

(1954) 08 PAT CK 0001

In the Patna High Court

Case No : Misc. Judl. Case No. 115 of 1954

Sasamusa Sugar Works Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 04-08-1954

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 4
Constitution of India, 1950 — Article 226, 32
Industrial Disputes (Appellate Tribunal) Act, 1950 — Section 20, 20(1), 20(2)
Industrial Disputes Act, 1947 — Section 12, 12(4), 12(5)

Citation : AIR 1955 Patna 49

Hon'ble Judges : Ramaswami, J;Ahmad, J

Bench : Division Bench

Advocate : A.B.N. Sinha, for the Appellant; Govt. Pleader, Ranen Ray, T.K. Prasad and Jagdish Pandey, for the Respondent

Final Decision : Allowed

Judgement

Ahmad, J.—The petitioner in this case is a limited concern Sasamusa Sugar Works Ltd. It has got a rule issued from this Court against the opposite parties calling upon them to show cause as to why a writ in the nature of mandamus or prohibition or certiorari, or, in the alternative, direction should not be issued forbearing them from giving effect to the orders passed by the Labour Commissioner on 21-2-1953 and 29-4-1953, and restraining them from taking any proceeding under the Industrial Disputes (Appellate Tribunal) Act 1950 and also for quashing two orders one passed by the Government u/s 20 of the aforesaid Act and communicated to the Sub-divisional Officer, Gopalganj, on 20-2-1954, and the other passed by the Certificate Officer, Gopalganj, whereby he has started, a certificate case No. 331 of 1953-54 for the recovery of Rs. 23,790/1/3 against the Directors of Sasamusa Sugar Works Ltd.

2. The dispute giving rise to the present application is in substance the outcome of some difference between the parties over the interpretation of an award dated 26-9-1950, given under -the Industrial Disputes Act (Act 14 of 1947) by the

Industrial Tribunal of which the Hon"ble Mr. Justice B. P. Sinha (as he then was) was the sole member.

3. It appears that in the early part of the year 1950 some dispute arose between the employers and workmen of the petitioner company Sasamusa Sugar Works Ltd. For the adjudication of that dispute the Government u/s 7, Industrial Disputes Act by an order dated 6-2-1950, constituted an Industrial Tribunal with Hon"ble Mr. Justice B.P. Sinha (as he then was) as its sole member, and u/s 10 of the Act referred to that Tribunal a number of points for adjudication. One of the points referred to it, which has given rise to the present application, was : "The retaining allowance for the off-season to be paid if any". The award, given by the Tribunal on 25-9-1950, was published in the Bihar Gazette, Extraordinary, on 5-10-1950. The finding given therein on the issue of retaining allowance was to the effect that the skilled workmen and clerks should get at the rate of 50 per cent, of their wages during the off-season and semi-skilled ones at the rate of 25 per cent. thereof. A list was also given in the award classifying therein broadly the skilled and semi-skilled jobs with a note attached thereto in the following words :

"It should be noted that the list given above of skilled and semi-skilled jobs is illustrative of the nature of the work done, and not exhaustive of the description, that is to say, irrespective of the description, or nomenclature given by particular factories to their workmen, it is the job, and not the description attaching to it, which will determine the question of whether the particular man is or is not entitled to retaining allowance."

Against the award, an appeal was taken to the Labour Appellate Tribunal of India u/s 7, Industrial Disputes (Appellate Tribunal) Act 1950. The main controversy in appeal between the parties on the point of retaining allowance was as to who among the workmen was to be considered as skilled and semi-skilled labour and as such entitled to get retaining allowance. The Appellate Tribunal on hearing the parties gave its decision on 7-3-1951 which was published in the Bihar Gazette, Extraordinary, dated 26-3-1951. Therein it held : "We think that we should maintain the list given in the award".

4. It appears from the counter-affidavit sworn by opposite party No. 4, the Secretary of the Sasamusa Sugar Workers" Union, that while the matter was already pending before the Appellate Tribunal, a conciliation proceeding for the settlement of the difference over the award had also started on 3-3-1951 and it was decided therein that the Commissioner of Labour would issue clarification of the award, if necessary, after the order of the Appellate Tribunal had been given and in the meantime the parties were advised to discuss the matter between themselves and to come to a settlement as far as practicable. Unfortunately, the decision of the Appellate Tribunal did not smooth down their difference and, therefore, in accordance with the agreement arrived at in the conciliation proceeding held on 3-3-1951, the parties by an agreement dated 23-1-1952, which forms Annexure 2 of the counter-affidavit filed on behalf of opposite party

No. 4, agreed that the Labour Officer, Muzaffarpur, would hold an investigation into the nature of duties of different workmen and make his recommendation to the Labour Commissioner by the end of January, 1952, and on the receipt of his report the management would be asked to pay workmen in the light of that report.

The Labour Officer, Muzaffarpur, accordingly enquired into the matter and submitted his report to the Labour Commissioner, and on the basis of that report a letter dated 4-4-1952, was sent to the petitioner from the Deputy Commissioner of Labour communicating therein that "The Labour Commissioner has accepted the said report and has directed that the management should pay the retaining allowance as recommended by the Labour Officer. The Labour Commissioner has further directed that such payment should be made within a week from the date of the receipt of this letter".

Unfortunately, none of the parties was satisfied with the report submitted by the Labour Officer and, therefore, a protest petition was filed by both of them. On those protest petitions the Labour Commissioner by his letter dated 19-5-1952, directed the parties to place all materials before the Assistant Labour Commissioner, Muzaffarpur, and to satisfy him that retaining allowance had been paid to all the categories of workmen in accordance with the terms of the award of the Tribunal and to abide by his directions in the matter,

In pursuance of this direction the Assistant Labour Commissioner held an enquiry into the matter and on enquiry directed the payment of retaining allowance to some categories of the workmen about whom there was difference of opinion between the parties in the light of the decision, given in the award. It is claimed by the petitioner that the instructions given to it by the Assistant Labour Commissioner on the close of his enquiry were fully carried out by it and thus the conciliation proceeding initiated between the parties over the question of retaining allowance in terms of the award of the Tribunal had exhausted itself out. It is further alleged that in the meantime the petitioner had given a notice as well on 14-4-1952, u/s 19(6), Industrial Disputes Act, conveying its decision therein to terminate the award as a result whereof it is alleged the award under law terminated after two months from that date.

5. The grievance of the petitioner in this application on this part of the case is that thereafter the Labour Commissioner without any authority by his letter issued from his office on 21-2- 1953, ordered the petitioner to make payment of retaining allowance to some additional categories of workmen and subsequently sent a reminder on 29-4-1953, communicating therein

"The workmen concerned have applied for recovery of the amount due under certificate procedure in accordance with Section 20, Industrial Disputes (Appellate Tribunal) Act, 1950. You are, therefore, advised once again to make payment of the retaining allowance due to all workmen in accordance with the abovementioned letter immediately".

The directions given in these two letters were, it is said, challenged by the petitioner and it categorically denied to accept the eligibility of the new categories of workmen set up by the Labour Commissioner for payment of retaining allowance and also questioned his authority to give such direction.

6. On the protest made by the petitioner, it appears, the State Government, according to the allegation of the petitioner, at the instance of the Labour Commissioner, and according to the opposite party No. 4 on an application filed by the workers on 25-5-1953, sanctioned the institution of a proceeding u/s 20, Industrial Disputes (Appellate Tribunal) Act, 1950, for the recovery of retaining allowance payable to the additional categories of workmen in accordance with the finding of the Labour Commissioner and issued a letter on 20-2-1954, to the Sub-divisional Officer, Gopalganj, directing him to file the necessary certificate of public demand in the office of the Certificate Officer, Gopalganj, and to make a request that early steps should be taken to realise the amount from the Directors of the Sasamusa Sugar Works Ltd.

In pursuance of this letter, it appears, the Sub-divisional Officer of Gopalganj, filed the necessary certificate form in the office of the Certificate Officer, Gopalganj, who, on its receipt, filed it in his office u/s 4, Public Demands Recovery Act and subsequently started a proceeding under the Public Demands Recovery Act against the petitioner. That proceeding is still pending for disposal and in the course of that proceeding notice u/s 7, Public Demands Recovery Act has been served on the petitioner on 4-3-1954. The case of the petitioner is that the certificate case started against it on the basis of the order passed by the Government u/s 20(1), Industrial Disputes (Appellate Tribunal) Act, 1950, is invalid in law, for no money either found due by a conciliation officer in a conciliation proceeding or found due on an interpretation and application by a workman or the Government of a principle given in the award is recoverable u/s 20(1) of the said Act.

7. On these allegations the present application has been now filed in this Court by the petitioner for the issue of writs and directions as stated above. It may be noted here that the present application was sworn on 18-2-1954, and as the petitioner had no knowledge of the proceeding taken against it under the Public Demands Recovery Act at any time before 4-3-1954, when notice thereof u/s 7 was served on it, no reference of the proceeding, it is said, could be made in the original application, and, therefore, on the service of the notice under the Public Demands Recovery Act, supplementary affidavits were filed in the case by the petitioner praying therein to quash the order passed by the Certificate Officer whereby he has started a case under the Public Demands Recovery Act against the petitioner and also to make the Certificate Officer ft party therein.

8. Cause has been shown in the case by the Government Pleader on behalf of the State of Bihar, the Commissioner of Labour, Bihar, the Collector of Saran, Chapra, and the Certificate Officer, Gopalganj, and by Mr. Tara Kishore Prasad, on behalf of Mohammad Shamsuddin, Secretary, Sasamusa Workers' Union.

9. The learned Government Pleader contended that the orders dated 21-2-1953 and 29-4-1953, were passed by the Labour Commissioner in the course of the conciliation proceeding held on the basis of the agreement dated 23-1-1952, and, there fore, the Labour Commissioner had the necessary authority in law to pass the orders on 21-2-1953, and 29-4-1953, and the orders passed on those dates were valid and legal.

10. His next contention was that the order passed by the Government u/s 20, Industrial Disputes (Appellate Tribunal) Act, 1950, for the recovery of the retaining allowance payable to the additional categories of workmen was on the basis of the application submitted to it by the workmen of the Sasamusa Sugar Works Ltd., and the same was valid and legal. He supported the order firstly on the ground that the money found due by the Labour Commissioner in the conciliation proceeding could also be directed by the Government to be recovered u/s 20 of the aforesaid Act and secondly that in any case the money which the Government has under its order directed to be recovered u/s 20 of the Act is the money claimed to be due by the workers under the award dated 26-9-1950. In this view of the matter he submitted that the validity of the proceeding started against the petitioner for the realisation of the due is not open to any question.

11. Mr. Tara Kishore Prasad appearing for the Secretary of the Union has, however, in his argument conceded that the money found due by the Labour Commissioner under his orders dated 21-2-1953, and 29-4-1953, passed by him in the conciliation proceeding started on the basis of the agreement dated 23-1-1952, cannot in law be recovered u/s .20, Industrial Disputes (Appellate Tribunal) Act, 1950. He also did not support the validity of the order passed by the Labour Commissioner on the basis of the agreement dated 23-1-1952. His only contention was that the order passed by the Government u/s 20 of the aforesaid Act was not for the money found due in the conciliation proceeding but for the money claimed to be due by the workmen under the award of 26-9-1950, and as such the order passed by the Government u/s 20 is valid and legal and accordingly the proceeding started on the basis of that order under the Public Demands Recovery Act by the Certificate Officer, Gopalganj, is to accordance with law.

12. On the contentions raised in this case, the following four points arise for consideration :

1. Whether the orders passed by the Labour Commissioner on 21-2-1953 and 29-4-1953 were within the authority conferred on him by law.

(2) Whether the Government u/s 20, Industrial Disputes (Appellate Tribunal) Act, 1950, can pass an order for the recovery of money found due from the employers by the Labour Commissioner to a conciliation proceeding.

(3) Whether Government can exercise powers u/s 20, Industrial Disputes (Appellate Tribunal) Act, 1950, for the recovery of a due under an award wherein it is neither shown as a determinate sum nor as payable to a determinate

person. (4) Whether the proceeding started by the Certificate Officer, Gopalganj, under the Public Demands Recovery Act, against the petitioner is valid in law in case it is found that the due thereunder cannot be realised by the order of the Government in accordance with the procedure laid down in Section 20, Industrial Disputes (Appellate Tribunal) Act, 1950. "

13. I take up these questions one by one.

14. In the course of the argument on the first point a subsidiary point was also raised by the petitioner that the conciliation proceeding based on the agreement dated 23-1-1952, had after the decision given by the Assistant Labour Commissioner exhausted itself and there was no proceeding left thereafter wherein any decision could be given by the Labour Commissioner. I think it is not necessary to decide this point. Even if it be accepted for the sake of argument, as contended by the learned Government Pleader, that the conciliation proceeding based on the agreement dated 23-1-1952, remained pending before the Labour Commissioner even after the decision given by the Assistant Labour Commissioner and even after the satisfaction of the claims by the petitioner on the basis of that decision, this much is clear that the Labour Commissioner in that conciliation proceeding had no authority in law to pass any final order of the nature of those made by him on 21-2-1953, and 29-4-1953. The powers and duties of a conciliation officer are given in Section 12, Industrial Disputes Act 1947. That section reads:

"(1) Where any Industrial dispute exists or is apprehended, the conciliation officer may, or where the dispute relates to a public utility service and a notice u/s 22 has been given, shall, hold conciliation proceedings in the prescribed manner.

(2) The conciliation officer shall, for the purpose of bringing about a settlement of the dispute, without delay investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute.

(3) If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

(4) If no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute & for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at

(5) If, on a consideration of the report referred to in Sub-section (4), the

appropriate Government is satisfied that there is a case for reference to a Board or Tribunal, it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reasons therefor.

(6) A report under this section shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government."

This section obviously contemplates that what is referred to a conciliation officer to be decided in a conciliation proceeding under the Industrial Disputes Act, 1947, is an industrial dispute. In this view of the matter, the very argument advanced by the learned Government Pleader presupposes that the controversy between the parties over the interpretation of the award of 26-9-1950, regarding its application to the different categories of workmen was taken by the parties as an industrial dispute, and it was, therefore, agreed between them to be referred to the Labour Commissioner to be decided by him as a conciliation officer in a conciliation proceeding.

This aspect of the question finds support also from the definition of the phrase "industrial dispute" given in Clause (k) of Section 2, Industrial Disputes Act, 1947. That reads --"industrial dispute" means any dispute or difference between employers and employees, 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."

In this case, therefore, there was a dispute between the employers and workmen, as contemplated by the Industrial Disputes Act, over the interpretation of the award as to whether it did or did not apply in the case of particular categories of workmen. That being so, all that the Labour Commissioner u/s 12, Industrial Disputes Act could do was to induce the parties to come to a fair and amicable settlement on the matter. On his success in the attempt what he could do under Sub-section (3) of Section 12, Industrial Disputes Act was to send a report thereof to the Government together with a memorandum of the settlement signed by the parties to the dispute.

It is admitted in this case that though the parties had agreed to appoint the Labour Commissioner as the conciliation officer no settlement could be arrived at before the Labour Commissioner in the course of the conciliation proceeding and even if there was any that was not before him but before the Assistant Labour Commissioner which had already been acted upon by the parties and thus it had exhausted itself. If, therefore, the contention of the learned Government Pleader is accepted that even after the decision given by the Assistant Labour Commissioner the conciliation proceeding still remained pending before the Labour Commissioner, this much is to be held that as no settlement thereafter was arrived at between the parties before the Labour Commissioner in that

proceeding, he had no option under Sub-section (4) of Section 12 but to send to the Government only a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at. And in any case in the absence of the settlement before him he had no authority under law to pass a final order of the type said to have been given by him in the letters issued from his office on 21-2-1953 and 29-4-1953. Sub-sections (4) and (5) of Section 12, Industrial Disputes Act 1947 say that on receipt of the report submitted to the Government under Sub-section (4) of the section, it was for the Government to decide as to whether the case should be referred to a Board or Tribunal for a decision. It does not provide for a final decision to be given by the conciliation officer even when a settlement is arrived at between the parties and much less when no settlement is arrived at between them. In either case he has only to report the matter to the Government. For these reasons, I hold that the orders passed by the Labour Commissioner on 21-2-1953, and 29-4-1953, in a conciliation proceeding said to be based on the agreement dated 23-1-1952, are without jurisdiction.

15. The law on the second point also, in my opinion, is equally clear. Section 20 of the Industrial Disputes (Appellate Tribunal) Act, 1950, reads:

"(1) Any money due from an employer under any award or decision of an industrial tribunal may be recovered as arrears of land revenue or as a public demand by the appropriate Government on an application made to it by the person entitled to the money under that award or decision.

(2) Where any workman is entitled to receive from the employer any benefit under an award or decision of an industrial tribunal which is capable of being computed in terms of money, the amount at which such benefit should be computed may subject to the rules made under this Act, be determined by that industrial tribunal, and the amount so determined may be recovered as provided for in Sub-section (1).

(3) For the purpose of computing the money value of a -benefit, the industrial tribunal may, if it so thinks fit, appoint a commissioner, who shall, after taking such evidence as may be necessary, submit a report to the industrial tribunal, and the said tribunal shall determine the amount after considering the report of the commissioner and other circumstances of the case." Under Sub-section (1) of the section the Government can recover under the Public Demands Recovery Act only that money which is due from an employer under any award or decision of an industrial tribunal. This Sub-section, therefore, does not give power to the Government to realise any money under the Public Demands Recovery Act which is due from an employer under a decision given by a conciliation officer in a conciliation proceeding. I, therefore, think that the learned Government Pleader was not correct in pressing that the money found due by the Labour Commissioner under his orders dated 21-2-1953 and 29-4-1953, given in the

conciliation proceeding could be executed by the Government by procedure laid down in Section 20, Industrial Disputes (Appellate Tribunal) Act, 1950. The contention of the learned Government Pleader, therefore, on this point fails.

16. The third point is also based on the interpretation of Section 20, Industrial Disputes (Appellate Tribunal) Act, 1950. That section has already been quoted above in extenso. Reading the award of 26-9-1950, as I do, it seems to me that what it decides is that the workmen of particular categories are entitled to get retaining allowance for the off-season and has further laid down certain principle to be worked out in the case of each worker if found to belong to those categories for the payment of his demand on account of retaining allowance. It does not deal with the claim of any individual workman nor does it work out any particular due to be paid to any specific person. In that view of the matter, it cannot be said that any particular person was shown therein as entitled to any determinate amount as his due from the petitioner. That being so, no particular person could apply to the Government on the basis of any finding in the award specially given in his favour that he was entitled to any particular money as his due from the petitioner.

In my opinion, Sub-section (1) of Section 20 is applicable, only in those cases where a determinate sum is held to be due under the award in favour of a specified and definite person. This is clear from the reading of Sub-section (2) of Section 20. This Sub-section deals with the cases where the benefit under an award is not given in the form of a determinate sum but only in a form which is capable of being computed in terms of money. It says that in such a case the money claimed by any particular person as due to him under the award may be determined either by the Industrial Tribunal or according to the provision provided in the rules made under the Act, and only on determination in either of those ways it may be recovered under Sub-section (1) of Section 20.

In the present case our attention has not been drawn to any particular rules made under the Act for this purpose and, therefore, in the absence of such rules the only machinery available under law under this sub-section for the determination of any claim made by any person on the basis of such an award is the industrial tribunal. And it is only when the Industrial Tribunal has determined the amount that it can be recovered in a manner provided in Sub-section (1) of Section 20, Industrial Disputes (Appellate Tribunal) Act, 1950. As already stated above, the award in the present case has laid down only a principle for the payment of retaining allowance to workmen and therefore so far each individual worker is concerned, his due has to be worked out on the basis of the principle laid down there. That, as is apparent from the facts of this case, will require not only an arithmetical calculation of the figures but also a decision as to whether a particular workman does or does not in fact belong to the categories of workmen who under the award have been found to be entitled to receive the retaining allowance. I, therefore, think that it was not permissible law for the Government in such a case to act under Sub-section (1) of Section 20, industrial Disputes

(Appellate Tribunal) Act, 1950 and to pass an order for the realisation of any due under the Public Demands Recovery Act on the basis of a claim made by a workman without its determination by the Industrial Tribunal. This, in substance, if permitted, will amount to giving power to each workman or to the Government to interpret the award and to compute the due claimed on the basis of that Interpretation. That, I think, is not contemplated by Section 20(1), Industrial Disputes (Appellate Tribunal) Act, 1950. That has to be done under Sub-section (2) of Section 20 either by the Tribunal or in accordance with the procedure laid down in the rules, if any, made on the subject under the Act.

In my opinion, the contention advanced by the teamed Government Pleader on this point is without any substance. In the present case, therefore, the award not having found any determinate sum as due from the employers to a particular person, the Government could not proceed under law to recover any due by a proceeding under the Public Demands Recovery Act on the basis of a calculation made by any individual workman in his application submitted to it. The order of the Government, therefore, of 20-2-1954, said to have been passed on the basis of the application submitted by the workman for the realisation of their amount claimed to be due against the management under the award of 26-9-1950, is without jurisdiction. Here it may be noted that the learned Counsel appearing for the petitioner also tried to attack the validity of the order passed by the Government u/s 20(1) of the Act on the ground that the award as a result of the notice given u/s 19(6), Industrial Disputes Act, had long before that order terminated and as such no order could be passed thereafter for the realisation of any money said to be due under that award. I, however, think that in view of the finding given above, this point need not be answered in this case.

17. Coming to the last point, we have to proceed on the findings given above that the Government on the facts of the present case had no power to pass an order u/s 20, Industrial Disputes (Appellate Tribunal) Act, 1950, for the realisation of the due claimed in the applications submitted to it by workmen. That being so, the very foundation on the basis of which the Certificate Officer of Gopalganj started a proceeding under the Public Demands Recovery Act for the realisation of Rs. 23790-1-3 against the petitioner did not exist in law and therefore that proceeding is without any legal basis and void.

18. In this case action was taken by the Certificate Officer against the petitioner for the realisation of money u/s 4, Public Demands Recovery Act, 1914. That section reads:

"When the Certificate Officer is satisfied that any public demand payable to the Collector is due, he may sign certificate in the prescribed form, stating that the demand is due and shall cause the certificate to be filed in his office."

It shows that the satisfaction of the Certificate Officer to the effect that some public demand payable to the Collector is due is a condition precedent to the exercise of the power given to him under this section. iD case, therefore, where

an order is passed by the Certificate officer under this section without any satisfaction on his part to the effect stated above or on the so-called satisfaction which, is arbitrary and not based on any material, his order so passed will be one without jurisdiction. It is evident from the facts of this case that the proceeding against the petitioner was started by the Certificate Officer on the basis of form No. 1 filed in his office by the Sub-divisional Officer of Gopalganj and that form was filled in in accordance with the direction given to the Sub-divisional Officer by the Government in its letter dated 20-2-1954, That order by the Government, as already held above, being without jurisdiction, there could not be in law any basis for the satisfaction of the Certificate Officer that any public demand payable to the Collector was due and, therefore, the proceeding started by him under the Public Demands Recovery Act on the basis of that order is undoubtedly void.

It has, however, been contended both by the learned Government Pleader and Mr. Tara Kishore Prasad that a writ of certiorari or prohibition for such a relief at least at this stage is not maintainable and it should not be allowed. Their point is that the question of invalidity of the proceeding can be raised and decided on an objection before the Certificate Officer or in appeal before the appellate authority or in a separate suit as provided in the Public Demands Recovery Act itself, and unless those remedies have been exhausted no writ under 226 of the Constitution should be issued to quash the proceeding. It is true that as a general rule a writ of certiorari or prohibition will not lie in such a case but as held in the case of -- "Nazma Khatoon v. R.P. Sinha", AIR 1954 Pat 43 (A)

"there is an exception in a case where the want of jurisdiction complained of is based upon the violation of some fundamental principle of Justice. In such an exceptional case, the existence of a remedy by way of appeal or revision is no answer to an application asking for a writ of certiorari or prohibition."

In the present case in law there is no money due under the certificate and as such is not recoverable by the Government u/s 20 (1), Industrial Disputes (Appellate Tribunal) Act, 1950. Therefore, if despite that fact the proceeding for the realisation of money under a void certificate is allowed to continue, it will only result in an unnecessary harassment of the petitioner and the attachment of some of its properties or the attachment of the personal properties of any of its directors and all this without any legal validity.

19. For the reasons stated above, I hold this is a fit case in which a writ of certiorari should issue quashing the orders passed by the Labour Commissioner on 21-2-1953, and 29-4-1953, and the order passed by the Government u/s 20 Industrial Disputes (Appellate Tribunal) Act, 1960 on 20-2-1954, as also the proceeding started by the Certificate Officer, Gopalganj, under the Public Demands Recovery Act against the petitioner for the realisation of Rs. 23,790-1-3 on the basis of the letter issued to him by the Government on 20-2-1954. Further the Certificate Officer, Gopalganj, is prohibited to take any further action in the proceeding started by him against the petitioner under the Public Demands Recovery Act. (20) The application is accordingly allowed but in

the circumstances of the case no order for costs is passed.

Ramaswami, J.

20. I agree.