

(1959) 08 KL CK 0024
In the High Court Of Kerala
Case No : O.P. No. 650 of 1959

Superintendent Nellikai Estate		APPELLANT
	Vs	
Their Workmen		RESPONDENT

Date of Decision : 10-08-1959

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 15

Citation : AIR 1960 Ker 103

Hon'ble Judges : Vaidialingam, J

Bench : Single Bench

Advocate : K.P. Abraham, George Kurien, K.K. Poulose and M. Pathrose Mathai, for the Appellant; K. Velayudhan Nair, V.S. Moothath and Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Vaidialingam, J.—This is an application by the Superintendent of the Nellikai Estate, Vandiperiyar, under Article 226 of the Constitution, for quashing the award in Industrial Dispute No. 88/1957 of the Industrial Tribunal, Ernakulam and published in the Kerala Gazette dated 28-4-1959. The first respondent is the workman of the Nellikai Estate, Vandiperiyar, represented by this President, Peer-made Taluk Estate Labour Union, Vandiperiyar, the second respondent is the Industrial Tribunal, Ernakulam and the third respondent herein is the State of Kerala. The Government notification, including the award is marked as Ex-Pi in these proceedings.

2. The issue that was referred for adjudication of the Tribunal by the State Government was:

"Whether the dismissal of the 5 workers named below from the Nellikai Estate is justifiable? If not justifiable, to what reliefs are the dismissed workers entitled? Names of workers: (1) Rajendran (2) Thangavelu; (3) Rajiah (4) Bhaskaranathan and (5) Shanmugam."

3. The circumstances under which the said issue was referred for adjudication, as disclosed by the affidavit filed in support of this application, are briefly as follows: On 17-7-56, one of the workers Bhaskarnathan, went to field No. 13 of the Estado for work half an hour late, and the Plucking Writer informed the worker that no work could be given to him, as he has come late. The worker concerned vulgarly abused his official superior the Plucking Writer and then the other 4 workers Rajendran, Thangavelu, Rajiah and Shanmugham involved in this inquiry, joined him and all of them incited the other workers working in the field to leave off their work. Accordingly, 33 out of 39 workmen left the field, without the permission of the Plucking Writer.

4. In consequence, the management issued show cause notices on 17-7-1956 to these 5 workmen for misconduct under the Company's Standing Orders and the enquiry was posted on the 18th morning. The workers were informed that they are at liberty to adduce any evidence that they would like in the said inquiry. The inquiry was conducted on the 15th July 1956 by the Superintendent of the Estate, in the presence of these 5 workmen. After such inquiry, orders were passed finding them guilty and dismissing those 5 workmen from their employment. The entire proceedings relating to the said domestic inquiry is contained in the papers marked as Ex-P2 herein. According to the management, the inquiry has been conducted in accordance with all principles of natural justice, after fully affording an opportunity to these 5 workmen to place their case before the management. In view of the offence with which they were charged and in view of their previous conduct sheet, the management in the interests of the Company, had to dismiss them from service as per order dated 19-7-1956.

5. The matter was taken up by the first respondent Union, on behalf of the said 5 workers, and the State made the reference to the Industrial Tribunal.

6. According to the management the entire materials available before the management, which resulted in the dismissal of the workers, were placed before the Tribunal. The concerned workers themselves have admitted before the Tribunal about an inquiry having been conducted. In fact, they also admitted that they had received the show cause notices even on the 17th July 1956 itself about the inquiry to be held on the 18th morning. Though the actual enquiry and the opportunity given were not challenged by the workers, the Tribunal has come to the conclusion that the workmen were not served with notice of the enquiry and so the principles of natural justice have not been followed in this case by the management. The Tribunal on this assumption has also come to the conclusion that there was no proper enquiry and the workmen were denied the principles of natural justice and it has directed the reinstatement of the 5 workers.

7. It is further stated by the management that though the act of the Superintendent in taking action against the workers was stated to be not bona fide and that it was a case of unfair labour practice and victimisation, the Tribunal has come to the conclusion that all those allegations made by the

workers and the union cannot be accepted. In fact, the Tribunal has stated that those allegations made by the Union as against the management and the Superintendent, in particular, were baseless and it has also held that the Superintendent of the Estate was not guided, by any ulterior motive, as alleged by the Union.

8. According to Mr. K. P. Abraham, learned counsel appearing for the petitioner, the Industrial Tribunal has assumed the role of an appellate authority, which it did not possess in law. The entire criticism of the Tribunal, if at all, is only as regards the manner of enquiry and not about the inquiry as such. The manner of enquiry is a matter for the domestic Tribunal. The Tribunal has not even cared to advert to the inquiry proceedings conducted by the domestic Tribunal and placed before this court as Ex-P2, and which was also before the Tribunal as Ex-E1. In coming to a conclusion that the Company has not followed the principles of natural justice, it has not at all considered the inquiry proceedings, which will ultimately show that all the workers were present at the time of the inquiry, the witnesses were examined in their presence and they were given ample opportunity to place their case before the management. The Tribunal erred in law in ignoring those proceedings before recording a finding that there was no proper inquiry or that the dismissal of the workmen is arbitrary and unjustifiable.

9. The learned counsel also contended that in coming to a conclusion that show cause notices might not have been served on the workers, the Tribunal again has not adverted to the admissions of at least some of the workers to the effect that all the workers were given notices even on the 17th evening itself to appear for the inquiry on the 18th morning and that it was in pursuance of those notices that all the 5 workmen went to the office of the Superintendent on the morning of 18th July 1956, According to the learned counsel, the findings recorded by the Tribunal are not supported by the evidence on record and are perverse. In any event, the total omission on the part of the Tribunal in ignoring the clear admissions made by the workmen constitutes an illegality and an error apparent on the face of the record.

10. On the other hand, Mr. Kalathil Velayudhan Nair, learned counsel appearing for the first respondent and supported by the learned Government Pleader appearing for the State, contended that the Tribunal had ample jurisdiction to arrive at the findings recorded in the award on the materials that were available before it. One of the grounds, on which the Tribunal has got jurisdiction to interfere with the order of a domestic Tribunal in the position of the management in this case is that there has been a violation of the principles of natural justice. Whether there has been a violation of the principles of natural justice or not is a question of fact to be arrived at by the Tribunal on a consideration of the evidence placed before it. In this case, the Tribunal had to consider as to whether the management was justified in dismissing the 5 workmen in the circumstances or not. In considering that question, the Industrial Tribunal has got jurisdiction to consider all circumstances and to give a finding either in favour of the

management or against the management.

In this case, the Tribunal has gone into all the circumstances and recorded a finding against the management. Once the Tribunal has jurisdiction to interfere on this ground this court has no jurisdiction under Article 226 of the Constitution to interfere with an order passed by the Tribunal under those circumstances. At the most, the contention of the management amounts only to this namely, that the Tribunal did not draw proper inferences from the evidence given by the workers before it. It is a matter for the Tribunal to consider what evidence is to be accepted and what not. That is a matter purely within the discretion of the Tribunal and cannot be challenged under Article 226 of the Constitution.

11. Both Mr. K. P. Abraham and the learned Government Pleader have drawn my attention to certain decisions of the Supreme Court and I shall deal with them, after noting the materials that were available before the Tribunal in this case. The Tribunal had before it a preliminary statement filed by the Union which is Ex. P3 herein. In that statement, they have charged the management of taking a vindictive attitude against the workmen. In particular, the 5 workmen in question are active members of the Peer made Taluk Estate Labour Union. The present Superintendent in particular, according to that statement is also antagonistic to the Union and the said Superintendent has a record and reputation for vindictiveness and harassment of the workers.

12. But in paragraph 12 of that statement, the Union has stated:

"The 5 workers concerned were dismissed on 19th July 1956. The formality of an enquiry was gone through on the previous day".

13. But later on, the Union alleged that the enquiry was a farce and no charges were framed and the workmen had no opportunity to defend themselves or examine witnesses on their behalf. Further the said statement also alleged that the Superintendent has acted without bona fides and with ulterior motives when he dismissed the workers. According to the Union, the dismissal was an act of unfair labour practice and victimisation.

14. Though in the said preliminary statement, the Union, in paragraph 12, had admitted the conducting of an enquiry, it went back on this statement when it filed a replication. In paragraph 6 of the replication it is stated:

"There was no enquiry conducted to the knowledge of the workmen concerned. If there was any inquiry, it is only a make-believe".

The Superintendent of the estate gave evidence as Ew. 3 and two other witnesses were also examined on behalf of the management. The enquiry proceedings and the several reports received by the management which led to the enquiry and the show cause notices stated to have been issued to the 5 workmen on 17-7-56, as also the dismissal orders and the records of service of the workmen, were also filed as exhibits before the Tribunal on behalf of the management.

15. On behalf of the workers, excepting the evidence of the 5 workmen involved in the enquiry as Ww. 1 to Ww. 5, no other evidence--oral or documentary -- was adduced.

16. The enquiry notices were Ex. 5 series, and so far as Bhaskaranathan was concerned, he was charged with having incited other workers to leave the work spot on working time 011 17-7-50 and using derogatory language concerning the Assistant Plucking Writer at the work spot on 17-7-59 and that these acts amount to misconduct under Clauses (b) and (h) of Standing Order No. 22 of the Company. So far as the rest of the 4 workmen are concerned, the notices stated that they are guilty of inciting other workmen to leave the work spot on working time on 17-7-56, which is an act of misconduct under Clause (b) of Standing Order No. 22. All those notices which are dated 17-7-56, further stated that the parties therein should appear before the manager of the estate at his office at 9 A. M. on 18-7-56, when an enquiry will be held into the alleged misconduct. The notice further stated that each of the persons mentioned therein are permitted to bring witnesses to the enquiry and he will be given a full opportunity to explain the circumstances alleged against him.

17. The Superintendent of the estate Ew. 3 had given evidence about the various matters and has stated that show cause notices were issued on the 17th July 1956 itself to the 5 workmen and he conducted the enquiry on the morning of 18-7-1958 as stated in the notices. All the accused were present and they never asked for time and they also cross-examined the witnesses. In cross-examination, he has also stated that he started the enquiry at about 10-30 A. M. on 18-7-1956 and it took about 2 hours and that all the witnesses were examined in the presence of the 5 workers. He has also stated that no representations were made to him by any of the workers that the enquiry should proceed only after the representatives from the Union arrived, and he has also stated that if they had made such request he would have granted it. He also stated that the show cause notices were served on the 17th July 1956 itself and he is convinced that the show cause notices were served in view of the records of Mr. Velu and the Kannakku Pillai. After having stated all these, he finally also stated:

"Now I feel that he might not have served these notices."

18. In re-examination he has stated that in the enquiry that took place on the 18th July 1956, all the 5 workers were present and attended the enquiry. There was also the evidence of the other two witnesses.

19. Ex. P2 which is the MI record relating to the enquiry conducted by the Superintendent on 18-7-1956, shows that the 5 workmen involved in the enquiry were present and that there were also certain others present. It states that the charge was explained and that they admitted as having understood the charge. The accused were agreeable to one Sri G. Samuel acting as interpreter. All the accused, when asked as to whether they plead guilty or not guilty, answered that

they are not guilty, and one of the workers Thangavelu spoke on behalf of all the other accused by consent. Evidence of the various witnesses examined are found in Ex. P2. In the case of some of the witnesses, the accused have stated that they have no questions to ask. It is also stated in Ex. P2 that all the accused have nothing further to say and that they were asked, each by turn, as to whether they wished to question the chief plaintiff, Mr. J. K. Velu and all of them said that they do not wish to do so nor do they wish to question the other witnesses who have given evidence.

20. Then there is the finding and decision recorded by the Superintendent that he accepts the evidence given against these 5 workers, and after taking into account their previous record, passes an order of dismissal from service. The entire proceedings of the domestic Tribunal, evidenced by Ex. P2, was before the Tribunal.

21. Before the Tribunal all the workers involved in the dispute, gave evidence. Ww. 1 Bhaskaranathan was prepared to admit that he received a notice of the enquiry to be held on the 18th July 1956 and that notice wanted him to appear before the manager of the estate. The notice also stated that he is to appear on the next day for enquiry, that is, 18th July 1956. He also stated that the other 4 workers who have also been dismissed, got a similar notice on the 17th July 1956 to appear for the enquiry on the morning of 18th July 1956. Because the notice had stated that they should attend the office of the Superintendent at 9 A. M. on 18th July 1956, he went to the Superintendent's office on the 18th July 1956 at 9 A. M. At that time the other 4 workers were also present there and the Superintendent was in the office.

22. Ww. 2 Rajiah also admits that the show cause notice was served on him on the 17th July 1956, and he also admitted that the said notice required him to attend the office of the Superintendent on the morning of 18th July 1956. He also admitted that in response to the said notice he attended the office on the morning of 18th July 1956. The other 4 workers were also present at that time and the Superintendent of the estate and certain others were also there. This witness further admitted that when he received the notice on the 17th evening, the other 4 workers also got the show cause notice. He also admitted that the notice received by the 5 workmen, had stated that they are at liberty to produce witnesses at the time of the enquiry. The witness further stated that the notice was served on the 17th July 1956 by K. P. Velu. Wws. 3, 4 and 5 do not admit their receipt of a show cause notice on the evening of 17th July 1956.

But all of them admit that they went to the office of the Superintendent at 9 A. M. on the morning of 18th July 1956 and they were then asked as to whether an enquiry can be conducted against them. But the management have put certain questions and elicited answers that some of these witnesses had informed, even on the 17th evening itself, the Union to send a representative for the enquiry to be held on the morning of 18th July 1956. Though it is not within the province of this court to appreciate or assess the evidence placed before the Tribunal. I have

indicated in general the evidence available before the Tribunal because the strongest attack that has been made on the award by Mr. K. P. Abraham is that the Tribunal completely ignored the admissions made by some of the workers about the receipt of show cause notices not only by them but also by all the 5 workmen.

23. The Tribunal was not prepared to accept the allegations made by the Union that the management acted vindictively or that they are guilty of unfair labour practice, when it dismissed these 5 workmen. The Tribunal has not also adverted to the proceedings of the domestic enquiry namely, Ex. P2 as such and therefore, it is not necessary for me to consider the same. But the ground on which the Tribunal has set aside the order of dismissal is that the workmen might not have been served with the show cause notices and therefore, the management has not followed the principles of natural justice in that they did not inform the workmen regarding the date of enquiry.

24. But the Tribunal was prepared to accept the case of the management that the 5 workers were present at the Superintendent's office on the morning of 18th July 1936 as is evident from the following statement in the award:

"So I believe that the presence of these 5 workmen in the office of the Superintendent on the 18th morning was not in pursuance of Ex. 5 series show cause notices and the enquiry began without the workmen, even though there was the physical presence of the workmen there."

In this connection, it must be stated that Ww. 1 and Ww. 2, specifically admit before the Tribunal that all the 5 workmen received the show cause notices and they attended the office of the Superintendent on 18th July 1956 in pursuance of that notice for the purpose of enquiry.

25. It is really this aspect of the matter that has been canvassed by Mr. K. P. Abraham, appearing for the petitioner. According to the learned counsel, the Tribunal committed a very serious error in not even adverting to the admissions made by the workers regarding the receipt of the show cause notices.

26. Therefore, the question is whether there is any illegality or error apparent on the face of the record, giving jurisdiction to this court to interfere with the award passed by the Tribunal.

27. According to the Tribunal, the management has not followed the principles of natural justice in that they did not inform the workmen regarding the enquiry. The Tribunal has rejected the attack made on the order of dismissal as being in any way prompted by vindictiveness or unfair labour practice. It is here that the parties are in great controversy as to whether the order could be set aside in these circumstances. Mr. K. P. Abraham contending for the position that the order of the Tribunal is illegal and perverse in not having at all considered the admissions of the workmen and the learned Government Pleader contending that even if there has been a mistake committed by the Tribunal it is on a question of

fact, and as such the award cannot be interfered with under Article 226 of the Constitution.

28. There is no dispute that the acceptance or rejection of a piece of evidence placed before the Tribunal and its appreciation is a matter exclusively within its jurisdiction. Again, sufficiency and quality of evidence, on which a finding could be arrived at is also really a matter for the Tribunal. But is it open to a Tribunal to completely ignore admissions made by the parties, and record a finding contrary to those admissions? If so, is this court powerless to interfere under Article 226 of the Constitution even in such cases?

29. It must again be emphasised that the Tribunal has set aside the order of dismissal passed by the management only on the single ground that the management did not follow the principle of natural justice in that they did not inform the workmen regarding the date of enquiry. Mr. K. P. Abraham referred me to a number of decisions of the Supreme Court u/s 33 of the Industrial Disputes Act, 1947 -- Central Act XIV/1947-- and also u/s 22 of the Industrial Disputes (Appellate Tribunal) Act 1950 to the effect that the Industrial Tribunal in such matters, is not sitting as a court of appeal over the decision arrived at by the domestic Tribunal. In those cases, it has also been held that the Industrial Tribunal has only to consider as to whether the management is guilty of any unfair labour practice or victimisation and whether the management has made out a prima facie case for giving the permission asked for. The decisions of the Supreme Court referred to by Mr. K. P. Abraham are those reported in Lakshmi Devi Sugar Mills Ltd. Vs. Pt. Ram Sarup, ; Martin Burn Ltd. Vs. R.N. Banerjee, and Patna Electric Supply Co., Ltd., Patna Vs. Bali Rai and Another, . All these decisions have been considered in the judgment delivered by me, sitting along with the Acting Chief Justice, which is reported in Raghavan v. Industrial Tribunal, Ernakulam 1958 Ker LT 456: (AIR 1959 Ker 02).

30. But there are two decisions of the Supreme Court dealing with the question of the powers of an Industrial Tribunal when an order of dismissal by the management comes before it as an Industrial Dispute. In Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen, at p. 138, their Lordships observed as follows:

"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 victimisation 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,"

It will be soon that in the case before me, the Tribunal has interfered under the latter part of principle No. 3 laid down by their Lordships of the Supreme Court namely, "violation of a principle of natural justice".

31. Again in *Mckenzie and Co. Ltd. Vs. Its Workmen and Others*, It is Lordship Mr. Justice Kapur, speaking for the Supreme Court, observes at page 674 (or SCJ): (at p. 392 of AIR) as follows:

"It is for the management to determine what constitutes major misconduct within its standing orders sufficient to merit dismissal of a workman but in determining such misconduct it must have facts upon which to base its conclusion and it must act in good faith without caprice or discrimination and without motives of vindictiveness, intimidation or resorting to unfair labour practice and there must be no infraction, of the accepted rules of natural justice. When the management does have facts from which it can conclude misconduct its judgment cannot be questioned provided the above mentioned principles are not violated. But in the absence of these facts or in case of violation of the principles set out above its position is untenable."

32. From these two decisions of their Lordships, it will be clear that the Tribunal does not act as a court of appeal and can interfere only if it is satisfied that any one of those 4 principles laid down by their Lordships has been infringed.

33. The Supreme Court, speaking through Mr. Justice Venkatarama Ayyar regarding enquiries before Tribunals and principles of natural justice, observes in *Union of India (UOI) Vs. T.R. Varma*, at p. 885 as follows:

".....The Evidence Act has no application to enquiries conducted by tribunals even though they may be judicial in character. The law requires that such tribunal should observe rules of natural justice in the conduct of the enquiry and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that which obtains in a court of law.

Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party and that no materials should be relied on against him without his being given an opportunity of explaining them.

If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed. Vide the recent decision of this court in *New Prakash Transport Co. Ltd. Vs. New Suwarna Transport Co. Ltd.*, : *New Prakash Transport Co. Ltd. Vs. New Suwarna Transport Co. Ltd.*, where this question is discussed".

34. In *New Prakash Transport Co. Ltd. Vs. New Suwarna Transport Co. Ltd.*, their

Lordships of the Supreme Court have observed as follows:

"Rules of natural justice vary with the varying constitutions of statutory bodies and the rules prescribed by the Legislature under which they have to act, and the: question whether in a particular case they have been contravened must be judged not by any pro-conceived motion of what they may be, but in the light of the provisions of the relevant Act."

In order to give jurisdiction to the Tribunal to interfere with the order of the domestic Tribunal which resulted in the dismissal of the 5 workmen concerned, the Industrial Tribunal should have come to the conclusion that the principles of natural justice have been violated and according to the Tribunal, the principles of natural justice have been violated in the case before me because the management did not inform the workmen regarding the date of enquiry. The question as to whether the principles of natural justice have been violated or not has to be arrived at by the Tribunal in the light of the cost laid down by the Supreme Court in the decision referred to earlier namely, Union of India (UOI) Vs. T.R. Varma, whether there was notice served upon the 5 workmen about the proposed enquiry on the 18th July 1956. It is here that there are specific admissions made by some of the workmen, at least that enquiry notices were served on the evening of the 17th July 1956 not only on them, but also on all the 5 workmen concerned. It is perfectly open to the Tribunal to consider those items of evidence and still hold against the management that those admissions cannot be seriously taken note of. It may be open to the Tribunal to explain away those admissions. But in my view, it is not open to the Tribunal to completely ignore the admissions made by at least some of the workmen before it could come to the conclusion that the show cause notices were not served upon the workmen. This is the defect and that a vital one according to the Tribunal which vitiates the enquiry proceedings of the domestic Tribunal.

35. The learned Government Pleader appearing for the State, rather strenuously contended that at the most it amounts only to an omission by the Tribunal to consider a piece of evidence on record and such an omission does not give jurisdiction to this court to interfere under Article 226. In my opinion, it is not an omission of one among the various pieces of evidence in the case, but a vital omission which really goes to the root of the finding on the question of violation of principles of natural justice. In my opinion, if the contentions of the learned Government Pleader are accepted, it would amount to this: A Tribunal may have clear evidence before it on which it could come to only one conclusion; but a Tribunal can completely ignore that evidence and record a finding which is absolutely opposed to the evidence. It can be corrected if at all, only by an appellate body. This court is powerless to interfere under Article 220 of the Constitution, because the Tribunal has recorded a finding rightly or wrongly which could be set right only in appeal.

36. I cannot accept this extreme contention of the learned Government Pleader. After all, as observed by the Supreme Court, the Tribunal can interfere only if a

matter comes within the 4 principles laid down and extracted earlier in this judgment. It is not open to the Tribunal to completely ignore vital admissions made by parties, which is certainly contrary to the finding recorded on the question of principles of natural justice. It is the duty of the Tribunal, like the Industrial Tribunal, to consider the material on record before it can come to the conclusion that it has no jurisdiction to interfere on the ground of violation of principles of natural justice. In my opinion, by ignoring those vital pieces of admissions the Tribunal will not get jurisdiction by deciding wrongly on that point.

37. Once again, I am to emphasise that it is not within the province of this court to scrutinise the appreciation of the evidence in the case or the sufficiency of evidence which would justify a finding recorded by the Tribunal.

38. The principles on which a writ of certiorari can issue is now well settled as laid down by the Supreme Court in *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, . At page 243, Mr. Justice Venkatarama Iyer delivering the leading judgment, observes as follows:

"On these authorities the following propositions may be taken as established: (1) "Certiorari" will be issued for correcting errors of jurisdiction, as when an inferior court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it (2) "Certiorari" will also be issued when the court, or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice (3) The Court issuing a writ of "certiorari" acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or Tribunal, even if they be erroneous. This is on the principle that a court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right and when the Legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior court were to rehear the case on the evidence, and substitute its own findings in "certiorari." These propositions are well settled and are not in dispute."

Again at page 244, the learned Judge refers to the decision in *T.C. Basappa Vs. T. Nagappa and Another*, and quotes an extract from the said judgment as follows:

"An error in the decision or determination itself may also be amenable to a writ of "certiorari" but it must be a "manifest error apparent on the face of the proceedings" e. g., when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by "certiorari" but not a mere wrong decision".

39. The learned Government Pleader very strongly relied upon the decision of the Supreme Court reported in *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, . In the said decision no doubt their Lordships had occasion to consider whether the High Court has got jurisdiction to interfere with the order of an inferior Tribunal on the

ground of the mistake of the fact apparent on the face of the record and their Lordships have also dealt with the jurisdiction exercisable by the High Court under Arts. 226 and 227. In my opinion, that decision does not at all apply to the case before me, because this is not an instance where the Industrial Tribunal has considered a piece of evidence and given its view upon it, which may not be acceptable to an appellate authority.

40. In this case before me, I am concerned with an Industrial Tribunal which has interfered with the order of a domestic Tribunal on the ground that it violates principles of natural justice. The violation of the said principle, according to the Tribunal, consists in non-issue of notices for the enquiry. This finding has been recorded by the Tribunal, without adverting or even noting and totally ignoring the admissions of at least some of the workers about the service of such a notice on all the 5 workmen. In my view, this will come under the second test laid down by their Lordships of the Supreme Court in (S) Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, namely, "Certiorari will also be issued when the court or tribunal acts illegally in the exercise of its undoubted jurisdictionor violates the principles of natural justice." I may also add that this decision has been quoted with approval, in the later decision in Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, on which the Government Pleader placed considerable reliance.

41. In the result the award of the Industrial Tribunal, Ernakulam in I. D. No. 88/1957 is quash ed and this O. P. allowed. As the workmen have been dismissed by the management, I am not directing the first respondent Union to pay costs in this matter. Therefore, parties will bear their own costs in this O. P. The Petitioners are at liberty to withdraw from the court any amount that they may have deposited under orders of this court on C. M. P. 2214/59.