

(1958) 10 MAD CK 0011
In the Madras High Court

Sridharan Motor Service

APPELLANT

Vs

Industrial Tribunal and Others

RESPONDENT

Date of Decision : 10-10-1958

Acts Referred:

Factories Act, 1948 — Section 56

Industrial Disputes Act, 1947 — Section 13, 14, 22, 33, 33A

Citation : (1959) 1 LLJ 380

Hon'ble Judges : Balakrishna Ayyar, J

Bench : Single Bench

Judgement

Balakrishna Ayyar, J.—This is a petition by the management of Sridharan Motor Service, Attur, in Salem district, for the issue of an

appropriate writ to quash the order of the Industrial Tribunal, Madras, dated 24 December 1957, and made in Petition No. 5 of 1957 in I.D. No.

10 of 1957.

2. The relevant facts are these. On 15 February 1957 the management of Sridharan Motor Service and the workers in that service submitted a

Joint petition to the Government of Madras asking that various matters mentioned in the petition be referred to adjudication. On 20 May 1957 the

Government passed an order referring those questions for adjudication to the Industrial Tribunal, Madras. On 31 May 1957, the management

revised their time-tables in such a manner that it prejudicially affected the workers in various ways. The position that resulted is thus summarized in

the order of the industrial tribunal:

It will be seen from the list that in the case of some of the workers, while the working hours per day were maintained the same, the number of

working days in June was increased. It will be also seen that several of the drivers and conductors, very much more than in May, were put on

spare duty, thereby depriving them of their daily batta which they could claim if they were on active duty. It will further be seen that in the case of

several of the employees they were given night halts at stations other than their residential places whereas under the agreement in force between

parties, the night halts should be, as far as possible, in their respective residential places. It cannot, therefore, be denied that in June there was

increase in the workload. Further it will be seen from that list that in the case of most of these employees the spread-over hours were much more

than that fixed by the statute, namely, 10 1/2 hours.

In consequence the workers went on strike on 5 June 1957. The workers contended that it was a case of lockout effected by the management.

The tribunal, however, has found that what took place was not a lockout but a strike. The tribunal stated its conclusions on this aspect of the

matter in these terms:

On the evidence it is clear that the trouble in the various stations on the morning of the 5 June was due to the strike resorted to by the workers and

not lockout by the management. Indeed, during the arguments, the learned Counsel for the union could not seriously contend that on the evidence

any other view is possible.

The management thereupon framed charges against several individuals who had gone on strike and entrusted the enquiry to an advocate. The

workers, however, withdrew from the enquiry and refused to participate in it. Thereafter the management dismissed the workers against whom

charges had been framed and then filed an application u/s 33(2)(b) of the Industrial Disputes Act, 1947, before the tribunal for approval of the

action which it had taken. The tribunal approved the action of the management in respect of two of the workers who had been found guilty of

having collected fare from passengers without issuing tickets to them. It, however, refused to approve the action of the management as regards the

other workers. The management has, therefore, come to this Court for the issue of an appropriate writ to Quash the order of the tribunal.

3. It seems to me that the tribunal was in error on a number of points. It is common ground that the bus service in question is a public utility service

within the meaning of Section 22(1) of the Industrial Disputes Act. So far as is here material, Section 22(1) of the Industrial Disputes Act runs as

follows:

22 (1). No. person employed in a public utility service shall go on strike in breach of contract-

(a) without giving to the employer notice of strike as hereinafter provided, within six weeks before striking; or

(b) within fourteen days of giving such notice; or

(c) before the expiry of the date of strike specified in any such notice as aforesaid;...

It is not denied that the requirement of this section was not complied with. The strike was therefore clearly illegal. Nevertheless, the industrial

tribunal recorded the view that the strike was justified. It observed :

The management had clearly no right to put the workers on duty so as to exceed the statutory spread-over hours. Even on that very ground, the

workers would be justified in refusing to work on those terms, which they did by going on strike. The strike was one provoked by the management

by the revision of the duty roster, in which they introduced the increase in the workload by increasing the number of working days and in any case

by compelling them to work for more than the statutory spread-over hours. On that ground alone it must be held that the strike resorted to by the

workers on the morning of 5 June was justified.... In other words, the strike, though Illegal, because of the non-compliance of the provisions of

Section 22, must be held to be justified in the circumstances of the case.

4. In recording this opinion the tribunal was following the views expressed in Punjab National Bank, Ltd. v. their workmen 1952 II L.L.J. 648. I

find it difficult to see how anything which is illegal can be said to be Justified. Provocation may mitigate or it may extenuate, but, it practically never

justifies contravention of the law. I am not forgetting that in the great drama of human development situations may occur in which some men of

nobler clay than the rest, may feel an irresistible moral compulsion to defy an unjust law. Such men make history; they stand on the pinnacles of

time. But, surely the present is not such a case. No high or transcendental moral issues were involved. The workers had an adequate remedy

available to them in the Industrial Disputes Act. u/s 33A, where an employer

contravenes the provisions of Section 33 during the pendency of proceedings before a tribunal, any employee aggrieved by such contravention, may make a complaint in writing to the tribunal and thereupon the tribunal is required to adjudicate upon the complaint as if it were a dispute referred to it in accordance with the provisions of the Act. Of that remedy the workers did not avail themselves.

5. Even assuming that the action of the management in altering the conditions of work was illegal, that would not justify the workers in contravening the law themselves. One wrong never justifies another wrong. If the view of the tribunal that provocation justifies a breach of the law or that an unlawful act committed by one party justifies the opposite party in contravening the law were right, dangerous consequences will follow. A member of Parliament; may in Parliament make a speech which angers a section of the people. If the view of the tribunal were right then these persons would be justified in marching into Parliament and beating the member up. Some railway official may behave rudely or assault a member of the travelling public; then the other members of the travelling public would be justified in storming the booking office, wrecking the train and setting fire to the station. I do not think that when it put the matter in the form it did, the tribunal fully appreciated the implications of its statement. If it had, I am certain it would not have committed itself to such a position.

6. Mr. Lakshminarayana Reddi, the learned Counsel for the workers, said that in the present instance the strikers did not commit any acts of violence. That is true enough, but it does not affect the principle involved. If the Government were to issue orders altering to their disadvantage the conditions under which the police in the State work they would be justified if, Mr. Lakshminarayana Reddi were right, in walking away from their posts of duty. They may leave the traffic posts unmanned and the treasuries and jails unguarded. On the same principle, if the conditions of service in the army were to be altered to the disadvantage of serving personnel, and they were thereby provoked, they would be justified in marching off from the frontiers they are posted to defend. I am mentioning these extreme illustrations merely to indicate how dangerous and explosive is the doctrine to which the tribunal-I am sure in an unguarded moment-committed itself. The law permits a man to defend himself, but, it does not justify

a man in contravening the law merely because his neighbour had done so.

7. The tribunal quoted the following passage from *Punjab National Bank, Ltd. v. their workmen* 1952 II L.L.J. 648 :

Modern concepts of social justice would be outraged if in such cases the employer could dismiss a workman for his mere absence due to his participation in such a strike.

The order of the tribunal leaves the impression that it shared this view.

8. On this I would make certain comments. Concepts of social justice have varied with age and clime. What would have appeared to be

indubitable social justice to a Norman or Saxon in the days of William the Conqueror will not be recognized as such in England today. What may

appear to be incontrovertible social justice to a resident of Quebec may wear a different aspect to a resident of Peiping. If it could be possible for

Confucius, Manu, Hammurabi and Solon to meet together at a conference table I doubt whether they would be able to evolve agreed formulas as

to what constitutes social justice, which is a very controversial field. Courts and tribunals created by the law must guide themselves by the

directions and principles embodied in the law. If the law declares that a line or course of conduct is illegal, they must give effect to that declaration.

In countries with democratic forms of Government public opinion and the law act and react on each other. Sometimes the law sets the pace and

public opinion catches up with the law. In other cases where the law lags behind public opinion, the pressure of opinion brings about a change in

the law. But, so far as Courts and tribunals are concerned, the important thing is that they are bound by the law as it stands and must give effect to

it. They cannot ignore the law by rhetorical appeals to undefined and contentious concepts.

9. After expressing the view that the strike, though illegal, was justified, the tribunal went on to say:

That being so, the dismissal of the workers would not be justified, as it would amount to victimization.

Here too I think the tribunal made a mistake. If you punish a man for a wrong which someone else has committed it would be right to say that you

are victimizing him; because then you are literally making a scapegoat of him. Again if you punish a man for something which he has done in another

context which has no relation to or bearing to the charge which has been framed against him, the charge and enquiry being only a pretext to punish

him for something he has done somewhere else, then also it would be right to say that you are victimizing him. But, if you punish a man for

something which he has himself done and the offence found to have been committed and the punishment awarded in respect of it are directly

related to each other, I do not see how it can be said there has been any victimization. I would illustrate my meaning. X is a leader of labour. He

gives considerable trouble to the management. Y is a son or friend of his, employed by the management. The management can find no chance to

punish X. Therefore, they proceed to punish Y. That would be a case of victimization, Or again, X makes himself active on behalf of the

employees in various situations. The management is annoyed by it. He reports to work a minute or two late. He may have good cause for being

late but the management want to get rid of him because of his other activities and they seize upon this occasion, to frame a charge against him and

dismiss him. That would be a case of victimization. But, if X wilfully destroys some piece of machinery and the management were to frame a charge

against him and finding the offence proved dismisses him, it is difficult to see how it can be said that he has been victimized.

10. It must be remembered, a fact too frequently forgotten, that the final responsibility for maintaining standards of conduct and discipline inside an

establishment rests solely on the management. In this matter the position of a labour court or an industrial tribunal vis-a-vis the management is not

analogous to that of a court of appeal in relation to a court of first instance. There are a number of decisions on the point and I shall refer to some

of them.

11. In *The Automobile Products of India Ltd. Vs. Rukmaji Bala and Others*, the Supreme Court had to consider an application which the

management had made to the Labour Appellate Tribunal to retrench some of its workers. The Labour Appellate Tribunal granted the permission

but subject only to various conditions. On appeal the Supreme Court ruled:

This also indicates that those sections only impose a ban on the right of the employer and the only thing that the authority is called upon to do is to

grant or withhold the permission.... Imposition of conditions is wholly collateral

to this purpose and the authority cannot impose any condition.

In *Lakshmi Devi Sugar Mills Ltd. Vs. Pt. Ram Sarup, Bhagwati, J.*, observed:

The tribunal before whom such an application for permission is made u/s 22 of the Act would not be entitled to sit in judgment on the action of the

employer if once it came to the conclusion that a prima facie case had been made out for dealing out the punishment to the workman. It would not

be concerned with the measure of the punishment nor with the harshness or otherwise of the action proposed to be taken by the employer except

perhaps to the extent that it might bear on the question whether the action of the management was bona fide or was actuated by the motive of

victimization. If on the materials before it the tribunal came to the conclusion that a fair enquiry was held by the management in the circumstances of

the case and it had bona fide come to the conclusion that the workman was guilty of misconduct with which he had been charged a prima facie

case would be made out by the employer and the tribunal would under these circumstances be bound to give the requisite permission to the

employer to deal out the punishment to the workman. If the punishment was harsh or excessive or was not such as should be dealt out by the

employer having regard to all the circumstances of the case, dealing out of such punishment by the employer to the workman after such permission

was granted would be the subject-matter of an industrial dispute to be raised by the workmen and to be dealt with as aforesaid. The tribunal,

however, would have no jurisdiction to go into that question and the only function of the tribunal u/s 22 of the Act would be to either grant the

permission or to refuse it.

This statement of the law was reiterated in *Caltex (India) Ltd. v. Fernandez* 1957 I L.L.J. 1:

The Industrial Disputes Act, however, was amended in 1956. The question has therefore to be considered how far the amendment has affected the

decisions which the Supreme Court had given earlier, *Rajagopala Ayyangar J.*, had occasion to examine the matter in *Gordon Woodroffe & Co.*

Ltd. v. Venugopal 1958 I L.L.J. 300. The learned Judge then summarized and analysed the charges that had been made in the Industrial Disputes

Act by the amendments made in 1950 and 1956, and, later in the judgment recorded this view:

The reasoning contained in the judgments of the Supreme Court in the decisions referred to above appear to apply with equal force to the construction of Section 33 as it now stands. The broad distinction between the powers of a tribunal in dealing with industrial disputes and when exercising jurisdiction to grant permission still prevails and there is in this connexion no material difference between the powers of the tribunal under the three Sub-sections of Section 33.... The expression used, "approved" in Section 33 now under consideration has, in my opinion, to be construed similarly. The power of the tribunal is to "approve" or "not to approve" the action of the employer and it does not extend to its adding conditions to its approval.... In the light of these considerations I have reached the conclusion that the power of the Tribunal u/s 33(2) is of the same type and nature as u/s 33(1) or Section 33(3) as interpreted by the Supreme Court, and that the different expressions "approval" used in Sub-section (2) or the words "as it deems fit" in Sub-section (5) do not affect any change in the scope of this power. When once the tribunal negated mala fides on the part of the employer or any intention to victimize the worker for his participation in the industrial dispute, the tribunal is in my judgment bound to accord its approval to the action of the employer, leaving the propriety of the quantum of punishment for being agitated in other appropriate proceedings open under the Industrial Disputes Act.

With these views I am in respectful agreement.

12. In *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, the position was restated in these terms:

Undoubtedly, the management of a concern has power to direct its own internal administration and discipline, but the power is not unlimited and when a dispute arises, industrial tribunals have been given the power to see whether the termination of service of a workman is justified and to give appropriate relief. In cases of dismissal on misconduct, the tribunal does not, however, act as a court of appeal and substitute its own judgment for that of the management. It will interfere

(i) when there is a want of good faith,

(ii) when there is victimization or unfair labour practice,

(iii) when the management has been guilty of a basic error or violation of a principle of natural justice, and

(iv) when on the materials the finding is completely baseless or perverse.

13. Mr. Lakshminarayana Reddi the learned advocate for the workmen, sought to support the decision of the tribunal on other grounds. The

management in the present case entrusted the enquiry to an advocate who, he said, had appeared for the management in earlier legal proceedings.

Mr. Lakshminarayana Reddi also said that subsequently too the same advocate appeared for the management in other proceedings and that in

consequence the enquiry held by the management was wholly bad.

14. The industrial tribunal refused to accept this view, and I think quite properly. It cannot be doubted that if the management had a full time

salaried manager and the enquiry had been held by him the workers could not have complained. In most large establishments enquiries into

allegations of misconduct by a member of the subordinate staff is held by some one placed above him, and, so long as the principles of natural

justice are not violated, the person against whom the enquiry is being conducted will not be heard to say that the enquiry is being held by a person

in the employment of the management. If a full time salaried manager will not be disqualified I do not see how an advocate, who, relatively

speaking is an outsider can be said to be disqualified. Very often the results of enquiries conducted by management have been held to be vitiated

because the principles of natural justice had not been conformed to. The ordinary businessman has very often no clear or firm ideas as to what

constitutes principles of natural justice and if he were a prudent person, he would entrust the enquiry to someone who can be trusted to know what

these principles are. I do not think that the workmen are entitled to complain because in the present case a lawyer was engaged to hold the

enquiry. Besides, it does not appear from any part of the record shown to me that they objected to this particular gentleman holding the enquiry. In

fact, what they did was to "non-co-operate" at the enquiry. In these circumstances, I do not consider that they can be heard to complain that the

enquiry was by a particular individual.

15. Mr. Lakshminarayana Reddi next said that u/s 33 of the Industrial Disputes Act, as amended in 1956, an employer is prohibited from altering

to the prejudice of the workmen concerned the conditions of service applicable to them during the pendency of proceedings before a labour

tribunal in regard to any matter connected with the dispute and that when the management revised the time tables on 31 May 1957 it did so alter

the conditions of service and that, as it had thus transgressed the law, it has placed itself in the wrong. I am unable to agree that the management

altered the conditions of service in regard to any matter that had been referred to the tribunal. The annexure to G.O. Ms. No. 1775, dated 20 May

1957, reads as below:

(1) Fixation of basic scales of pay of all categories of workers with provision for service weightage, while fitting the existing workers in the new

scales of pay.

(2) Fixation of dearness allowance.

(3) Fixation of house-rent allowance.

(4) Fixation of bonus for the year 1955-56.

(5) Whether the termination of service of the following workers, is justified and whether they are entitled to any relief including reinstatement:-

(i) conductor Logaguru,

(ii) conductor Bangarusami,

(iii) cleaner Pandarinathan,

(iv) cleaner Alia Baksh.

So far as I can see the revision of time tables which the management sought to effect on 31 May 1957 did not touch any of these matters. Mr.

Lakshminarayana Reddi, however, argued that item 1 in the annexure relates to fixation of basic scales of pay, that the result of the alteration of

timings was to increase the hours of work and that, therefore the matter comes under item 1. The argument overlooks the fact that the first item in

the annexure relates only to the fixation of basic scales of pay. That is independent of the hours of work. The questions relating to the hours of

work and the rate of payment for overtime work were not referred to the tribunal at all by the G.O. in question. I do not, therefore consider the

matter can be brought within the scope of Section 33 of the Industrial Disputes Act.

16. Mr. Lakshminarayana Reddi argued that Section 56 of the Factories Act provides that the periods of work of an adult worker in a factory

shall be so arranged that inclusive of his intervals for rest they shall not be

spread over more than ten and a half hours in any day. The result of the changes in the time tables which the management sought to effect on 31 May 1957 was to spread the work over a longer period and that therefore this was illegal.

17. I infer that such an argument was advanced before the tribunal because it observed in its order:-

Further it will be seen from that list that in the case of most of these employees the spread-over hours were much more than that fixed by the statute, namely, 10 1/2 hours.

I have difficulty in appreciating this argument. The Factories Act applies only to factories and a factory is defined as meaning any premises wherein

a manufacturing process is being carried on. I do not see how a bus service can be said to be a factory as defined in the Factories Act.

18. Mr. Lakshminarayana Reddi advanced certain arguments on the basis of Rule 24 of the rules framed by the Government of Madras under the

Minimum Wages Act (Central Act XI of 1948) and these must now be considered.

19. The rule in question, so far as it is here relevant, runs as follows:

24. Number of hours of work which shall constitute a normal working day... (1)
The number of hours which shall constitute a normal working day

shall be-

(a) in the case of an adult, 9 hours;

(b) in the case of a child, 4 1/2 hours.

(2) The period of work of an adult worker each day shall be as fixed that no period shall exceed five hours and that no worker shall work for more

than five hours before he has had an interval for rest of at least half an hour.

(3) The periods of work of an adult worker in a scheduled employment other than employment in any plantations shall be so arranged that inclusive

of his intervals for rest under Sub-rule (2), they shall not spread-over more than ten and a half hours in any day:

Provided that the inspector may, for reasons to be specified in writing, increase the spread over to twelve hours.

20. Mr. Lakshminarayana Reddi argued: By reason of this rule the spread-over of the work of an employee must be limited to ten and a half hours

a day unless the permission of the inspector has been obtained. No permission

was obtained in the present case. When the management so altered the duty roster that the spread-over of work was increased to more than ten and a half hours, in effect it was issuing an illegal order to its employees. Nobody is bound to obey an Illegal order and a person cannot be punished for not obeying an illegal order. The workers concerned in the present case could not have been lawfully punished and so the order of the tribunal is right.

21. Attractive as this reasoning looks at first sight it really proceeds on an initial misconception. Rule 24 has been framed in exercise of the powers

conferred by Section 13 of the Act, which runs as follows:

13. Fixing hours for a normal working day, etc.-In regard to any scheduled employment minimum rates of wages in respect of which have been

fixed under this Act, the appropriate Government may-

(a) fix the number of hours of work which shall constitute a normal working day, inclusive of one or more specified intervals;

(b) provide for a day of rest in every period of seven days which shall be allowed to all employees or to any specified class of employees and for

the payment of remuneration in respect of such days of rest;

(c) provide for payment for work on a day of rest at a rate not less than the overtime rate.

What Rule 24 does is in effect to define a normal working day. The rule does not say that the hours of work which are to be regarded as

equivalent to a normal working day shall be the maximum number of hours during which a person can be required to work. Section 14 of the Act

provides for overtime work and Rule 26 provides for wages for overtime work. These provisions make it plain that it is not illegal to require an

employee to work overtime. The only thing is that if he is required to work overtime he must be paid extra wages and this extra will be computed

at one and a half times the ordinary rate of wages in the case of agricultural and plantation labour and at double the ordinary rate in every other

case. The foundation for this argumet of Mr. Lakshminarayana Reddi, therefore, disappears.

22. Mr. Lakshminarayana Reddi next said that an employer has no right in law to call on an employee to work overtime when other workers are

available. In support of this contention, I was shown no authority, and, I do not

think that it is the law. If it were so, some astonishing results would follow. An irrigation channel breaches and the work of repairing is started by a contractor. In many cases work of this nature once started must be continued without interruption till a particular stage is reached. Otherwise all the work done may be undone by the action of water, and, sometimes this may have very disastrous consequences, particularly when the breach affects a chain of irrigation tanks. In such cases when one tank higher up in the series breaches, there is a real risk of that breach affecting the tanks lower down in the chain. Now, if Mr. Lakshminarayana Reddi were right, the moment the clock shows that the end of the normal working day has arrived, the workers would be entitled to walk away from the site of their work and the contractor or other employer cannot require them to stay on even for half an hour. Apparently the person entrusted with the execution of the work must be able to compute exactly what stage would be reached in the execution of the work when the clock strikes and he must have other employees on hand ready to take the place of the individuals who have completed their normal working day. More often than not this requirement will be found to be impracticable, if not impossible.

23. Again, take an industry in which a long series of interlocking processes are involved from say cooking the alloy to the end of the operation line.

Very often something or other happens and there is delay at one stage or other in the chain of operations. This naturally leads to delay at every

subsequent stage. Now, if Mr. Lakshminarayana Reddi were right, on the stroke of the clock the employees would be entitled to walk away

leaving the operations unfinished though the result might be ruinous waste. I shall give one more illustration. An express train pulls out from the

Central on its way to Mangalore. The railway administration has so adjusted the time table of work that the driver leaving Central will be relieved

at Salem Junction. Now, I presume the railway administration has engine drivers who can be called up to do relief duty. That being so, and, if Mr.

Lakshminarayana Reddi were right, the driver who takes out the train from Central would not be bound to take the train to Salem where his relief

awaits him if his normal working day ends when the train is between Salem and Jalarpet. He will be entitled to stop the train the moment the end of

his normal working day has arrived, and walk away. I put this illustration in a

slightly different form to Mr. Lakshminarayana Reddi, and then, he replied that no engine driver would act in so irresponsible a manner. That may well be so. But the point is, if the argument of Mr. Lakshminarayana Reddi were right, the driver would be legally entitled to do so.

24. I can see no warrant for this contention in any of the statutes placed before me, and, the illustrations I have given furnish a sufficient commentary on the untenability of the argument.

25. Mr. Lakshminarayana Reddi next said that the result of the revision of the time tables by the management was to increase the number of days in a month on which the employees were required to work. The maximum number of days during which a person can be required to work in a week has been fixed by Section 13 of the Act as six days in seven. If any particular person is required to work on the seventh day, then the section provides that such work shall be treated as overtime work and that it shall be paid for at the rates prescribed for overtime work. This makes it clear that it is not unlawful to require a person to work more than six days a week. The only thing is that if he is required to work on the seventh day also he must be paid extra on the overtime scale. It has not been shown to me that the duty roster fixed by the management contravenes Section 13 of the Act.

26. One other comment must be made. Assuming that the order issued by the management to a particular worker was illegal in that he was required to work longer than the law permits the employer to require him to work he may possibly be justified in disobeying the order. But, that would not justify the others in striking and thus violating Section 22 of the Industrial Disputes Act. If they wanted to go on strike they should have given the notice required by that section. Alternatively, they should have availed themselves of the remedies provided by the Act, for an industrial dispute.

27. Mr. Rajah Ayyar said that the alteration of the time table which the management tried to effect on 31 May 1957 did not, so far as it related to hours of work, materially alter the conditions that obtained in April and May. This, however, is controverted by Mr. Lakshminarayana Reddi, and so it becomes an issue of fact. The only comment I need make is that if Mr. Rajah Ayyar is right in this respect the employees would have had

even less excuse for striking than was sought to be made out.

28. The liability to be called upon to work overtime is an incident of various kinds of employment and an order is not illegal merely because it

requires an employee to work overtime. When that happens, the employee is entitled to extra payment at certain enhanced rates. But, he cannot

refuse to work. It will be appreciated that the requirement of the law that overtime work should be paid for at higher rates is itself bound to deter

the management from calling on its employees to do overtime work. In controversies of this kind it is as well to remember that the rights and

obligations between the employer and the employee are mutual and reciprocal; the obligations are not all on one side and the rights on the other.

Managements have to bear in mind that labour is not a commodity like so many sacks of oats. On the other hand, labour has to remember equally

distinctly that the management is not a sponge to be squeezed dry. The goose lays no eggs that is killed. Both labour and management have to

remember that the general public are also affected by their internecine disputes.

29. The last argument of Mr. Lakshminarayana Beddi which I need deal with is based on Section 9A of the Industrial Disputes Act. The relevant

portion of that section runs:

No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the

Fourth Schedule, shall effect such change,

(a), without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to

be effected ; or,

(b) within twenty one days of giving such notice;...

Item 4 in the Fourth Schedule reads ""hours of work and rest intervals."" The argument was that the revision of timetables which the management

attempted to effect on 31 May 1957 affected the hours of work and rest intervals of the workmen concerned, that the attempted revision was

therefore illegal and that therefore the subsequent action of the management in dismissing the workers should not be approved.

30. I entirely agree that if a management contravenes the law it cannot obtain the support either of the courts or the tribunals to uphold it in its

contravention, however indirectly or obliquely such support may be sought. But at the same time I want to make it perfectly plain that this does not

mean that the management thereby becomes an outlaw and that it is not entitled to the protection of the State in every other respect. In the present

case the management asked for the approval of the industrial tribunal u/s 33(5) of the Act. If the result of according such approval would be to

enable the management to successfully violate the law and reap the benefits of such violation, the tribunal would be justified in refusing to accord its

approval. That would be a contingency not contemplated or provided for in the decisions which the Supreme Court has so far rendered.

31. The first reply of Mr. Rajah Ayyar to this last contention of Mr. Lakshminarayana Reddi based on Section 9A of the Industrial Disputes Act

was that the point was not taken before the tribunal. This, however, is a matter I am prepared to overlook. But, I cannot do that in respect of the

second point which Mr. Rajah Ayyar made, viz. that there exist anterior understandings, arrangements and awards within the framework of which

the management was entitled to effect the changes it notified on 31 May 1957. That is a question of fact which I cannot investigate. Nor, as the

point was not taken before it, was the requisite material placed before the tribunal. The tribunal would have to go into this matter.

32. The position then comes to this: The order of the tribunal must be set aside because of the mistakes it has committed and to which, I have

already referred. Naturally it would have to dispose of the matter afresh. Both the parties will be at liberty to place any additional or relevant

material before the tribunal. Rule made absolute. There will be no order as to costs.