Supreme Court of India
The Automobile Products Of India ... vs Rukmaji Bala And Others(And ... on 3 February, 1955
Equivalent citations: 1955 AIR 258, 1955 SCR (1)1241
Author: S R Das
Bench: Das, Sudhi Ranjan

PETITIONER:
THE AUTOMOBILE PRODUCTS OF INDIA LTD.

Vs.

RESPONDENT:
RUKMAJI BALA AND OTHERS(And connected Appeal)

DATE OF JUDGMENT:
03/02/1955

BENCH:
DAS, SUDHI RANJAN
BENCH:
DAS, SUDHI RANJAN
BHAGWATI, NATWARLAL H.
IMAM, SYED JAFFER

CITATION:
1955 AIR 258 1955 SCR (1)1241

ACT:
Industrial Disputes (Appellate Tribunal) Act, 1950 (XLVIII of 1950), s. 22-Whether Labour Appellate Tribunal has Jurisdiction to impose conditions when granting permission-Industrial Disputes Act, 1947 (XIV of 1947), s. 33 and Industrial Disputes (Appellate Tribunal) Act, 1950-S. 23-Jurisdiction of authority not only to decide whether there has been failure to obtain permission but also to give decision on the merits of an industrial dispute-Industrial Disputes Act, 1947 (as amended), s. 33 and s. 33-A-Industrial Disputes (Appellate Tribunal) Act-Ss. 22 and 23-Meaning and scope of.

HEADNOTE:
Held, (i) that the ordinary and primary jurisdiction of the Labour Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950 is appellate; (ii) that s. 22 of the Act confers on the appellate tribunal a special jurisdiction which is in the nature of original jurisdiction; (iii) that s. 23 also vests in the tribunal an additional jurisdiction to decide the complaint as if it were an appeal pending before it; and (iv) that s. 23 confers on the

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workmen an additional remedy which they did not have under the Industrial Disputes Act, 1947.

The two now ss. 33 and 33-A inserted in the Industrial Di-- putes Act 1947 (XIV of 1947) by Act XLVIII of 1950 confer distinct benefits on the workmen and give some additional jurisdiction and power to the authorities mentioned therein. Section 33-A enjoins the Tribunal to decide the complaint "as if it were a dispute referred to or pending before it" and to submit its award to the appropriate Government and provides that the provisions of the Act shall apply to the award. The provisions of these two new ss. 33 and 33-A of the 1947 Act correspond to and are in pari materia with the provisions of ss. 22 and 23 of the 1950 Act and are more or less in similar terms.

A ban has been put by s. 22 of 1950 Act and s. 33 of the 1947 Act upon the ordinary right, which the employer has under the ordinary law governing a contract of employment with a view to protect the workmen against victimisation by the employer and to ensure the termination.of the proceedings in connection with industrial disputes in a peaceful atmosphere and the only thing that the authority is called upon to do is to grant or withhold the permission i.e. to lift or maintain the ban. These sections do not confer any power on the authorities to adjudicate upon any other dispute.

Under s. 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950 (XLVIII of 1950) the Labour Appellate Tribunal has no jurisdiction to impose conditions as a pre-requisite for granting permission to the employer to retrench its workmen.

Under s. 33-A of the Industrial Disputes Act 1947 and s. 23 of the 1950 Act the jurisdiction of the authority is not only to decide whether there has been a failure on the part of the employer to obtain the permission of the authority before taking action but also to give a decision on the merits of an industrial dispute and grant appropriate relief which when published by the appropriate Government will become enforceable under the respective Acts.

Serampore Belting Mazdoor Union v. Serampore Belting Co., Ltd. ([1951] 1 Lab. L.J. 341), Batuk K. Vyas v. Surat Borough Municipality ([1952] 54 Bom. L.R. 922), Raj Narain v. Employer-s' Association of Northern India ([1952] 1 Lab. L.J. 381), The Queen v. County Council of West Riding of Yorkshire ([1896] 1 Q.B. 386), Carlsbad Mineral Works Co., Ltd. v. Their Workmen ([1953] 1 Lab. L.J. 85), Atherton West & Co., Ltd. v. Suti Mill Mazdoor Union ([1953] S.C.R. 780) and Bhattacharji v. Parry & Co., Ltd., Calcutta ([1954] 2 Lab. L.J. 635), referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 2 and 4 of 1955.

Appeal by Special Leave from the Order dated the 18th day of November 1954 of the Labour Appel-

late Tribunal of India, Bombay in Application (Misc.) Bombay No. 773 of 1954.

H. M. Seervai, J. B. Dadachanji and Rajinder Narain, for the appellant in Civil Appeal No. 2 of 1955 and respondent in Civil Appeal No. 4 of 1955.

D. H. Buch and I. N. Shroff, for the respondents in Civil Appeal No. 2 of 1955 and appellants in Civil Appeal No. 4 of 1955.

M. C. Setalvad, Attorney-General for India (G. N. Joshi and P. C. Gokhale with him), for the Intervener (Union of India).

1955. February 3. The Judgment of the Court was delivered by DAS J.-This is an appeal by special leave from the order of the Labour Appellate Tribunal, Bombay Bench, dated the 18th November 1954 which was made on an application made by the appellant company on the 6th September 1954 under section 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950 (Act XLVIII of 1950) which is hereinafter referred to as the 1950 Act.

The appellant company carries on business as assemblers of motor vehicles from "completely knocked down" assemblies imported into India. There was some appeal pending before the Labour Appellate Tribunal arising out of disputes between the appellant company and its workmen. It is alleged that the name of the appellant company had been removed by the Government of India from the list of approved manufacturers maintained by them and that, in the result, it had been unable to secure further import licenses for the import of completely knocked down assemblies of motor vehicles and that consequently on and from the 1st November 1953 the company had to lay off a number of its workmen, for it had to operate the various departments of its factory at greatly reduced strength. As the appellant company saw no prospect of any increase in the scope of its present operation which would provide employment for the workmen who had been laid off, it had become necess-

sary to retrench the workmen named in Annexure A to the application. As those workmen were concerned with the appeal pending before the Labour Appellate Tribunal the company applied to the Appellate Tribunal under section 22 of the 1950 Act for permission to retrench them. The respondents through their Union, the Automobile Manufacturers' Employees' Association, Bombay, filed a written statement on the 1st November 1954 making diverse allegations against the company and contending that the company bad itself to blame for having brought about the lay off. It was contended that there was no immediate cause for making the application, that the company was motivated by ulterior motives to deprive the workmen of their dues which even according to the company would become due and payable to the workmen on the expiry of the one year of the said lay off period. It was further alleged that in or about April 1954 the company recalled some of the workmen out of those who had been laid off since November 1953 violating all principles on which a

recall should have been made and that by such arbitrary and unscientific recall the company had imposed disproportionate work loads on the recalled workmen, thereby altering their conditions of service to their prejudice. The respondents maintained that the application was not maintainable in law, was mala fide and should be dismissed. In the penultimate paragraph of the written statement it was submitted that in the event of the Labour Appellate Tribunal granting the permission in whole or in part such permission should be granted subject to the following conditions:-

(1) Payment of full wages with dearness allowance for the entire period of lay off;

(2) Payment of one month's notice pay and retrenchment compensation at the rate of one month's wages including dearness allowance for every completed year of service and part thereof in addition to the gratuity as per the scheme in force in the company;

(3) Alternatively to (2) above and in cage the Labour Appellate Tribunal took the view that the lay off was governed by section 25-C of the Industrial Disputes Act, 1947, payment of compensation at 50 per cent. of their wages plus dearness allowance for the entire period of lay off to the date of discharge in addition to the notice pay and gratuity as claimed in (2) above; and (4)Payment of leave wages as per existing rules, taking the entire period of lay off as service.

A number of documents were filed in support of the respective contentions.

-The Labour Appellate Tribunal at the very outset of its judgment under appeal states its finding on the merits of the action proposed to be taken by the company as follows:- "There can be little doubt that the retrenchment has been occasioned by the failure of the concern to secure sufficient work owing to absence of licenses from Government and, therefore, retrenchment must be regarded as inevitable and the application before us bona fide. Permission to retrench cannot be refused but for the reasons that we shall state hereafter we make that permission conditional upon the fulfilment of certain terms by the concern". The company contended before the Labour Appellate Tribunal that its function, while dealing with an application under section 22 of the 1950 Act, was only to give or withhold permission. This contention was rejected by the Appellate Tribunal with the following observation:- "That view is quite untenable as has been repeatedly held by this Tribunal. We are the authority to whom an application has to be made for permission to retrench, and when such an application is made we must of necessity exercise our judgment and discretion and satisfy ourselves that when the company retrenches it does justice by its employees". The Labour Appellate Tribunal was clearly influenced by the consideration which, stated in its own words, was as follows:-

"We do not think that we will be advancing the interest of the employees or of the concern by refusing retrenchment because the case for retrenchment has been established, and the sooner the workmen are allowed to leave and find for themselves other employment the better for them. But in order to assure ourselves that on retrenchment the employees receive what in justice they should have, we have decided to give permission to retrench subject to cer- tain conditions which in our view are inherent under the Act., and which apart from the Act we consider to be just and equitable in the particular circumstances of this case". In this view of the matter the Labour Appellate Tribunal definitely declined "to leave over the question of compensation for lay off as a legacy of the

present troubles; the employees to be retrenched have enough to worry them without having to make claims and have them decided after contest before a Tribunal". In the result, the Labour Appellate Tribunal gave the appellant company permission to retrench "subject to the terms and conditions of Act XLIII of 1953, provided that each workman is paid at the rate of half basic wages and dearness allowance for the whole period from the date of lay off up to the date of retrenchment (less sums already received as lay off compensation)". Liberty was given to the company to set off the lay off compensation protanto against the retrenchment relief given by the Act.

Aggrieved by this decision the appellant company applied for and obtained from this Court special leave to appeal against this order. The respondents subsequently filed an application for special leave to appeal against this decision in so far as the Labour Appellate Tribunal had not allowed their full claim as surmmarised above and in so far as the names of 17 persons had been struck off on the allegation of the company that they were not workmen. This application of the respondents was also acceded to and the two appeals have been heard together. The Union of India asked for leave to intervene as important questions of construction of the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the 1947 Act) and the 1950 Act were involved. Such leave was granted. and we have heard learned counsel for the Union of India along with learned counsel for the parties. The question as to the propriety of permitting the names of 17 workmen to be struck off from the application has not been seriously pressed before us. Only two questions have been canvassed at some length before us, namely-.- (1)Whether under section 22 of the 1950 Act the Tribunal has jurisdiction to impose conditions when granting the permission asked for; and (2)Whether the conditions imposed in this case are in conformity with law.

It is plain, however, that in case the first question is answered in the negative, the second question will not call for any decision on the present occasion.

In order to correctly answer the questions it will be necessary to bear in mind the general scheme of the two Acts. The purpose of the 1947 Act is, inter alia, to make provision for the investigation and settlement of industrial disputes. In order to achieve this avowed object different authorities have been constituted under this Act. Thus section 3 provides for the constitution of Works Committee whose duty is to promote measures for securing and preserving amity and good relations between the employers and workmen. The appropriate Government is authorised by section 4 to appoint conciliation officers charged with the duty of mediating in and promoting the settlement of industrial disputes and by section 5 to constitute a Board of Conciliation for promoting the settlement of industrial disputes. Section 6 empowers the appropriate Government to constitute a Court of Inquiry for enquiring into any matter appearing to be connected with or relevant to an industrial dispute. Finally, section 7 provides for the constitution of Industrial Tribunals for the adjudication of industrial disputes in accordance with the provisions of the Act. Section 10 of this Act provides for reference of disputes to a Board, Court or Tribunal. It will be noticed that under this section it is the appropriate 160 Government which alone can make the reference and set the authority in motion. The procedure, powers and duties of conciliation officers, Boards, Courts and Tribunals are elaborately prescribed and defined in sections I 1 to 15. It is to be noted that the conciliation officer, Board, and Court are required to make a report to the appropriate Government while the Tribunal is enjoined to submit its award to the appropriate Government. The report of a

Board or Court and the award of a Tribunal are under section 17 to be published by the appropriate Government within a month from the date of their receipt. Section 17-A provides that the award of a Tribunal shall become enforceable on the expiry of 30 days from the date of its publication and, subject to the provisions of sub-section (1) shall come into operation from such date as may be specified therein and if no date is so specified from the date when the award becomes enforceable as aforesaid. Section 19 prescribes the period of operation of settlements and awards. Chapter deals with strikes and lock-outs. Sections 26 to 31 which are grouped together under the heading "Penalties" prescribe punishments. Section 31 (I) provides that any employer who contravenes the provisions of section 33 shall be punishable with imprisonment for a term which may extend to 6 months or with fine which may extend to Rs. 1,000 or with both. Section 33, a contravention of which is made punishable by section 31, as it stood before 1950, forbade an employer, during the pendency of any conciliation proceedings or proceedings before a Tribunal, to alter, to the prejudice of the workmen concerned in the dispute, the conditions of service applicable to them immediately before such proceedings, nor, save with the express permission of the conciliation officer, Board or Tribunal, as the case may be, to discharge, dismiss or otherwise punish during the pendency of the proceedings any workman, except for misconduct not connected with the dispute. It may be noted that under this section the ban on the alteration of the conditions of service was absolute and that permission was necessary only in case of discharge or dismissal or punishment and even in such case no permission was necessary when the workman was guilty of misconduct not concerned with the pending dispute. The Only deterrent against a contravention by an employer of the provisions of section 33 was the prosecution of the employer under section 31. This was hardly any consolation for the workmen, for if an employer took the risk of a prosecution and acted in contra- vention of section 33 the workmen could only raise an industrial dispute and ask the appropriate Government to refer the same to a Tribunal but if the Government declined to accede to their prayer the workmen were without any remedy. This was the position under the 1947 Act before it was amended in 1950.

The 1950 Act was enacted for establishing an Appellate Tribunal in relation to industrial disputes. Chapter II of the Act deals with the constitution, composition and functions of the appellate tribunal. Section 7 formulates the jurisdiction of the appellate tribunal. Section 9 confers on the appellate tribunal all the powers which are vested in a Civil Court when hearing an appeal under the Code of Civil Procedure, 1908. Section 10 prescribes the period of limitation within which appeals are to be brought before the appellate tribunal. Under section 15 the decision of the appellate tribunal becomes enforceable on the expiry of 30 days from the date of its pronouncement, provided that where the appropriate Government is of opinion that it would be inexpedient, on public grounds, to give effect to the whole or any part of the decision the appropriate Government may, before the expiry of the said period of 30 days, by order in the Official Gazette either reject the decision or modify it. Section 22 of this Act provides:

"22. During the period of thirty days allowed for the filing of an appeal under section 10 or during the pendency of any appeal under this Act, no employer sball-

(a) alter, to the prejudice of the workmen concerned in such appeal, the conditions of service applicable to them immediately before the filing of such appeal, or

(b)discharge or punish, whether by dismissal or otherwise, any workmen concerned in such appeal, save with the express permission in writing of the Appellate Tribunal". Section 23 on which reliance is placed by learned counsel for the respondents and for the intervener, reads as follows:-

"23. Where an employer contravenes the provisions of section 22 during the pendency of proceedings before the Appellate Tribunal, any employee aggrieved by such contravention, may make a complaint in writing, in the prescribed manner to such Appellate Tribunal and on receipt of such complaint, the Appellate Tribunal shall decide the complaint as if it were an appeal pending before it, in accordance with the provisions of this Act and shall pronounce its decision thereon and the provisions of this Act shall apply accordingly".' Section 29 of this Act provides for penalty for con- travention of the provisions of section 22, namely, imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. From what has been stated so far four things are to be noted, namely, (i) that the ordinary and primary jurisdiction of the appellate tribunal is appellate, (ii) that section 22 of this Act confers on the appellate tribunal a special jurisdiction which is in the nature of original jurisdiction, (iii) that section 23 also vests in the tribunal an additional jurisdiction to decide the complaint as if it were an appeal pending before it; and

(iv) that section 23 confers on the workmen an additional remedy which they did not have under the 1947 Act. To fill up the lacuna in the 1947 Act section 34 of the 1950 Act provided for certain amendments of the 1947 Act. Amongst other things, it substituted a new section for the old section 33 of the 1947 Act. The new section 33 runs as follows--

"33. During the pendency of any conciliation proceedings or proceedings before a Tribunal in respect of any industrial dispute, no employer- shall-

(a)alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings; or

(b)discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute, save with the express permission in writing of the conciliation officer, Board or Tribunal, as the case may be".

It will be noticed that this section has made several changes. Thus under this section provision is made for obtaining permission as a condition precedent both for altering the conditions of service and for discharging or punishing the workmen and no exception is made for a case of misconduct unconnected with the pending dispute. Besides this, the following new section was added to the 1947 Act as section 33-A:

"33-A. Where an employer contravenes the provisions of section 33 during the pendency of proceedings before a Tribunal, any employee aggrieved by such contravention, may make a complaint in writing, in the prescribed manner to such Tribunal and on receipt of such complaint that Tribunal shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit its award to the appropriate

Government and the provisions of this Act shall apply accordingly".

It may be pointed out that the new sections 33 and 33-A thus inserted into the 1947 Act confer distinct benefits on the workmen and give some additional jurisdiction and power to the authorities mentioned therein. Section 33-A enjoins the Tribunal to decide the complaint "as if it were a dispute referred to or pending before it" and to submit its award to the appropriate Government and provides that the provisions of the Act shall apply to the award. It is quite clear that the provisions of these two new sections 33 and 33-A of the 1947 Act correspond to and are in pari materia with the provisions of sections 22 and 23 of the 1950 Act and are more or less in similar terms. The question for our conside-

ration is: What are the meaning, scope and effect of these sections.

A cursory perusal of section 33-A of the 1947 Act as well as section 23 of the 1950 Act will at once show that it is the contravention by the employer of the provisions of section 33 in the first case and of section 22 in the second case that gives rise to a cause of action in favour of the workmen to approach and move the respective authority named in the section and this contravention is the condition precedent to the exercise by the authority concerned of the additional jurisdiction and powers conferred on it by the sections. The authority referred to in the sections is, as we have seen, a Court of limited jurisdiction and must accordingly be strictly confined to the exercise of the functions and powers actually conferred on it by the Act which constituted it. What, then, are the scope and ambit of the functions and powers with which it has been vested by these sections?

When an employer contravenes the provisions of section 33 of the 1947 Act or of section 22 of the 1950 Act the workmen affected thereby obviously have a grievance. That grievance is two-fold. In the first place it is that the employer has taken a prejudicial action against them without the express permission in writing of the authority concerned and thereby deprived them of the salutary safeguard which the legislature has provided for their protection against victimisation. In the second place, and apart from the first grievance which may be called the statutory grievance, the workmen may also have a grievance on merits which may be of much more seriousness and gravity for them, namely, that in point of fact they have been unfairly dealt with in that their interest has actually been prejudicially affected by the highhanded act of the employer. These sections give the workmen the right to move the authority by lodging a complaint before it. This is a distinct benefit given to them, for, as we have seen, apart from these sections, the workmen have no right to refer any dispute for adjudication. This complaint is required to be made in the prescribed manner. Form DD prescribed by rule 51-A of the Industrial Disputes (Central) Rules, 1947, framed under section 38 of the 1947 Act, like Form E prescribed under section 35 of the 1950 Act, requires the complaining workmen to show in their petition of complaint not only the manner in which the alleged contravention has taken place but also the grounds on which the order or the act of the management is challenged. This clearly indicates that the authority to whom the complaint is made is to decide both the issues, namely (1) the fact of contravention and (2) the merits of the act or order of the employer. It is also clear that under section 33-A of the 1947 Act the authority is to adjudicate upon the complaint "as if it were a dispute referred to or pending before it" and under section 23 of the 1950 Act the authority is to decide the complaint "as if it were an appeal pending before it". These

provisions quite clearly indicate that the jurisdiction of the authority is not only to decide whether there has been a failure on the part of the employer to obtain the permission of the authority before taking action but also to go into the merits of the complaint and grant appropriate reliefs. The extreme contention that under section 33-A of the 1947 Act, on a finding that there has been a contravention of the provisions of section 33, the Tribunal's duty is only to make a declaration to that effect, leaving the workmen to take such steps under the Act as they may be advised to do, has been negatived by the Labour Appellate Tribunal in Serampore Belting Mazdoor Union v. Serampore Belting Co., Ltd.(1) and by the Bombay High Court in Batuk K. Vyas v. Surat Borough Municipality(1). The same principle has been accepted and applied by a Full Bench of the Labour Appellate Tribunal to a case under section 23 of the 1950 Act in Raj Narain v. Employers' Association of Northern India(1). We find ourselves in agreement with the construction placed upon section 33-A of the 1947 Act and section 23 of the 1950 Act by these decisions. In our view the scope and ambit of the jurisdiction conferred on the authority named in those (1) (1951) 2 Lab. L.J. 341.

(2) [1952] 54 Bom. L.R. 922.

(3) [1962] 1 Lab. L.J. 381, sections is wider than that conferred on the Criminal Court by section 31 of the 1947 Act and section 29 of the 1950 Act. The Criminal Court under the two last mentioned sections is only concerned with the first issue herein before mentioned, namely, yea or nay whether there has been a contravention of the respective provisions of the sections mentioned therein, but the authority exercising jurisdiction under section 33-A of the 1947 Act and section 23 of the 1950 Act is to adjudicate upon or decide the complaint "as if it were a dispute referred to or pending before it" in the first case or "as if it were an appeal pending before it" in the second case. The authority is, therefore, enjoined to go into the merits of the act complained of under section 33-A of the 1947 Act and section 23 of the 1950 Act. In this sense the jurisdiction of the authority named in these two sections is certainly wider than that of the Criminal Court exercising jurisdiction under the penal sections referred to above. Having regard to the scope of the enquiry under section 33-A of the 1947 Act and section 23 of the 1950 Act it must follow that the power of the authority to grant relief must be co-extensive with its power to grant relief on a reference made to it or on an appeal brought before it, as the case may be. The provision that the authority concerned must submit its award to the appropriate Government and that the provisions of the respective Acts would be applicable thereto also support the view that the decision of the authority is to partake of the nature of a decision on the merits of an industrial dispute which when published by the appropriate Government will become enforceable under the- respective Acts. It follows, therefore, that the authority referred to in these sections must have jurisdiction to do complete justice between the parties relating to the matters in dispute and must have power to give such relief as the nature of the case may require and as is also indicated by the prayer clause mentioned in the two Forms DD and E referred to above. In short, these two sections give to the workmen a direct right to approach the Tribunal or Appellate Tribunal for the redress of their grievance without the intervention of the appropriate Government which they did not possess before 1950 and they provide for speedy determination of disputes and avoid multiplicity of proceedings by giving complete relief to the workmen in relation to their grievances arising out of the action taken by the employer in contravention of the provisions of the relevant sections. It is significant that this jurisdiction or power has been vested in the Tribunal or Appellate Tribunal whose normal duty is to decide or

adjudicate upon industrial disputes and not on any conciliation officer or Board who are normally charged with the duty of bringing about settlement of dis- putes.

it is submitted by learned counsel for the Respondents and of the intervener that the scope of section 33 of the 1947 Act and of section 22 of the 1950 Act is precisely the same as that of section 33-A of the 1947 Act and section 23 of the 1950 Act. The argument is that the two last mentioned sections were enacted only in order to afford an opportunity to the workmen to do what they had been prevented from doing at the earlier stage by reason of the employer taking the law into his own hands and taking action against them without previously obtaining the sanction of the appropriate authority to do so. If the law permits the workmen to ventilate their grievances at a later stage under section 33-A of the 1947 Act and section 23 of the 1950 Act there can be no logical reason why the law should not permit them to do so at the earlier stage under section 33 of the 1947 Act and section 22 of the 1950 Act. It is submitted that the purpose of labour legislation being to maintain industrial peace and restore amity and goodwill between the employer and his workmen, it should be the attempt of the Tribunal or the Appellate Tribunal at every stage to try to resolve all disputes which are connected with the matter which is brought before it. Finally, it is urged that whenever an authority is vested with the power to do or not to do an act it must be regarded as having a discretion and that in exercise of such discretion the authority must be presumed to be vested with power to impose suitable conditions. Reliance is placed on the decision in The Queen v. County Council of West Riding of Yorkshire(1). The argument is that the authority concerned may under section 33 of the 1947 Act and section 22 of the 1950 Act grant by way of imposing conditions the same relief which it can grant to the workmen under section 33-A of the 1947 Act and section 23 of the 1950 Act. We are unable to accept this contention as correct for reasons which we now proceed to state.

The object of section 22 of the 1950 Act like that of section 33 of the 1947 Act as amended is to protect the workmen concerned in disputes which form the subject-matter of pending proceedings against victimisation by the employer on account of their having raised industrial disputes or their continuing the pending proceedings. It is further the object of the two sections to ensure that proceedings in connection with industrial disputes already pending should be brought to a termination in a peaceful atmosphere and that no employer should during the pendency of those pro- ceedings take any action of the kind mentioned in the sections which may give rise to fresh disputes likely to further exacerbate the already strained relation between the employer and the workmen. To achieve this object a ban has been imposed upon the ordinary right which the employer has under the ordinary law governing a contract of employment. Section 22 of the 1950 Act and section 33 of the 1947 Act which impose the ban also provide for the removal of that ban by the granting of express permission in writing in appropriate cases by the authority mentioned therein. The purpose of these two sections being to determine whether the ban should be removed or not, all that is required of the authority exercising jurisdiction under these sections is to accord or withhold permission. And so it has been held-we think rightly-by the Labour Appellate Tribunal in Carlsbad Mineral Works Co. Ltd. v. Their (1) [1S96] 2, Q.B. 386.

Workmen(1) which was a case under section 33 of the 1947 Act. Even a cursory persual of section 33 of the 1947 Act will make it clear that the purpose of that section was not to confer any general

power of adjudication of disputes. It will be noticed that under section 33 of the 1947 Act the authority invested with the power of granting or withholding permission is the conciliation officer, Board or Tribunal. The conciliation officer or the Board normally has no power, under the 1947 Act, to decide any industrial dispute but is only charged with the duty of bringing about a settlement of dispute. It is only the Tribunal which can by its award decide a dispute referred to it. 'Section 33 by the same language confers jurisdiction and power on all the three authorities. Power being thus conferred by one and the same section, it cannot mean one thing in relation to the conciliation officer or the Board and a different and larger thing in relation to the Tribunal. There is no reason to think that the legislature, by a side wind as it were, vested in the conciliation officer and the Board the jurisdiction and power of adjudicating upon disputes which they normally do not possess and which they may not be competent or qualified to exercise. Further, if the purpose of the section was to invest all the authorities named therein with power to decide industrial disputes one would have expected some provision enabling them to make and submit an award to which the provisions of the Act would apply such as is provided in section 33-A of the 1947 Act or section 23 of the 1950 Act. There is no machinery provided in section 33 of the 1947 Act or section 23 of the 1950 Act for enforcing the decision of the authority named in those sections. This also indicates that those sections only impose a ban on the right of the employer and the only thing that the authority is called upon to do is to grant or withhold the permission, i.e. to lift or maintain the ban. And so it has been held by this Court in Atherton West & Co., Ltd. v. Suti Mill Mazdoor Union(1) which was a case under clause 23 of the U. P. Government Notification quoted on p. 785.

(1) [1953] 1 Lab. L.J. 85.

(2) [1953] S.C.R, 780, 786-7, Section 22 of the 1950 Act is in pari materia with section 33 of the 1947 Act and the above clause 23 of the U. P. Government Notification and most of the considerations noted above in connection with these provisions apply mutatis mutandis to section 22 of the 1950 Act. Imposition of conditions is wholly collateral to this purpose and the authority cannot impose any condition. And it has been so held-we think correctly-in G. C. Bhattacharji v. Parry & Co., Ltd., Calcutta(1). In view of the scheme of these Act summarised above and the language of these sections the general principle laid down in the case of The Queen v.The County Council of West Riding supra can have no application to a case governed by these sections. In our judgment the Labour Appellate Tribunal was in error in holding that it had jurisdiction to impose conditions as a prerequisite for granting permission to the company to retrench its workmen and the first question must be answered in the negative.

In the view we have taken on the first question we do not consider it necessary on this occasion to express any opinion on the other question canvassed before us. The result, therefore, is that this appeal is allowed and the decision of the Labour Appellate Tribunal is set aside and the matter is remanded to the Labour Appellate Tribunal to deal with the application of the company and make the appropriate order according to law. In the circumstances of this case we make no order as to costs. Appeal No. 4 of 1955 is dismissed also without costs.

(1) [1954] 2 Lab. L.J. 635.