J.K. Iron And Steel Co. Ltd., Kanpur vs Labour Appellate Tribunal Of India And ... on 9 April, 1953

Equivalent citations: AIR1953ALL624, (1953)IILLJ10ALL, AIR 1953 ALLAHABAD 624

Author: Raghubar Dayal

Bench: Raghubar Dayal

JUDGMENT

Raghubar Dayal, J.

1.This is an application under Article 226 of the Constitution, for the issue of a -writ in the nature of certiorari to quash the award dated 1-11-1951 and the order dated 4-7-1952, of the Labour Appellate Tribunal.

2. The petitioner is the J. K. Iron and Steel Co., Ltd., having its registered office at Kamla Tower, Kanpur. It dispensed with the services of 128 workers on 15-5-1951 and served on them a notice to this effect:

> "Consequent to transfer of the Rolling Mill to Calcutta and want of scrap to work furnace department in full, the services of the persons as per list attached are dispensed with from today. Their wages and other dues in full settlement will be paid after 2 P.M."

The dismissal of the workers was challenged on their behalf by the Secretary, Iron and Steel Mazdoor Union, Kanpur.

3. On 28-6-1951, the Governor in exercise of the powers conferred by Section 3, 4 and 8, U. P. Industrial Disputes Act, 1947 (U. P. Act No. 28 of 1949) & in pursuance of the provisions of Clause 10 of Government Order No. 615 (LL)/XVIII-7(LL)/51, D/-15-3-1951, subsequently to be referred to as the Order, referred this industrial dispute, between the petitioner firm and its workmen, to Sri J.N. Singh, Additional Regional Conciliation Officer, Kanpur, for adjudication. The matter in dispute was expressed thus in G. O. No. 3092(TD)/XVIII-28 (TD)/1951 dated 28-6-1951:

> "Whether the retrenchment of the workmen given in the Annexure by Messrs. J. K. Iron and Steel Co., Ltd., Kanpur is unjustified? if so, to what relief are the workmen

entitled?"

Clause 16 of the Order reads:

> "The Tribunal or the Adjudicator shall hear the dispute and pronounce its decision within 40 days (excluding holidays observed by Courts subordinate to the High Court) from the date of reference made to it by the State Government, and shall thereafter as soon as possible supply a copy of the same to the parties to the dispute, and to such other persons or bodies as the State Government may in writing direct.
>
> Provided that the State Government may extend the said period from time to time."

The period of 40 days commencing from the 28th June terminated on the 14th August. The Governor, however, extended the period for the decision of the adjudicator upto September 15, by an order dated the 31st August, again to September 30, by an order dated 24th September and lastly upto 1-11-1951, by an order dated 17-10-1951. It win be noted that these orders extending the period fax the decisions of the adjudicator were made after the expiry of the earlier periods and not before the expiry of those periods.

4. The adjudicator made his award on 1-11-1951.

5. Against this award both the parties to the dispute filed appeals before the Labour Appellate Tribunal of India. The Tribunal modified the award, holding that the retrenchment was wholly unjustified and that the case was only a case for "play off" under Standing Order 16(a), and ordering that they be reinstated and be given their full wages for the period above 12 days in every calendar month during which they were not allowed to work and were unemployed. It is against this order that this writ of certiorari is sought on the grounds that the award of the adjudicator was without jurisdiction inasmuch as the various extensions of the period for his decision were ordered after the expiry of the earlier period specified for the making of the award and that the adjudicator or the Appellate Tribunal had no jurisdiction to order that the workmen should be played off under the Standing Order 16(a), particularly when there was a genuine shortage of material for a long period.

6. Mr. Pathak, appearing for the petitioner, urges that the adjudicator became 'functus officio' after the 14th August 1951, when the period of 40 days, commencing from the date of reference, expired and that, therefore, the Governor could not extend the period for making the award by an order passed subsequent to 14-8-1951, as the effect of such order would not be the mere extension of the period for decision which had expired, but would amount to reviving the right of the adjudicator to make an award, a right which had ceased to exist on the expiry of the period of 40 days. In support of this contention reliance was placed on the cases of -- 'Brooke v. Clarke', (1818) 106 E. R. 146 (A); -- 'In re Macintosh and Thomas', (1903) 2 Ch. 394 (B); -- 'Strawboard v. Gutta Mill Workers Union', AIR 1953 SC 95 (C) and -- 'State v. Ram Kishan', AIR 1951 All 181 (PB) (D).

7. It is contended by Mr. Khare, for opposite party no. 4, that the power of the Governor to extend the period for the making of the award under Clauses 16 of the Order is not limited by any

expression to the effect that such order should be passed before the termination of the period originally fixed or subsequently enlarged by an order made before the expiry of the original period or the extended period and that, therefore, the various orders extending the periods for making the award were valid orders and the adjudicator could, therefore, make the award upto 1-11-1951, on which date he did actually make the award. He relies in his support on the cases of -- 'Har Narain Singh v. Bhagwant Kuar', 13 All 300 (PC) (E); --'Ram Manohar v. Behari Misr', 14 All 343 (P); --'Lord v. Lee', (1868) 3 QB 404 (G) -- 'Denton v. Strong', (1874) 9 QB 117 (H) and -- 'May v. Har-court', (1884) 13 Q B D 688 (I).

8. We have considered all that had been urged on behalf of the parties and are of opinion that the various orders extending the period for the making of the award by the adjudicator were valid orders, it being not necessary that such orders should have been passed before the expiry of the period which was sought to be extended.

9. To extend a certain period is the same thing as to enlarge that period. The words "to extend" and "to enlarge" are synonymous. Whenever any period fixed for doing a certain thing is extended, the extension would commence from the point of time when the earlier period ends. The contention, therefore, that there can be no extension when a period already fixed has come to an end in view of what is implied by the term "extension" is not of any significance when it is not disputed that extension can be made after the expiry of the period in cases where the provision authorising the making of orders extending certain periods uses an expression that such orders could be passed before or after the expiry of the earlier period. Such an expression only makes it clear that the order of extension can be passed at any time, but cannot give a different meaning to the word "extension". The argument, therefore, for the petitioner based on the implications of the word "extension" to the effect that only what exists can be extended is not sufficient for arriving at the conclusion that the orders about extension must be passed prior to the expiry of the earlier period. The provision in Clause 16 is in most general terms. It does not limit the power of the Governor to order the extension within the period to be extended, but empowers him to extend the period from time to time. In the absence of any such limitation, we are not prepared to narrow down the interpretation of this provision and to hold: that the Governor must exercise his power of extending the period before its expiry.

10. Such an order of extension merely substitutes the extended period for the period of 40 days in the main provision of the clause. It has nothing to do with the right of the adjudicator to adjudicate on the matter referred to him. There is nothing in the order with respect to the revival of his right to adjudicate, There is nothing in Clause 16 or in any other clause of this Order which provides that the right of the adjudicator to make an award will cease after the expiry of 40 days. In the absence of any such expression with respect to the cessation of the adjudicator's power or right to decide the dispute, it appears to us that it would be wrong to say that the adjudicator ceases to be an adjudicator or that his right to adjudicate ceases. Clause 10 of the Order empowers the Governor to refer any industrial dispute to an adjudicator for decision. The referring order dated the 28th June mentions that it is made in pursuance of the provisions of Clause 10 of the Order. The adjudicator derives his right to adjudicate on the dispute referred to him from the referring order made in pursuance of the powers conferred on the Governor under Clause 10 of the Order. He does not

derive his power to adjudicate upon the dispute under any provision of Clause 16 of tne Order. The provisions of Clause 16 simply deal with procedural matters and provide for the adjudicator's hearing the dispute and pronouncing his decision within a certain period, which in every case is to be at least of 40 days, as mentioned in the clause and-which period can be extended by the State Government. Expiry of any such period, therefore, has no effect on his right to decide the dispute. That right does not come to an end after the expiry of 40 days. He cannot exercise the right to pronounce the award once the period allowed for making the award has expired, but if that period is extended subsequently, with the result that the extended period would be deemed to be the original period fixed, the adjudicator can exercise his powers and pronounce his award. Clause 13 empowers the Governor to withdraw any such reference. There is nothing in the Order providing for the adjudicator's returning the reference undecided to the Governor in case he could not deliver the award within the time allowed. Section 6(1), U. P. Industrial Disputes Act reads:

> "When an authority to which an industrial dispute has been referred for adjudication has completed its inquiry, it shall, within such time as may be specified, submit its award to the State Government."

11. Clause 16 of the Order says that the adjudicator shall, after recording necessary evidence, make the award within 40 days. It would appear from these provisions of the Act and the order and from the absence of any provision suggesting the return of the reference by the adjudicator, in case he could not pronounce the award within the period allowed, that the adjudicator is bound to make an award unless the reference to him has been revoked, and that in case he fails to pronounce the award within the time allowed, he should take steps to have the necessary period extended.

12. We, therefore, construe these various provisions to mean that the adjudicator remains seized of the reference till he makes his award or till the reference to him is withdrawn by the Governor, and that so long as he remains seized of the reference, the Governor can make an order extending the period of decision and thus making him competent to make the award. No valid objection, therefore, can be taken to the adjudicator's making the award within any such extended periods.

13. Section 508, Civil P. C., Act 14 of 1882, provided for the Court's referring a matter to an arbitrator and enjoined its fixing such time as it thought reasonable for the delivery of the award and for specifying such time in the order. Section 514 authorised the Court, in certain circumstances, either to grant further time, and from time to time to enlarge the period for the delivery of the award, or make an order superseding the arbitration. Section 521 provided that no award would be valid unless made within the period allowed by the Court.

14. In the case of -- '13 All 300 (PC) (E)' the order referring the matter to the arbitrator did not specify the period within which the award was to be made but fixed a date for the disposal of the case which implied that the award was to be made before that date. The award was not made within that date. The Court, however, extended the periods for the delivery of the award successively making such orders of extension some time beyond the expiry of the period, fixed earlier. The award was, however, made on a date beyond the last date of the period fixed by the last order of extension. The award was set aside in view of the provisions of Section 521. Their Lordships of the Judicial

Committee of the Privy Council observed at page 304:

> "When once the award was made and delivered the power of the Court under Section 514 was scent, and although the Court had the fullest power to enlarge the time under that section as long as the award was not completed, it no longer possessed any such power when once the time was passed."

The observations, therefore, mean, though it is not so expressed explicitly, that the Court was competent to extend the period within which the award was to be delivered even after the expiry of the earlier period as had happened in that case on some occasions, and that this power was limited by one consideration alone and that was that the order of extension must be made prior to the delivery of the award. This limitation was found as a result of the provisions of Section 521 and not of Section 514, as would appear from the observations of the Supreme Court in -- 'AIR 1953 SC 95 (C)'. It was observed in column 2 at page 96 :

> "In order to give effect to Section 521 the Judicial Committee had to confine the exercise of the power to extend the time given to the Court by Section 514 to a point of time before the award had been made."

The case of -- '14 All 343 (F), just followed the Privy Council case.

15. In the case of -- '(1868) 3 Q B 404 (G)', an agreement of reference to arbitration was made and signed on 8-8-1866. It mentioned no time for the making of the award. The arbitrator entered upon the reference at once and made his award on 17-1-1867. A Judge's order was obtained to the effect "that the time for the arbitrator to make his award be enlarged till the 15th of March instant." The award was taken up on the 14th March and was in favour of the plaintiff. Section 15, Common Law Procedure Act, 1864, (17 & 18 Vic., c. 125) reads:

> "The arbitrator acting under any such document or compulsory order of reference as aforesaid, or under any order referring the award back, shall make his award under his hand, and (unless such document or order respectively shall contain a different limit of time), within three months after he shall have been appointed and shall have entered upon the reference, or shall have been called upon to act by a notice in writing from any party; but the parties may by consent in writing enlarge the time for making the award; and it shall be lawful for the superior Court of which such submission, document or order is or may be made a rule of the Court, or. for any Judge thereof, for good cause to be stated in the rule or order for enlargement from time to time to enlarge the term for making the award."

It was held that the Judge had power to enlarge the time after the award had been made and that the effect of the enlargement was the same as if it had been made by consent of the parties, viz., to ratify what had been previously done by the arbitrator without authority, and that the award was therefore valid. Blackburn J. observed at page 409:

> "I am, therefore, clearly of opinion that the section gives power to the Judge to enlarge the term for making the award at any time, and under any circumstances in which he thinks there is good cause for his intervention, (of course he would not grant an order if he saw that injustice might be done thereby), and the effect of the enlargement is the same as if it had been by the parties; it amounts to a ratification and is, as if the enlarged time had been originally in the submission."

Mellow J. observed at page 410:

> "……..but I may say that the very form of expression used in Section 15 shows that the object was to put the parties and the arbitrator in the same position as if the original submission had contained the enlarged time, so that the arbitrator should during the whole time be clothed with the same authority as that originally given to him though for a shorter period."

Lush J. observed at page 411:

> "No limit of time is given within which the Judge may enlarge the time, and he is not limited to the time within which the arbitrator himself could enlarge it, even although it be said in the submission that the arbitrator shall make his award on or before a certain date. If that is so, it cannot be any obstacle to the Judge's power that the arbitrator in the interval has done something which is at the time a nullity…… The true meaning of the statute is that when the order is once made, it annexes to the time originally limited all the intervening time and such further time as the order expresses."

16. This case was followed in -- '(1874) 9 QB 117' (H), in which the submission to arbitration mentioned that the award was to be made within a month or within such further time (not exceeding three months from the date of the submission) as the arbitrator should enlarge the time to: and again in the case of -- '(1884) 13 QBD 688' (T).

17. Mr. Pathak submits that all these cases related to arbitration and that as the parties themselves could enlarge the period during which the arbitrator could give the award, the provisions of law allowing the Court to enlarge the time for the delivery of the award were construed in that manner. It is true that the parties could enlarge the period during which the arbitrator was to give an award, but that consideration could not have been of any importance if the provisions empowering the Courts to extend the time could not be legally interpreted to mean that the order extending the time could be made even after the expiry of the period. It is only when the expressions to be interpreted are capable of more than one meaning that their true meaning is deduced with reference to other matters having a bearing on the point. Mr. Pathak also submits that the Court under Section 508 and 514, Civil P. C. of 1882 had the power to fix the initial period for the delivery of the award and had the power to enlarge that period and that, therefore, the expressions empowering the Court to extend the time could be interpreted differently from the provisions empowering the State Government to extend the time fixed in Clause 16 of the Order for the delivery of the award by the

adjudicator. We do not see any good reason for this consideration affecting the interpretation of the expression in Clause 16 empowering the State Government to extend the period from time to time.

18. The case reported in -- 'AIR 1953 S C 95' (C), in which the Supreme Court held that the adjudicator became 'functus Officio' after the expiry of the time, related to the adjudicator's making an award after the date which had been specified in the order of reference and in circumstances when there was no provision in the Act or in the order notified under its provisions about extending the period originally specified. It was observed in Column II, page 97:

> "In view of the language of Section 6 of the U. P. Act and in the absence of a rule like the proviso to Rule 16 referred to above it must follow that the State Government had no authority whatever to extend the time and the adjudicator had become functus officio on the expiry of the time specified in the original order of reference and therefore the award which had not been made within that time must be held to be without jurisdiction and a nullity as contended by Dr. Tek Chand."

In the absence of any provision for extending the period for the making of the award it must follow that the adjudicator's power to adjudicate comes to an end at the expiry of the period. The same, however, cannot be said when there is provision for extending the period unless such a provision limits the time for making the order of extension within the period sought to be extended, because in that case that power of extending the period could not be exercised after the expiry of the period fixed earlier.

19. The case of -- 'AIR 1951 All 181 (PB)' (D) referred to an Act ceasing to be in force after the period expressed for its enforcement, and it was held that once the Act had ceased to operate, any order passed subsequently for the continuation of that Act would be invalid. As already mentioned, there is nothing in the U. P. Industrial Disputes Act or the order dated 15-3-1951, which provides that the adjudicator's power to adjudicate ceases on the expiry of the period of forty days mentioned in Clause 16 of the order. This case, therefore, is not of any help.

20. In -- '(1818) 106 ER 146' (A), an author's right of copyright had come to an end before the enactment of another Act which granted the right of copyright for the lifetime of the' author in case the author was alive at the expiry of twenty-eight years after the first publication. It was in this setting that Lord Ellenborough C. J., said at page 146:

> "The word 'extension' imports the continuance of an existing thing and must have its full effect given to where it occurs.... and it seems to me that predicating the purpose to be to benefit the author by the extension of his right in adopting a very different idea from recreating an expired right. The word 'extension' is too strong for me to grapple with; and if the Court were to get rid of its operation, a great public injury would be effected by calling back a right that, by lapse of time, had become extinct."

It may be noted that on the cessation of the author's right of copyright at the expiry of twenty-eight years after the first publication any person was free to publish that work, and if a different

interpretation had been given, it would have meant divesting the public in general of a right which had accrued to them on the extinction of the right of copyright in the author at the expiry of twenty-eight years after the first publication. This case is also distinguishable as there the right had ceased while in the present case, as already mentioned, the right or power of the adjudicator to decide had not come to an end.

21. In the case of -- '(1903) 2 Ch 394' (B) an order of the Court authorised the taxing Master to make his certificate in a month unless the said Master extended the time to enable him to make the certificate, and provided that, in default of the Taxing Master's making of the certificate within such time, that order would be of no effect. The taxing Master's right to proceed with the matter after a month was questioned. Byrne J. observed at p. 401:

> "I think that the force of the words 'or this order is to be of no effect' destroys the proceeding altogether: that there is no longer a proceeding under which the taxation can take place, and that the power to enlarge the time is meant to be power to enlarge the time while there is a pending matter. But for the final words 'or this order is to be of no effect' I think the order would be a substituting order and the time could be extended."

These observations, to our mind, do not support the contention for the petitioners. There is nothing in the provisions of the Order to the effect that the reference to an adjudicator under para. 10 would be of no effect if the adjudicator did not make his award within the period of forty days specified in para. 16. When the judgment of Byrne J. went in appeal it was reversed on the ground that Sub-rule 57 of Rule 27 of Order 65 authorised the Taxing Master to extend the time even after the expiry of the time fixed in that order. This sub-rule reads:

> "The Taxing Officer shall have power to limit or extend the time for any proceeding before him, and where, by any general order, or any order of the Court or a Judge, a time is appointed for any proceeding before or by a Taxing Officer, unless the Court or Judge shall otherwise direct, such officer shall have power from time to time to extend the time appointed upon such terms, if any, as the justice of the case may require, and although the application for the same is not made until after the expiration of the time appointed, it shall not be necessary to make a certificate or order for this purpose, unless required for any special purpose."

Romer L. J. observed at page 408:

> "First it is said that under the very terms of the order it ceases to have any effect after the expiration of the appointed time. The certificate not having been made within the month and there being no extension of time within the month, it is said that the order was dead and could not be revived. In my opinion that is not the right view to take of this order. I do not think that it was dead in that sense. It is more like a case of suspended animation, if I may be permitted to say so. In my opinion the power to extend the time in this order meant power to extend it according to the rules that is,

according to Sub-rule 57."

Something to the same effect can be said with respect to the proceedings pending with the adjudicator after the expiry of the period of forty days and till the order extending the period is made.

22. It follows that the cases relied on by Mr. Pathak are distinguishable and not quite apposite to the present case. The cases relied upon on behalf of the opposite party are more in point and support the view we have expressed earlier to the effect that the Governor is free to make the order extending the period for the making of the award even after the expiry of the period of forty days or any extended period and that therefore the adjudicator had jurisdiction to make the award in suit on 1-11-1951.

23. A "preliminary objection" was raised by Mr. Khare at the conclusion of the arguments of Mr. Pathak that in view of the failure of the petitioners to raise an objection before the Appellate Tribunal with respect to the adjudicator's having no jurisdiction to act as an adjudicator after 14-8-1951, they should not be granted a writ of certiorari. Reliance was placed on the cases of -- 'Lakshmanan Chettiar v. commr. of Corporation of Madras', AIR, 1927 Mad 130 (FB) (J) and -- 'Rex v. Williams', (1914) 1 KB 608 (K). These cases support his contention. In -- '(1914) 1 KB 608' (K) a writ of certiorari was refused on the ground that the aggrieved party failed to raise any objection to the jurisdiction of the Court below at the hearing before that Court. Channell J. said at page 613:

> "NO objection was taken to the Jurisdiction of the Court below at the hearing before that Court; that being so, it is the rule of this Court not to grant a writ of certiorari except upon an affidavit which negatives knowledge on the part of the applicant when he was before the Court below of the facts on which he bases his objection."

He further observed at page 613: "A party may by his conduct preclude himself from claiming the writ 'ex debito justitiae', no matter whether the proceedings which he seeks to quash are void or voidable. If they are void it is true that no conduct of his will validate them; but such considerations do not affect the principles on which the Court acts in granting or refusing the writ of certiorari." In -- 'AIR 1927 Mad 130 (FB)' (J) it was observed at page 134:

> "The point taken by Mr. Krishnaswami Ayyangar is that failure to object to the jurisdiction of the Court whose order is sought to be quashed only debars the applicant when the objection is one involving the investigation of facts which were or should have been within the knowledge of the applicant when he was before the lower Court and does not apply to a contention of law. We see no warrant in the cases for drawing any such distinction because in our opinion the test that they lay down is whether the applicant armed with a point either of law or of fact which would oust the jurisdiction of the lower Court has elected to argue the case on its merits before that Court. If so, he has submitted himself to a jurisdiction which he cannot be allowed afterwards to seek to repudiate. We are of opinion that the applicant has so conducted himself as to. preclude this Court from exercising a discretionary

jurisdiction in his favour."

Mr. Pathak argues that this right of an aggrieved person to a writ of certiorari is lost only when he fails to bring to the notice of the Court below facts on the basis of which its general jurisdiction to deal with that matter would cease and will not be lost in cases in which the facts were well known and the question of jurisdiction was purely a question of law, the principle behind this view being that in view of the acquiescence of the aggrieved party to the proceedings in the Court below the discretion of issuing a writ of certiorari should not be exercised in his favour. The case of -- 'AIR 1927 Mad 130 (FB)' (J) does not draw this distinction and clearly lays down that failure to raise a point of fact or of law affecting the jurisdiction of the Court below will preclude the aggrieved party from claiming a writ of certiorari as a matter of right. Mr. Pathak relies on para 1178 at page 532 of Volume 8, Halsbury's Laws of England and on the cases of -- 'Ledgard v. Bull', 13 Ind App 134 (PC) (L) and -- 'Meenakshi Naidoo v. Subramaniya Sastri', 14 Ind App 160 (PC) (M). The aforesaid para. 1178 states:

> "Where, by reason of any limitation imposed by statute, charter, or commission, a Court is without jurisdiction to entertain any particular action or matter, neither the acquiescence nor the express consent of the parties can confer jurisdiction upon the Court, nor can consent give a Court jurisdiction if a condition which goes to the jurisdiction has not been perferred or fulfilled."

This refers to the jurisdiction of a Court to entertain any action or matter. In the present case the objection is not to the jurisdiction of the adjudicator to entertain the reference made to him by the Governor in pursuance of Clause 10 of the Order. If the reference had been bad for any reason, there would, have been an initial lack of jurisdiction in the adjudication to decide the dispute and no acquiescence or consent of the parties could have conferred jurisdiction on the adjudicator. The adjudicator had jurisdiction to decide the reference. We have already said that his jurisdiction had not ceased. Even if it had ceased, it was for the petitioners to raise the objection before the adjudicator with respect to his jurisdiction and to raise it again before the Appellate Tribunal. Their failure to raise this objection could be excused only if they were ignorant of it. This is not alleged. In fact what is urged by Mr. Pathak is that because the other party as well as the adjudicator knew of the provisions of Clause 16 and of the expiry of the period of 40 days from the date of the reference, it was not incumbent on the petitioners to raise this point of jurisdiction before the adjudicator. We do not find any support for this contention that the knowledge of the facts by the other party or by the adjudicator would be of any help to the petitioners. They lose a certain right on account of their failure. It is their conduct which has to be looked into and not the conduct of the other parties concerned in the matter. The case of --'13 Ind App 134 (PC) (L) simply lays down that a defendant may be barred by his own conduct from objecting to irregularities in the institution of a suit in a Court which was competent to entertain that suit if any such irregularities had been committed, and that when the Judge has no inherent jurisdiction over the subject matter of the dispute, the parties cannot by their mutual consent convert it into a proper judicial process, although they may constitute the Judge their arbiter, and be bound by his decision on the merits when these are submitted to him. We have already pointed out that the adjudicator in the present case had jurisdiction over the dispute and that what is laid down here does not in any way go against what

has been held in the case of -- 'AIR 1927 Mad 130 (FB)' (J). The case of --'14 Ind App 160 (PC)' (M) is also not of much help as it only held that the High Court in that case was inherently incompetent to hear the appeal which had been preferred to it against a certain decision of the District Judge under the Pagoda Act. Mr. Pathak also referred to the case of -- 'Rex v. West Suffolk Compensation Authority', (1919) 2 KB 374 (N) where certain conduct of the appellants for a writ of certiorari was not held to be such as to disentitle them to the relief. This case does not in any way throw doubt on what had been held in -- '(1914) 1 KB 608' (K).

24. In view of the above, we are of opinion that the writ of certiorari, which is in the discretion of the Court to issue under Article 226 of the Constitution should not be issued ordinarily in cases where the applicant had failed to urge the grounds on which he claimed a writ of certiorari before the other Tribunals where he could have properly urged the grounds, unless he could 'show that he was unaware of those grounds when the matter was before the other Tribunals.

25. The second point urged by Mr. Pathak, for the petitioners, was that the adjudicator and the Appellate Tribunal exceeded their jurisdiction in deciding that the order terminating the employment of the workmen opposite party was unjustified on account of the employers' not taking action under standing order 16 (a). It is urged that they had merely to see whether the exercise of the discretion vested in the employers by standing order 20 (a) had been properly exercised, that is, had been exercised in the interest of the industry and had not been exercised arbitrarily, mala fide or with a view to victimise certain workmen. We do not find any restriction on the powers of the adjudicator and the Tribunal with respect to the matters they have to take into consideration in coming to a conclusion on the point of dispute referred to the adjudicator. The issue referred to the adjudicator was simply whether the dismissal of the workmen was or was not unjustified, and if it was unjustified, to what relief they were entitled. The adjudicator held that there was shortage of scrap iron, that the complaint that the shortage was deliberate and "management created" was not correct, that the shortage of scrap iron was of a temporary nature and would probably last for about eight or nine months, that he was not convinced that the management had any mala fide intentions, that their bona fides were clear and that he could not hold that the retrenchment was at all motivated by any harassment or victimisation on the part of the management. He, however, was of opinion that the employer company should offer the option of employment to their workmen in their new set up in Calcutta and that the retrenched workmen should be kept on the roll of the factory from immediate effect with continuity of service and they should be played off in accordance with trade reasons.

The Appellate Tribunal agreed with the adjudicator's opinion, except with respect to the standing order in accordance with which the retrenched workmen were to be played off. Standing order 15 (a) contemplates what the company is to do in the event of a fire, catastrophe, breakdown of machinery or stoppage of the power supply or some other causes beyond the control of the company and allows the company to stop any machine or department for any period, without notice and without compensation in lieu of notice. Standing order 16 (a) allows the company, in the event of shortage of orders or for any other trade reasons, to stop any machine or machines or departments, for a period, not exceeding 12 days (excluding statutory holidays) in any one calendar month, without notice and without compensation in lieu of notice. The standing order 20 (a) allows the company to terminate

the employment of any permanent operator by giving 14 days' notice or by payment of 12 days wages in lieu of notice, and requires the termination of service to be recorded in writing and communicated to the operator, if he so desires at the time of discharge. It is contended by Mr. Pathak that the petitioner company exercised its discretion, given to it under standing order 20 (a) in spite of its discretion to play off for trade purposes under standing order 16 (a) and that the Tribunal had no jurisdiction to question this right exercised bona fide.

As already mentioned, we do not find anything in the U. P. Industrial Disputes Act or in the Order or in the particular order of reference to the adjudicator, which restricts the power of the adjudicator with respect to the matters he has to take into consideration in coming to the conclusion whether the retrenchment of the workmen was unjustified. He was free to take into consideration all such matters as could have a bearing on the question, and one such matter could have been to see whether it was absolutely necessary to retrench the workmen. The standing orders did contemplate the contigency of trade reasons requiring the stopping of any machine or machines or department or departments for certain periods and provided in standing order 16 (a) that in such contingency the company may stop any machine etc. for a period not exceeding 12 days in the aggregate. This implies, to our mind, that so long as it is possible for the company to pay off for trade purposes under standing order 16 (a), it should not take the extreme step of dispensing with the services of its employees. We are of opinion that this consideration is very relevant to the consideration of the point which had been referred to the adjudicator and that it cannot be said that the adjudicator or the Appellate Tribunal exceeded their jurisdiction in deciding the dispute referred to the adjudicator and which came up in appeal before the Appellate Tribunal. We may refer to the case of -- 'State of Madras v. C.P. Sarathy', Am 1953 SC 53 (O). It was observed at page 58:

> "But the adjudication by the Tribunal is only an alternative form of settlement of the disputes on a fair and just basis having regard to the prevailing conditions in the industry and is by no means analogous to what an arbitrator has, to do in determining ordinary civil disputes according to the legal rights of the parties."

This supports our view that the adjudicator or the Appellate Tribunal was not restricted with respect to the matters which should be taken into consideration by them in coming to a conclusion on the question referred about the justifiability of the retrenchment of the workmen. We are, therefore, of opinion that neither the adjudicator nor the Appellate Tribunal exceeded their jurisdiction in taking into consideration the various points they did consider in arriving at the conclusion.

26. We, therefore, hold that the award of the adjudicator and the order of the Labour Appellate Tribunal are valid and that no case is made out for the issue of a writ in the nature of certiorari quashing them. We accordingly reject this application with costs, which we assess at Rs. 200/-.