# Sundar Lal Saxena vs The Hindustan Commercial Bank Ltd. And ... on 3 November, 1952

## Equivalent citations: AIR1953ALL260, AIR 1953 ALLAHABAD 260

## Author: V. Bhargava

## Bench: V. Bhargava

JUDGMENT

V. Bhargava, J.

1. This is a petition for issue of a writ of certiorari under Article 226 of the Constitution.

2. The petitioner was employed as a sub-agent at the Kanpur main office of the Hindustan Commercial Bank, Ltd. This main office was different from the head office of the Bank. On 6-10-1947, the petitioner was suspended by the Bank. The dispute relating to this suspension was placed by the U. P. Bank Employees Union before the U. P. Government which, under Section 3, Industrial Disputes Act, 1947, referred it for decision to an adjudicator. The adjudicator held the petitioner to be a workman and gave an award declaring that the petitioner was entitled to the withdrawal of the order of suspension and further that he was entitled to his full salary with all allowances, except the conveyance allowance, and all privileges with regard to the provident fund, leave bonus etc., during his period of suspension. This award was enforced and the petitioner was re-employed by the Bank. He was paid all his duos, except the amounts which accrued to him as annual increments in salary and the consequential increase in the dear food allowance. Certain other relief arising out of an award of the All India Industrial Tribunal (Bank Disputes), Bombay, was also not granted to him. The petitioner then represented his case again but this time to the Union Government through the U. P. Bank Employees Union. While these proceedings were going on, the petitioner was dismissed by the Bank on 9-9-1950. The petitioner thereupon took his case of wrongful dismissal also to the Central Government.

Under a notification, dated 21-2-1950, the Government of India referred an industrial dispute to the Industrial Tribunal at Calcutta for adjudication and it is the case of the petitioner that, under this order, his case was also referred to that Tribunal. The Tribunal, however, held that the petitioner was not a workman within the meaning of that word as used in the Industrial Disputes Act, 1947, and, consequently, refused to pass any orders in favour of the petitioner. The petitioner went up in appeal to the Labour Appellate Tribunal of India which also dismissed his appeal on the same ground. The petitioner has filed this petition in this Court, challenging the correctness of this order of the Labour Appellate Tribunal on the ground that the Tribunal had wrongly refused to exercise its jurisdiction for awarding the reliefs to the, petitioner which he had claimed in the proceedings

before the Calcutta Tribunal and the Labour Appellate Tribunal.

3. "When this petition came up for admission, a preliminary question arose as to whether, in this case, there had been any refusal by the Labour Appellate Tribunal, or, by the Industrial Tribunal at Calcutta, to exercise jurisdiction vested in them so that a writ of certiorari could be issued. The question was argued at great length by Shri D. Sanyal in connection with' civil Misc. writ no. 570 of 1952 and his arguments were adopted by the learned counsel for the petitioner in this case also. We have found it convenient to deal with the matter in detail in this writ petition and to " follow the decision in this case in that petition,

4. Under the notification dated 21-2-1950, the dispute, that was referred to the Tribunal at Calcutta by the Central Government, related to matters mentioned in schedule of the notification as follows :

> "(1) Retrenchment, discharge or dismissal of workmen after 13th June 1949 (specific cases to be cited by employees).
>
> (2) Stoppage of increments and withholding of promotions, (specific cases to be cited by employees).

Note.--This list is not intended to be exhaustive."

It would be clear from the notification that the only disputes, which were referred to the Industrial Tribunal at Calcutta, related to retrenchment, discharge, or dismissal of workmen, or, the stoppage of increments, or, withholding of promotions of those men. In the second item, the word 'workmen' has not been specifically used but the language makes it clear that the second clause also related to the stoppage of increments and withholding of promotions of workmen referred to in the first clause. The question, therefore, is whether the dispute of the petitioner was also one of those which were referred to Calcutta Tribunal by the Central Government. The notification did not itself specify the names of the individuals whose cases had to be considered by the Tribunal. The notification left the specific cases to be cited by the employees. If any particular case was cited by the employees, it is clear that it was the function of the Industrial Tribunal itself to deter. mine whether the individual, whoso name was mentioned before it, was or was not a workman. It has been contended before us that, under Section 10, Industrial Disputes Act, 1947, it was for the Central Government itself to specify whether the persons, whose cases were being referred for adjudication to the Industrial Tribunal were or were not workmen.

It is not necessary for us to express any opinion on the question whether it was incumbent on the Central Government to make such specification. If it be the contention of the petitioner that the notification of 21-2-1950 was not in accordance with the provisions of Section 10, Industrial Disputes Act, 1947, he cannot claim any writ of cortiorari from this Court, directing the Industrial Tribunal at Calcutta or the Labour Appellate Tribunal to give an adjudication in his case. On this contention, the proper remedy for the petitioner would be to move the Central Government to make a separate reference of his case. On the other hand, if it be held that the reference to the Industrial Tribunal at Calcutta in the notification, dated 21-2-1950, was a proper reference under Section 10,

Industrial Disputes Act, 1947, the contention that the individual workmen, whose cases were referred, had to be specified by the Central Government must be ignored. Once the Central Government did not itself specify the names of the workmen and, in the notification, dated 21-2-1950, laid down that the specific cases were to be cited by the employees themselves, it became the duty of the Industrial Tribunal to determine whether the individuals, whose names were cited before it by the employees, were or were not workmen. In this case, both the Industrial Tribunal as well as the Labour Appellate Tribunal have held that the petitioner was not a workman. On this finding, it must be held that his case was not referred to the Industrial Tribunal at all, as it was not covered by the notification, dated 21-2-1950; and, on this ground, the orders of the Industrial Tribunal at Calcutta and the Labour Appellate Tribunal at Calcutta refusing to issue directions to the employers in favour of the petitioner cannot be interfered with.

4a. Mr. Sanyal urged that the decision whether the petitioner was a workman or not can be scrutinised by this Court in connection with this petition under Article 226 of the Constitution and if this Court be of the view that the decision was incorrect, this Court can issue a writ of certiorari. The contention was that the determination of the question whether the petitioner was a workman was the determination of a preliminary or collateral fact on which depended the exercise of jurisdiction by the Industrial Tribunal at Calcutta and the Labour Appellate Tribunal and a decision on such a preliminary or collateral fact can always be re-examined in proceedings for isaue of a writ of certiorari under Article 226 of the Constitution. We cannot, however, accept the contention that the determination of this question was the determination of a preliminary or collateral fact on which depended the exercise of jurisdiction by the two Tribunals. In fact, the question whether the petitioner was or was not a workman was involved in the decision by the Tribunals of the very dispute that had been referred under the notification, dated 21-2-1950. As stated above, the Government in its notification had not named the individual workmen whose cases were to bo referred to the Tribunal. According to the notification, the employees were to mention the cases of these workmen.

It is obvious that it could not have been left to the employee to determine whether he was a workman or not, and the Government itself had not decided the question. The only authority, therefore, that was to decide the question could be the Tribunal itself and nobody else. The question, therefore, could not be said to be a collateral matter, but was one which was referred to the Tribunal for its decision and was intrinsic to the matter which was for decision before the Tribunal. In order to grant any relief to a particular individual, it was essential for the Tribunal to find a number of facts. The first fact to be found by the Tribunal was whether the individual was a workman; the next was whether there had been a retrenchment, discharge or dismissal of such a workman; and, in the alternative, there had to be a determination of the question whether there was stoppage of increments or withholding of promotions. These were all questions that were specifically referred for adjudication by the Industrial Tribunal at Calcutta and, therefore, the determination of the question whether the petitioner was a workman was not the determination of a preliminary or collateral fact but was the determination of a fact which was itself one of the subject-matters of the dispute referred for adjudication. The decision on such a matter by a tribunal in the exercise of its jurisdiction cannot be challenged by a writ of certiorari. The Tribunal had jurisdiction to determine whether the petitioner was or was not a workman and as long as it had jurisdiction to determine this

fact, it could determine that fact rightly or wrongly. Even a wrong determination of that fact would not amount to exercise of jurisdiction not vested in it, or refusal to exercise jurisdiction vested in it.

5. In Ebrahim Aboobakar v. Custodian General of Evacuee Property, New Delhi, A. I. R. 1952 S. C. 319, their Lordships of the Supreme Court had occasion to deal with the question whether a decision on a question of fact by a tribunal can be challenged by a writ of certiorari. Their Lordships held :

> "It is plain that such a writ cannot be granted to quash the decision of an inferior Court within its jurisdiction on the ground that the decision is wrong. Indeed, it must be shown before such a writ is issued that the authority which passed the order acted without jurisdiction or in excess of it or in violation of the principles of natural justice. Want of jurisdiction may arise from the nature of the subject-matter, so that the inferior Court might not have authority to enter on the enquiry or upon some part of it. It may also arise from the absence of some essential preliminary or upon the existence of some particular facts collateral to the actual matter which the Court has to try and which, are conditions precedent to the assumption of jurisdiction by it. But once it is held that the Court has jurisdiction but while exercising it, it made a mistake, the wronged party can only take the course prescribed by law for setting matters right inasmuch as a Court has jurisdiction to decide rightly as well as wrongly." Their Lordships, after explaining this principle, proceeded to approve of the views expressed by Lord Esher, Master of the Rolls, in Beg. v. Commrs. for Special Purposes of the Income-tax, (1888) 21 Q. B. D. 313, where it was held that the formula enunciated above is quite plain but its application is often misleading. The learned Master of the Bolls classified the cases under two categories as follows:
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> "When an inferior Court or tribunal or body which has to exercise the power of deciding facts, is first established by Act of Parliament, the Legislature has to consider what powers it will give that tribunal or body. It may, in effect, say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction. 'But there is another state of things which may exist. The Legislature may entrust the tribunal or body with a jurisdiction which includes the jurisdiction to determine whether the preliminary state of facts exists, as well as the jurisdiction', on finding that it does exist, to proceed further or do something more.
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> When the Legislature are establishing such a tribunal or body with limited jurisdiction, they also have to consider whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. 'In the second of the two cases I have mentioned it is erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the Legislature gave them jurisdiction to determine all the

> facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends'; and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction."

The application of this classification made by the Lord Master of the Rolls, to the case before us makes it clear that this case falls in the second category and not in the first category. This is not a case where it was necessary to see that a certain state of facts existed and the Industrial Tribunal at Calcutta could not proceed further unless their existence was proved. This happens to be a case where, under the provisions of Section 10, Industrial Disputes Act, 1947, and the notification issued by the Central Government under that section, the duty to determine whether the petitioner was or was not a workman was left to the Industrial Tribunal. The Tribunal may have made that determination rightly or wrongly but since it was left to the Tribunal to make the determination in exercise of its jurisdiction, that determination cannot be challenged on the ground that it has resulted in refusal by the Tribunal to exercise jurisdiction vested in it.

6. In The King v. Justice of Lincolnshire, (1926) 2 K. B. 192, Lord Atkin, considering the same matter, approved of the principle mentioned in Halsbury'a Laws of England as follows ;

> "Under various statutes certain notices are requisite before the commencement of proceedings; and the omission to serve such notices deprives the inferior Court of jurisdiction and affords ground for certiorari. The case is more difficult where the jurisdiction of the Court below depends, not upon some preliminary proceeding, but upon the existence of some particular fact. If the fact be collateral to the actual matter which the lower Court has to try, that Court cannot, by a wrong decision with regard to it, give itself jurisdiction which it would not otherwise possess. The lower Court must, indeed, decide as to the collateral fact, in the first instance; but the superior Court may upon certiorari inquire into the correctness of the decision, and may quash the proceedings in the lower Court if such decision is erroneous, or at any rate, if there is no evidence to support it. On the other hand, if the fact in question be not collateral, but a part of the very issue which the lower Court has to inquire into, certiorari will not be granted, although the lower Court may have arrived at an erroneous conclusion with regard to it."

In the case before us also, the question whether the petitioner was or was not a workman was a part of the very issues which the Industrial Tribunal had to decide under the notification, dated 21-2-1950, which granted jurisdiction to it.

7. In Rex v. Woodhouse (1903) 2 K. B. 501, Vaughan-Williams L. J. held as follows :

> "Objections founded on the personal incompetency of the Judge, or on the nature of the subject-matter, or on the absence of some essential preliminary, must obviously, in most cases, depend upon matters which, whether apparent on the face of the proceedings or brought before the superior Court by affidavit, are extrinsic to the adjudication impeached. But an objection that the Judge has erroneously found a fact

> which, though essential to the validity of his order, he was competent to try, assumes that, having general jurisdiction over the subject-matter, he properly entered upon the inquiry but miscarried in the course of it. The superior Court cannot quash an adjudication upon such an objection without assuming the (auctions of a Court of Appeal, and the power to retry a question which the Judge was competent to decide."

8. In The Queen v. Board of Works for the district of St. Olave's, Southwark, 8 Q. B. R. by Ellis and Blackburn, 529, the question that arose was whether one Defree was or was not an officer entitled to compensation. The inferior Tribunal, which had to determine what compensation De-free was entitled to, had also to decide whether he was an officer of the commissioners. The Tribunal held that he was an officer and there after awarded him compensation. It was held that the question whether Defree was or was not an officer entitled to compensation was not a preliminary fact but the very fact which the Tribunal had to enquire into. Having jurisdiction to enquire, they held that he was an officer and was entitled to compensation and that such a determination was not removable by certiorari, This case is very similar in facts to the case before us. In the present case, the Industrial Tribunal at Calcutta had to determine whether the petitioner was or was not a workman and if they had held that he was a workman, they could adjudicate upon the dispute regarding his dismissal and withholding of various payments. On the other hand, the Tribunal held that he was not a workman, and, therefore, the Tribunal rightly refused to proceed further with the determination of the claims of the petitioner against the employers.

9. In Brittain v. Kinnaird, (1819) 4 MOO. p. C. 50, the question, which came up for consideration, related to a case which was before the Magistrates. The Magistrates were entitled to record a conviction provided the vessel to which the proceeding related was held to be a boat. The Magistrates held that the vessel was a boat and thereupon proceeded to make the conviction. On the proceedings for issue of a writ of certiorari, Lord Dallas C. J. held that the Magistrates had jurisdiction to enquire into the question whether the vessel was a boat and an adjudication by the Magistrates on that question was not open to challenge by a writ of certiorari.

10. All these cases cited above clearly support the view taken by us that, in this case, the question whether the petitioner was or was not a workman was a question for decision within the jurisdiction of the Industrial Tribunal at Calcutta and the Labour Appellate Tribunal; and, whether that decision be right or wrong, that decision cannot be removed by a writ of cortiorari.

11. On behalf of the petitioner, reliance was placed on the remarks of Lord Luxmoore In re Ripon (Highfield) Rousing Order, 1938, (1939) B ALL E. XI. 548. Lord Luxmoore, in his judgment, nowhere differed from the views of the various Judges in the cases mentioned above; and, in fact, he applied the test which had been laid down by Lord Esher, Master of the Bolls, in the case of Reg. v. Gommrs. for Special Purposes of the Income-tax, (1888) 21 Q. B. D. 313. The case before him arose out of proceedings under the Housing Act, 1936. The Act permitted local authorities to make an order for compulsory purchase of land, after confirmation by the Minister of Health, for housing purposes. Section 75 of the Act placed a limitation on this power as follows :

> "Nothing in this Act shall authorise the compulsory acquisition, for the purposes of this part of his Act, of any land which is the property of any local authority, or which is the property of statutory undertakers, having been acquired by them for the purposes' of their under-taking, or which at the date of compulsory purchase order forms part of any park, garden or pleasure ground, or is otherwise required for the amenity or convenience of any house,"

12. The question arose whether the land, in respect of which the order had been made by the Ripon Borough Council was or was not a part of a park. The order having been made by the Ripon Borough Council, after confirmation by the Minister for Health, a move was made for a writ of certiorari to remove the order on the ground that the land was part of a park and the order had been wrongly made, The Court in dealing with the petition for writ, had to decide whether it could or could not determine the fact whether the land formed part of a park. Lord Luxmoore held that such a determination by the Court dealing with a petition for writ was permissible.

His Lordship distinguished the decision of Swift J. in He Bowman, South Sheilds (Thames Street) Clearance Order, 1931, (1932) 2 K. B. 621, and held as follows :

> "I think that the remarks of Swift J. must be read in the light of the facts of case before him, and especially with regard to the provisions of Section 1 of 1930 Act, which appear in express terms to make the local authority the judge of whether or not the houses in question are fit for habitation, for the material words of that section are as follows : '(1) Where a local authority, upon consideration of an official representation or other information in their possession, are satisfied (that the houses in the area are unfit); then an order may be made'. This provision differs materially from the present case. Section 75 of the 1936 Act does not refer in terms to the local authority being satisfied that the land is not part of a park. The making of the order for compulsory purchase is prohibited if the laud is part of a park, a matter which can only be proved or disproved by evidence."

This view expressed by Lord Luxmoore shows that the 'ratio decidendi' in that case was that the Act did not leave the determination of the question whether the land was part of a park to the local authority or the Minister. It only laid down a statutory prohibition against acquisition of land which formed part of a park and, consequently, the fact whether it was or was not part of a park could be determined by the Court dealing with the petition for a writ of certiorari. He did not disagree with the remarks of Swift J. that the position is different in cases where the statute, in express terms, makes local authority the judge of the question, on a decision of which the local authority could pass the orders under the statute. In the case before us, we have already indicated that the notification of 21-2-1950, read with Section 10, Industrial Disputes Act, 1947, clearly laid upon the Industrial Tribunal at Calcutta the duty to determine whether the petitioner was or was not a workman and consequently, even if a wrong decision was given, that decision cannot be interfered with by a writ of certiorari.

13. Learned counsel for the petitioner pressed various grounds before us to show that the decision that the petitioner was not a workman was incorrect. One of the grounds was that there had been a previous decision by an adjudicator appointed in pursuance of the order passed under the Industrial Disputes Act, 1947. Another ground was that, on the facts before the Tribunal, the finding that the petitioner was not a workman was unjustified. These are only questions relating to the correctness or incorrectness of a decision by the Tribunal in exercise of the jurisdiction vested in it, and, as we have said above, we cannot investigate these circumstances.

14. This petition is, therefore, not maintainable and is dismissed.