

beyond what has already been granted by the company. In the particular circumstances of this case, *The Tata Oil Mills Co., Ltd.* we order the parties to bear their own costs.

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*Appeal allowed.*

GREAT INDIAN MOTOR WORKS LTD.,  
AND ANOTHER

v.

THEIR EMPLOYEES AND OTHERS

(B. P. SINHA, P. B. GAJENDRAGADKAR  
and K. N. WANCHOO, JJ.)

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*Industrial Dispute—Award against company in liquidation—Appeal by managing director and auction-purchaser not aggrieved by the award—Summary dismissal by Appellate Tribunal—Validity—Right of appeal—Industrial Disputes (Appellate Tribunal) Act, 1950 (48 of 1950), s. 120—Companies Act 1956 (1 of 1956), s. 457.*

The discharged employees of the Company in liquidation raised an industrial dispute wherein the auction-purchaser of the Company was also impleaded as a party. The Tribunal, *inter alia*, held that no relationship of employer and employee existed between the auction-purchaser and the old staff who had been discharged prior to the purchase of the business, and the reference so far as the auction-purchaser was concerned was incompetent. The Tribunal directed the liquidators to pay compensation to the discharged employees.

The liquidators were refused sanction to appeal from the said award by the High Court whereupon the auction-purchaser who was also the managing director of the Company, prior to its liquidation, preferred an appeal in the name of the Company represented by himself as the managing director and also in his capacity as the auction-purchaser of the Company. The Appellate Tribunal dismissed the appeal *in limine* as incompetent in view of the provisions of s. 457 of the Companies Act 1956, on the ground that the appeal was not maintainable as it was not authorised by the High Court.

*Held*, that where a party to the Reference in an industrial dispute was exonerated from its terms, and no Award was made against him, he could not be said to be an aggrieved party, thereby attracting the provisions of s. 12 of the Industrial Disputes (Appellate Tribunal) Act 1950, and any appeal by him from the said Award will be incompetent.

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No person other than the Official Liquidator, who is placed in charge of the affairs of the Company in the process of winding up, is authorised with the sanction of the Court to institute any suit, prefer an appeal or other legal proceedings in the name and on behalf of the Company.

*Held*, further, that there is no inconsistency between s. 457 of the Companies Act 1956 and s. 12 of the Industrial Disputes (Appellate Tribunal) Act 1950. But in construing the provisions of s. 12 of the Industrial Disputes (Appellate Tribunal) Act 1950, if there was anything in the Companies Act, 1956, with particular reference to s. 457 which was inconsistent with the provisions of Industrial Disputes (Appellate Tribunal) Act 1950, the latter Act shall prevail.

Section 457 of the Companies Act 1956, concerns a very special case, it only lays down a condition precedent to the filing of a case if it has to be by the liquidator of a company in the process of winding up.

Section 12 of the Industrial Disputes (Appellate Tribunal) Act 1950 is the usual statutory provision which permits an appeal to be presented to the Appellate Tribunal, which otherwise would not lie, by any party who is aggrieved by an award; it does not either in express terms or by necessary implication override, abrogate or modify the provisions of s. 457 of the Companies Act 1956, nor does it do away with the necessity for the requisite sanction of the court which is a condition precedent so far as the liquidator is concerned to institute any suit or proceedings in the name or on behalf of the company in liquidation.

In the instant case the appeal purported to be filed on behalf of the Company in liquidation through its managing director was wholly incompetent; and the second appellant, the auction-purchaser, could not be said to the aggrieved party enabling him to invoke s. 12 of the Act.

**CIVIL APPELLATE JURISDICTION:** Civil Appeal No. 447 of 1957.

Appeal by special leave from the judgment and order dated the 1st August 1956 of the Labour Appellate Tribunal of India, Calcutta in Appeal No. Cal.-107 of 1956.

*D. N. Mukherjee*, for the appellants.

*Y. Kumar*, for the respondent.

1959. May 6. The Judgment of the Court was delivered by

*Sinha J.*

**SINHA J.**—This appeal by special leave, is directed against the order of the Labour Appellate Tribunal, dated August 1, 1956, dismissing *in limine* the appeal

against the Award of the Third Industrial Tribunal, dated March 8, 1956. The Great Indian Motor Works Ltd., now in liquidation (hereinafter referred to as 'the Company'), represented by one of the Managing Directors, K. D. Nundy, is the first appellant. The said K. D. Nundy, in his capacity as the creditor of the Company and/or as the auction-purchaser of the Company, is the second appellant. One hundred and forty two employees of the Company, represented by the Bus Workers' Union, are collectively the first respondent. The second and third respondents, C. D. Nundy and D. L. Dutt, are the Official Liquidators of the Company, appointed by the High Court as such.

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The relevant facts are these: The Company was incorporated and registered under the Indian Companies Act, 1913, in 1926, as a private limited company with its registered office at Calcutta. Its business was mainly that of carrying on public transport on Route No. 14 in the City of Calcutta, as also of dealers in and repairers of motor vehicles. It had an authorized capital of six lacs of rupees divided into 600 shares of Rs. 1,000 each, out of which, shares worth Rs. 4,00,000 only had been subscribed and paid up. The registered share-holders of the Company, were Kristo Das Nundy, the second appellant, having 246 shares; Chandy Das Nundy, respondent No. 2, having 142 shares, and Kumar Kartick Charan Mullick, holding 12 shares, each of the face value of Rs. 1,000. On account of financial difficulties and disputes between its share-holders, an application for compulsory winding up of the Company was made by the said respondent No. 2, on the Original Side in the High Court at Calcutta. On July 23, 1951, an order for winding up the Company was made, and the Official Receiver was appointed the Official Liquidator of the Company. An appeal against the order aforesaid, was dismissed on December 5, 1951, and the order for winding up the Company, stood confirmed. By an order dated December 11, 1951, the Official Receiver was discharged and the respondents 2 and 3 aforesaid, were appointed Joint official liquidators in his place, with

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power to sell the business of the Company as a going concern. In April, 1953, the list of the creditors of the Company was settled by the Court, and the second appellant aforesaid, was included in the list as a creditor for the largest amount, namely, Rs. 2,35,818. It may be added that the discharged employees of the Company were not included in the list of creditors thus settled by the Court. After several infructuous attempts for selling the property by auction, on May 4, 1954, the Court ordered the sale of the Company's business free from all encumbrances, out-goings and liabilities, to the highest bidder, subject to confirmation by the Court. The second appellant bid for the purchase of the business with the leave of the Court, and he was declared the highest bidder and purchaser of the business for Rs. 1,42,500 at the sale held on June 12, 1954. The said sale was confirmed by the Calcutta High Court on July 5, 1954. On July 23, 1954, the Official Liquidators issued a notice terminating the services of all the employees of the Company with effect from July 24, 1954, except one Assistant and one clerk, whose services were retained until the winding up proceedings were completed. On July 24, the Official Liquidators put the appellant No. 2, the auction-purchaser, in possession of the business of the Company, which is now being carried on by the second appellant as the sole proprietor.

As a result of the termination of the services of the one hundred and forty two employees of the Company, as aforesaid, an industrial dispute was raised at the instance of the said employees whose list is attached to the order of Reference, dated August 26, 1954, which is in these terms :—

“Whereas an Industrial dispute exists between (1) Messrs. Great Indian Motor Works Ltd., 33, Rowland Road, Calcutta, represented by their Managing Directors Sri C. D. Nundy and Sri K. D. Nundy, (2) Official Liquidators of the Company, Sri D. L. Dutta and Sri C. D. Nundy, 33, Rowland Road, Calcutta and (3) Sri K. D. Nundy, Auction Purchaser of the Company, 33, Rowland Road, Calcutta, and their 142, employees, given in the enclosed list, represented by

the Bus Workers' Union, 249, Bowbazar Street, Calcutta, regarding the matters specified in the schedule;

And whereas it is expedient that the said dispute should be referred to an Industrial Tribunal constituted under section 7 of the Industrial Disputes Act, 1947 (XIV of 1947);

Now, therefore, in exercise of the powers conferred by section 10 of the said Act, the Governor is pleased hereby to refer the said dispute to the Third Industrial Tribunal constituted under Notification No. 592 Dis./D/12L-5/12 dated the 23rd February, 1953 for adjudication.

The said Third Industrial Tribunal shall meet at such places and on such dates as it may direct.

#### SCHEDULE

1. Whether the notice dated 23rd July, 1954, of termination of services of 142 employees with effect from 24-7-54 issued by the Joint Official Liquidators, was justified?

2. Whether the refusal of the auction-purchaser to continue the employment of the 142 employees was justified?

3. What reliefs are the employees entitled to?

By order of the Governor."

The employees of the Company had moved the High Court for directions to the Liquidators for the payment of their dues from the Company. The Court, by its order dated September 8, 1954, directed the Liquidators to pay within a week the arrears of salary of all the workmen, and also within a week from receiving sale proceeds of the auction-sale aforesaid, to pay the workers, in lieu of notice, one week's wages to weekly paid workmen, two weeks' wages to fortnightly paid workmen, and one month's wages to monthly paid workmen. The Directors were to hold the balance of the sale proceeds till further orders of the Court.

It will be noticed from the order of reference, quoted above, that besides the Official Liquidators, the second appellant was also impleaded as a party to the Reference, in his capacity as the auction-purchaser of the Company. In his written statement before the Third

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Industrial Tribunal of West Bengal, which was in seizin of the case, the auction-purchaser, now the second appellant, after reciting the facts and circumstances leading up to his auction-purchase, as aforesaid, contended that as an auction-purchaser, he was not in any event liable for any compensation or dues, as claimed by the workmen; that he was not bound to reinstate the old employees of the Company; that having purchased the business free from any encumbrances, he was not liable for the dues of the workmen, as claimed; that he "had unnecessarily been made a party and dragged here before the Tribunal." He added that he admitted that he was one of the Managing Directors of the Company before its liquidation, but with the order for liquidation, he ceased to function as such.

After hearing the parties, the Tribunal made its Award dated March 8, 1955. The Tribunal awarded, *inter alia*, compensation under section 25(F)(b) of the Industrial Disputes Act, 1947, and directed the Company to pay compensation, within two months from the date the award became enforceable, to such of the workmen as had been found entitled to the same. It may be noted here that the proceedings before the Industrial Tribunal had commenced without the necessary sanction of the High Court in the liquidation proceedings, but during the pendency of the proceedings, the High Court, by its order dated December 20, 1955, granted leave to the workmen to proceed with and continue the proceedings against the Official Liquidators of the Company. The Industrial Tribunal, therefore, further directed that so far as the Liquidators were concerned, the compensation awarded to the workmen "shall be recoverable only out of the assets in their hands according to law". So far as the auction-purchaser was concerned, the award proceeded to make further directions in these terms:

"The auction-purchaser, it has already been noted, purchased the different sections of the business with the name "The Great Indian Motor Works" free from encumbrances and all outgoing and liabilities (*Vide* Exts. D and E), and the said purchase was

confirmed on 5th July, 1954. After the sale was confirmed and before possession was taken by the auction-purchaser, the Liquidators terminated the employment of all the employees (save and except the Accountant and one Clerk) by a notice dated 23rd July, 1954, with effect from 24th July, 1954. After such termination of employment, the auction purchaser obtained possession on 24th July, 1954. At that time no relationship of employer and employees subsisted. In the circumstances the dispute with the auction-purchaser cannot be considered to be 'industrial dispute' as no relationship of employer and employee existed between the auction purchaser and the old staff who had been discharged earlier. Hence I agree with the learned Advocate of the auction-purchaser that the reference so far as the auction-purchaser is concerned is incompetent. Apart from that, when the auction-purchaser purchased the business free from encumbrances and all outgoings and liabilities and when there is nothing to show that the auction-purchaser undertook at any time to maintain the old staff in his service, it cannot be said that his refusal to continue the employment of 142 employees was unjustified. Only when one purchases with all assets and liabilities as a going concern, he is bound to continue the old employees in service and not otherwise.

I award accordingly."

Against the said Award which, in terms, was made only against the Liquidators and not against the auction-purchaser aforesaid, only one of the two Liquidators, namely, Debendra Lal Dutt, made an application to the High Court for necessary directions regarding preferring an appeal. The other Liquidator, Chandy Das Nundy, opposed the said application for leave to appeal. The High Court, thereupon, made an order on April 30, 1956, refusing leave to the Liquidators to prefer an appeal from the said Award. It was in those circumstances that the appellants, namely, Messrs. Great Indian Motor Works Ltd., represented by the Managing Director, K.D. Nundy, as the first appellant, and K.D. Nundy, in his capacity as creditor and/or contributory of the said Great Indian Motor

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Works Ltd. (under liquidation) and/or as auction-purchaser of the Company, as appellant No. 2, filed an appeal before the Labour Appellate Tribunal of India, on May 3, 1956, impleading the one hundred and forty two employees through the Bus Workers' Union, as the principal respondents, C.D. Nundy and D. L. Dutt, the Official Liquidators of the Company, as *pro forma* respondents. As a counter-blast, the aforesaid workmen of the Company filed their appeal on May 17, 1956, impleading the Company represented by their Managing Directors, C. D. Nundy and K. D. Nundy, as the first respondent, the Official Liquidators of the Company, D.L. Dutt and C.D. Nundy, as respondents-second party, K.D. Nundy, the auction-purchaser, as respondent-third party and the workmen not represented by the Bus Workers' Union, as respondents-fourth party. It is not necessary to set out the grounds of appeal in either of the two appeals, in view of our decision on the preliminary question of the maintainability of the appeal in this Court, as will presently appear.

The Labour Appellate Tribunal disposed of the two appeals by its order dated August 1, 1956. The appellants' appeal was dismissed as incompetent in view of the provisions of s. 179 of Indian Companies Act, 1913, re-enacted as s. 457 of the Companies Act, 1956. The dismissal of the appeal on the ground of the appeal not being competent; was based on the order of the Calcutta High Court, dated April 30, 1956, aforesaid, refusing leave to the Liquidators to prefer an appeal. It is noteworthy that the appeal before the Appellate Tribunal, was not by the Liquidators but by K.D. Nundy as Managing Director of the Company, as also by him in his capacity as the creditor or contributory or as the auction-purchaser of the Company. This aspect of the case has not been dealt with by the Tribunal which held that the appeal was not maintainable as it was not authorised by the High Court. The employees' appeal also was dismissed as it was not pressed in view of the fact that the appeal by the Company stood dismissed as unauthorized. It was against the aforesaid order of the Appellate



Tribunal, dismissing the appeal *in limine*, that the appellants aforesaid moved this Court and obtained special leave to appeal, and the main ground of attack, naturally, was that the Labour Appellate Tribunal was in error in dismissing the appeal as unauthorised or as not maintainable.

It is manifest that we are called upon, in the first instance, to decide whether the Labour Appellate Tribunal had rightly dismissed the appeal *in limine* on the ground that the Liquidators had failed to obtain the necessary sanction of the Calcutta High Court to prefer an appeal from the Award of the Industrial Tribunal. If that order of the Appellate Tribunal is correct, and if we find that the appellants could not have any *locus standi* to prefer an appeal of their own as distinct from that on behalf of the Company, no other question would arise for determination in this case. If, on the other hand, we come to the conclusion that that order was erroneous, at least in respect of the appellants' appeal, then the appeal will have to be remanded to be re-heard by the Appellate Tribunal.

It has been urged on behalf of the appellants that in view of the provisions of s. 12, read with s. 3, of the Industrial Disputes (Appellate Tribunal) Act (48 of 1950) (which was repealed by Act 36 of 1956), which governed the making of appeals before the Appellate Tribunal, the appeal to that Tribunal was competent, and should have been heard and determined on merits. The provisions of ss. 3 and 12, which we have to construe in this case, are in these terms:—

“3. The provisions of this Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law.”

“12. An appeal under this Act against any award or decision of an industrial tribunal may be presented to the Appellate Tribunal by—

(i) any party which is aggrieved by the award or decision; or

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(ii) the appropriate Government or the Central Government, where it is not the appropriate Government, whether or not such Government is a party to the dispute."

We have first to determine whether there is anything in the Indian Companies Act, with particular reference to s. 179 of the Indian Companies Act, 1913, (re-enacted as s. 457 of the Companies Act, 1956), that is inconsistent with the provisions of the Industrial Disputes (Appellate Tribunal) Act, 1950 (which hereinafter will be referred to as "the Act"). If there is anything in those provisions of the Companies Act, inconsistent with the provisions of the Act, the latter shall prevail. Hence, we have to construe the provisions of s. 12 which specifically deals with appeals. That section permits an appeal to be presented to the Appellate Tribunal by any party which is aggrieved by the award (omitting the words not necessary for our present purpose). It is the usual statutory provision for an appeal, which otherwise would not lie. It does not say either in express terms or by necessary implication, that those specific provisions of the Companies Act, are abrogated or modified. It does not do away with the necessity of the requisite sanction of the Court so far as a Liquidator is concerned. Under the provisions of the Indian Companies Act, the affairs of the company under liquidation, are placed in charge of the Official Liquidator, and under s. 457, it is only the Liquidator who is authorized with the sanction of the Court, to institute any suit or other legal proceedings in the name and on behalf of the company. Thus, there is no inconsistency between the aforesaid provisions of the Act and the Companies Act, which only laid down a condition precedent to the filing of an appeal, if it has to be, by a Liquidator of a company in the process of winding up. It concerns a very special case and has no bearing on the general right of appeal. As, in the instant case, the Court refused the necessary sanction to the Liquidators to prefer the appeal, no appeal could have been filed on behalf of the Company. Hence, in so far as the appeal purported to be on behalf of the Company, through the Managing

Director aforesaid, it was wholly incompetent. But the appeal was not only by the Company as such, but also by the said K.D. Nundy as the creditor or contributory or auction-purchaser of the Company. So far as this part of the appeal is concerned, it is clear that only a party to the Reference aggrieved by the Award could be a party to the appeal. K.D. Nundy was not a party in his capacity as creditor or as contributory. He was impleaded, as already indicated as a party to the Reference in his capacity as the auction-purchaser of the business of the Company. So far as that capacity is concerned, it is clear from the order of the Tribunal, that no award was made against him as such. He could not, therefore, be said to be a party aggrieved by the award, having been exonerated from its terms. The Tribunal put this on three main grounds—(1) that the auction-purchaser had purchased the business of the Company free from all encumbrances, out-goings and liabilities, (2) that the employment of the workmen had been terminated by the Liquidators before possession of the business was delivered to the auction-purchaser, and (3) that there was no relationship of employer and employees between the auction-purchaser and the workmen whose services were so terminated. The Tribunal, in that view of the matter, declared the Reference to be incompetent in so far as the auction-purchaser was concerned. This order, the Tribunal passed at the instance of the auction-purchaser himself. The auction-purchaser, therefore, succeeded in obtaining the order which the Tribunal passed, holding that the Reference, so far as he was concerned, was incompetent. In view of these facts, it must be held that so far as the auction-purchaser is concerned, he was not aggrieved by the Award made by the Industrial Tribunal. That being so, the provisions of s. 12 of the Act, are not attracted to the appeal purported to have been filed by the auction-purchaser. It is a little difficult to appreciate why the auction-purchaser, having succeeded in obtaining the order, set out above, in his favour, changed his mind and preferred an appeal which, in the events that had happened, was not maintainable.

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In our opinion, therefore, the Labour Appellate Tribunal was not in error in dismissing the appeal by the Company and by the auction-purchaser, as incompetent. It follows, therefore, that we are not concerned with the merits of the appeal. In view of the fact that we have not expressed any opinion on the merits of the controversy raised in the abortive appeal, this dismissal shall be without prejudice to the appellants' rights, if any. The appeal is, accordingly, dismissed, but the parties here are directed to bear their own costs, in view of the fact that we have not gone into the merits of the controversy.

*Appeal dismissed.*

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MESSRS. ISPAHANI LTD. CALCUTTA

v.

ISPAHANI EMPLOYEES' UNION

(B. P. SINHA, P. B. GAJENDRAGADKAR and

K. N. WANCHOO, JJ.)

*Industrial Dispute—Puja Bonus—Implied agreement—Test—Benefits arising out of service with employer's predecessors—Workmen if entitled to.*

The workmen were originally employed by M/s. M.M. Ispahani Ltd., which shortly before the partition of India transferred its registered office from Calcutta to Chittagong. The appellant company was incorporated on September 15, 1947 and took over the good-will and trading rights of M/s. M. M. Ispahani Ltd. and also purchased its stock-in-trade, properties and assets. Most of the shares of the appellant were held by M/s. M. M. Ispahani Ltd. and the business of the appellant was of the same nature carried on in the same premises with the same workmen on the same remuneration. On the transfer of M/s. M. M. Ispahani Ltd. to Chittagong the question arose of retrenching those workmen who were not willing to go to Chittagong and when the appellant company came into existence it agreed to employ those workmen. The workmen apparently agreed to the termination of their services with M/s. M. M. Ispahani Ltd., and after receiving their provident funds and arrears of salaries they were appointed by the appellant. M/s. M. M. Ispahani Ltd. used to pay puja bonus to the workmen at the rate of one month's wages and the appellant also paid the same from 1948 up to 1952, even in the years in which the appellant suffered losses. As the appellant did not pay puja bonus for 1953, a dispute arose and was referred for