the present case that the striking workmen are not prevented from taking recourse to the protection of Section 18 of the Trade Unions Act mainly because the strike was illegal u/s 24(i) of the Industrial Disputes Act. It was still the duty of the arbitrators to find whether the strike was undertaken by the workmen in furtherance of a trade dispute within the meaning of Section 18 of the Trade Unions Act.

It was pointed out by the Government Advocate on behalf of the respondents that there was a finding of the arbitrators in paragraphs 21 and 27 (c) of the award that the strike was not resorted to in furtherance of a trade dispute. But this finding is vitiated in law because the arbitrators do not say upon what evidence this finding is based. As I have already said, the arbitrators have said in their award that the strike was resorted to because the demand for payment of bonus was not complied with and also because there was non-implementation of Shri Jee Jee Bhoy''s award relating to wages of casual workmen. It is true that in paragraph 21 of the award the arbitrators have said that the Unions have resorted to a strike with ulterior objects of their own. But the arbitrators have not mentioned anywhere as to what these ulterior objects were. The arbitrators have not also analysed the question as to whether the predominant purpose of the workmen in resorting to the strike was not the furtherance of a trade dispute. As I have already pointed out, the arbitrators have misdirected themselves in law in holding that the workmen cannot claim immunity u/s 18 of the Trade Unions Act because the strike is illegal u/s 24(1) of the Industrial Disputes Act. I consider that the award of the arbitrators regarding payment of compensation to the employers is vitiated by this fundamental mistake of law.

9. On behalf of the petitioners learned Counsel submitted that the Companies had no right of civil action for damages against the workers who had taken part in an illegal strike. It was submitted that the only remedy open to the Companies was criminal prosecution u/s 26(1) of the Industrial Disputes Act, which is in the following terms :

"26. (1) Any workman who commences, continues or otherwise acts in furtherance of, a strike which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or both."

The submission of learned counsel was that special penalty has been attached to the breach of Sections 23 and 24 of the Industrial Disputes Act, and that remedy is exclusive and the companies have no civil remedy in addition to the remedy expressly provided by the statute.

The opposite view point was put forward on behalf of the respondent-Companies and it was contended that apart from the express penalty provided u/s 26(1) of the Industrial Disputes Act the Companies had a right to civil action for breach of Sections 23 and 24 of the Act.

The question raised depends upon the intention of the Legislature in the enactment of the Industrial Disputes Act. Was it intended to make the duty imposed upon the employees and the employers by Sections 23 and 24 of the Act a duty owed to the individuals aggrieved, or was it intended to be a public duty only?

In the approach to this question it is necessary to have regard to certain principles which afford guidance in ascertaining the legislative intent. For example, if a statutory duty is prescribed but no remedy by way of penalty or otherwise for its breach is imposed, it can be assumed that a right of civil action accrues to the person who is damnified by the breach, for, if it were not so, the statute would be wholly ineffective. But "where an Act creates an obligation., and enforces the performance in a specified manner, we take it to be a general rule that performance cannot be enforced in any other manner" (Lord Tenterdoan, C. J. in Doe D. Rochester v. Bridges (1831) 1 B and Ad. 847 at p. 859. This passage was cited with approval by the-Earl of Halsbury, L. C. in Pasmore v. Oswaldtwistle Urban Council 1898 AC 387 . But this general rule is subject to exceptions. It may be that, though a specific remedy is provided by the Act yet the person injured has a personal right of action in addition. That depends on the scope of language of the particular statute.

For instance, in Black v. Fife Coal Co. Ltd. 1912 AC 149 Lord Kinnear observed :

"If the duty be established, I do not think there is any serious question as to the civil liability. There is no reasonable ground for maintaining that a proceeding by way of penalty is the only remedy allowed by the statute. The principle explained by Lord Cairns in Atkinson v. Newcastle and Gateshead Water Works, Co. (1877) 2 Ex. D. 441 and by Lord Harschell in Cowley v. Newmarket Local Board 1892 AC 345, solves the question. We are to consider the scope-and purpose of the statute and in particular for whose benefit it is intended. Now the object of the present statute is plain. It was intended to compet mine owners to make due provision for the safety of the men working in their mines, and the persona-for whose benefit all these rules are to be enforced are the persons exposed to danger. But when a duty of this kind is imposed for the benefit of particular persons, there arises at common law a correlative right in those persons who may be injured by its contravention."

10. An illustration of the general rule is the leading case in (1877) 2 Ex. D. 441. In that case, it was held by the Court of Appeal, reversing the decision of the

Court of exchequer, that the defendant company was not liable to damages for the destruction of the plaintiff''s house by fire, although its destruction was directly due to the failure of the defendants to perform the duty laid upon them under the Water Works Clauses Act, 1847, to maintain a certain pressure of water in their water-pipes for the purpose of extinguishing fire. The statute in question provided that any breach of this duly should be an offence punishable by a fine of ten pounds, and the Court came to the conclusion that on the true interpretation of the statute the intention of the Legislature was that this should be the solo remedy available.

11.) The principle is stated by Lord Cairns as follows :

"Apart, then, from authority, I should say, without hesitation, that it was no part of the scheme of this Act to create any duty which was to become the subject of an action at the suit of individuals, to create any right in individuals with a power of enforcing that right by action; but that its scheme was, having laid down certain duties, to provide guarantee for the due fulfilment of them, and where convenient to give the penalties, or some of them to the persons injured, but, where not convenient so to do, there simply to impose public penalties, not by way of compensation, but as a security to the public for the due performance of the duty."

This principle was applied by the Court of Appeal in Philips v. Britannia Hygienic Laundry Co., Ltd. (1923) 3 KB 832. In that case an action was brought by the owner of a damaged motorcar against the owners of a motor-lorry for a breach of Article II, Clause (6), of the Motor Care (Use and Construction) Order, 1904, read with Section 6, Subsection (i), of the Locomotive on Highways Act, 1896. It was held by the Court of Appeal in this case that it was not intended by the Act or by the order that every one injured through a breach of the order should have a right of action for damages; but that the duty imposed by the Order was a public duty only to be enforced by the penalty imposed for a breach of it, and not otherwise.

The same principle was applied by the House of Lords in Culler v. Wandsworth Stadium Ltd., 1949 AC 398. In that case an action was brought by an individual bookmaker against the occupier of a licensed dog-racing track on which a totalisator was lawfully in operation for failure to provide him with "space on the track where be can conveniently carry on bookmaking" in accordance with Section 11 Sub-section 2 (b) of the Betting and lotteries Act, 1934. It was hold by the House of Lords in this case that the action of the bookmaker for damages was not, maintainable, because the obligation imposed by the Betting and Lotteries Act was enforceable only by criminal proceedings for the penalties specified in Section 30, Sub-section (1), of the Act, and that the bookmaker had no cause of action for damages under the statute against the respondents. In my opinion the present case comes within the principle laid down by Lord Tenterden in (1831) 1 B and Ad. 847 and by the Court of Appeal in (1923) 2 KB 832 and by the House of Lords in 1949 App Cas 398.

12. In the application of this principle, it is necessary to consider the scope and object of the Industrial Disputes Act and to uncertain for whose benefit the protection of Sections 22 and 23 are Intended. There sections undoubtedly imposed a duty on the employees, but the important question is to whom was the duty owed? Was it intended by the framers of the Act to make the duty one which was owed to the employers, or was it a duty owed to the public? The preamble of the Act stated :

"It is expedient to make provision for the investigation and settlement of industrial disputes, and for certain other purposes".

There is nothing in the title or preamble of this Act to suggest that it is a charter for the employers or the employees or that it is enacted solely for the benefit of any particular class of employers or employes. On the contrary, the preamble suggests that the object of the Act is the proper adjustment of relations between capital and labour, preservation of law and order, and the increase of industrial production.

Chapter V of the Act is entitled "strikes and Lock-outs". Section 22(1) of this Chapter states that

"no person employed in a public utility service shall go on strike in breach of contract without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking............"

Section 22(2) states that

"No employer carrying on any public utility service shall lockout any of his workmen without giving them notice of lockout as hereinafter provided, within six weeks before locking out........"

Section 23 states :

"No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lockout (a) during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings; (b) during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and two months after the conclusion of such proceedings; or (c) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award."

Section 24 provides that a strike or a lock-out shall be illegal if it is commenced or declared in contravention of Section 22 or Section 23. Chapter VI is important. Section 26(1) states that any workman who commences, continues or otherwise acts in furtherance of an illegal strike shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees.

13. Section 26(2) similarly provides that any employer who commences,

continues or otherwise acts in furtherance of an illegal lock-out shall be punishable with imprisonment for a term which may extend to one month, or with (me, or with both. Section 27 provides penalty for instigation of an illegal strike or lock-out. Section 28 states that any persons who knowingly expends or applies any money in direct furtherance of any illegal strike or lock-out shall be punishable with imprisonment for a term of six mouths. Section 30 provides penalty for disclosing confidential information.

14. Upon the consideration of the various provisions of the Act it is manifest that the overriding purpose of the Act is the benefit of the community and not the benefit of the employees or the employers. It is true that Section 24 imposes a statutory duty on the employees not to commence or declare an illegal strike. But it is manifest that if there is a breach of this statutory duty on the part of the employees, the employer has no right of Civil action against the employees in default apart from the statutory penalty provided by Section 26(1). Similarly, if the employer declares an illegal lock-out, there is a breach of the statutory obligation created by Section 24, but the employees have no right of civil action. The exclusive remedy open to them is criminal prosecution u/s 26(2) of the Act. For these reasons I hold that the duties imposed by Sections 22, 23 and 24 of the Act arc statutory duties owed by the employees not to the employers concerned but duties owed to the public which can be solely enforced by criminal prosecution u/s 26(1) of the Act. It follows, therefore, that the employers have no right of Civil action for damages against the employees participating in an illegal strike within the meaning of Section 24(1) of the Industrial Disputes Act.

15. At the commencement of the hearing Counsel on behalf of the petitioners also challenged that portion of the award holding that the workmen participating in the strike were not entitled to the wages and salaries for the period of the strike. Learned Counsel also challenged the award with regard to the liability imposed upon the workmen jointly and severally to pay to the Companies part of the cost of arbitration. But in the course of argument learned Counsel for the petitioners confined their argument only with respect to that portion of the award which granted compensation to the employers payable by the workmen participating in the strike and gave up their objections with regard to other portions of the award.

16. It was also submitted on behalf of the respondents that a writ in the nature of certiorari cannot be granted against private arbitrators who are appointed by an agreement between the parties. I am unable to accept this submission as correct. The arbitrators whose award is challenged in this case are not private arbitrators, but the jurisdiction of these arbitrators is statutory because it is based upon Section 10A of the Industrial Disputes Act and the award of these arbitrators becomes enforceable u/s 17A of the Industrial Disputes Act. It is well established that a writ of certiorari will lie against statutory arbitrators of this description; see, for example, the decision of the King''s Bench Division in R. v. Powell (1925) 1 KB 641 and in Regina v. National Joint Council for the Craft of

Dental Technicians (Disputes Committee (1953) 1 QB 704.

17. I am also satisfied that the award of the arbitrators with regard to compensation payable to the employers by the workmen participating in the strike is separable from the other portions of the award of the arbitrators and, therefore, a writ of certiorari can be granted in respect of that portion of the award of the arbitrators by which they granted compensation to the employers by the workmen participating in the strike.

18. For these reasons I hold that the award of the arbitrators in all the five references u/s 10A of the Industrial Disputes Act must be held to be ultra vires and illegal so far as the arbitrators have granted compensation to the employers by the workmen participating in the strike for the losses due to the strike. In my opinion the petitioners are entitled to grant of a writ in the nature of certiorari under Article 226 of the Constitution for quashing the award of the arbitrators in all the five references so far as they granted compensation to the employers by the workmen concerned for the losses due to the strike,

19. I would accordingly allow these applications, but I do not propose to make any order as to cost.

Untwalia, J.

20. I entirely agree.

