APPEAL FROM ORIGINAL CIVIL

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Bhagwati.

MAHOMED USMAN RAHIMTOOLLA, APPELLANT *v.* THE LABOUR APPELLATE TRIBUNAL OF INDIA AT BOMBAY AND ANOTHER, RESPONDENTS.* 1952 *Mar.* 3

Industrial Disputes Act (XIV of 1947) Award of the Labour Appellate Tribunal—Petition by one individual worker for setting aside the award—Writ of certiorari*—Award cannot be set aside against some and confirmed against others—High Court has no power to remand an award on a petition for a writ of* certiorari.

The High Court has power and jurisdiction in a proper case to set aside as a whole an order or award of the Labour Appellate Tribunal when it is in excess of jurisdiction or *ultra vires* notwithstanding that it is challenged by only one out of a large number of persons affected by it.

On a petition for a writ of *certiorari* the High Court does not sit as a court of appeal; it exercises supervisory powers conferred upon it by issuing high prerogative writs. The jurisdiction of the High Court is limited to quashing an order passed without jurisdiction or in contravention of the principles of natural justice. The High Court has therefore no power or jurisdiction to remand a matter to the Tribunal.

Abdul Majid v. *Nayak*,[1] explained.

The facts material to the report appear sufficiently from the judgment.

N. V. Phadke, for the appellant (petitioner).

R. L. Dalal, for the Labour Appellate Tribunal.

S. D. Vimadalal, for the Elephant Oil Mills Ltd.

CHAGLA C. J. This is an appeal from an order of Mr. Justice Shah by which he directed a writ of *certiorari* to issue against the Labour Appellate Tribunal.

There was a dispute between the workers of the Elephant Oil Mills, Ltd., and the mills and this dispute was referred to the Industrial Tribunal, and the Tribunal made its award on October 19, 1950. There was an appeal to the Labour Appellate Tribunal and the Labour Appellate Tribunal gave its award on February 8, 1951, and the appellant before us, who is a worker of the mills, preferred this petition to this Court alleging that no notice of appeal had been served upon him, that he had not been heard by the Appellate Tribunal,

*O. C. J. Appeal No. 61 of 1951, Misc. No, 85 of 1951,

[1] (1951) 53 Bom. L. R. 621, 653.

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that there was a violation of the rules of natural justice, and therefore the award of the Appellate Tribunal should be quashed.

The learned Judge below upheld the contention of the appellant. He held that he had not been heard by the Appellate Tribunal, and the order that he made was that the award of the Appellate Tribunal in so far as it modifies the award to the prejudice of the petitioner be vacated, and he further directed that the Appellate Tribunal do hear the appeal against the petitioner after giving him adequate notice of the date of the hearing of the appeal.

Now, the order is challenged by the appellant on two grounds. One is that the learned Judge should not have set aside the award only to the extent that it affected the appellant but should have quashed the award as a whole, and the other ground on which the order of the learned Judge is challenged is that the learned Judge was in error in directing the Appellate Tribunal to hear the appeal against the petitioner.

Now, turning to the first ground Mr. Vimadalal has contended that there is nothing to prevent this Court when it issues a writ of *certiorari* and quashes an order to quash the order only to the extent that it affected the petitioner. Mr. Vimadalal says that the only person who has made a grievance of the award is the petitioner, the other workers have not come before the Court, and therefore there is no reason why the award should not be quashed so far as the appellant alone is concerned. He has relied on certain observations of the Court of appeal in *Abdul Majid* v. *Nayak*.[1] In that case we were considering the order of the Custodian and only one person affected by the order had come to this Court and therefore we set aside the order only to the extent that the petitioner was prejudiced. We pointed out that as others had been content with the order of the Custodian and had taken no steps to challenge the order, there was no reason why the order as a whole should be set aside. But in the very judgment we were at pains to point out that there may undoubtedly be cases where although a party affected by an order may come to Court, proper justice can only be done if the order is set aside as a whole and not only to the extent that it affects the interest of the petitioner, and, in delivering the judgment, I further added that I should not be understood

[1] (1951) 53 Bom. L. R. 621 at p. 653.

to say that the Court has not the power and the jurisdiction in proper cases to set aside an order, which is in excess of jurisdiction or *ultra vires*, as a whole, although it is challenged by only one party affected by the order.

Now, the question is whether in this particular case the order of the Appellate Tribunal should be set aside only to the extent that it affects the petitioner or it should be set aside as a whole. For this purpose we must look at the scheme of the Industrial Disputes Act. Section 18 makes an award which has become enforcible binding not only on the parties to the industrial dispute but also on all workmen who are employed in an establishment to which the dispute relates, and not only on all workmen who are employed by the establishment at the date of the dispute but upon all persons who are subsequently employed in that establishment; and the award is defined as a final determination by the Industrial Tribunal of any industrial dispute or of any question relating thereto. Therefore, the scheme of the Act is that when there is an industrial dispute in which workers are affected, the dispute should be finally settled by the decision of the Industrial Tribunal, and the efficacy of the award is so great that it binds not only the actual parties before the Tribunal but it binds all workers who were in the establishment which was concerned with the dispute and even workmen who might join that establishment subsequent to the date of the dispute.

Now, in the light of this, let us consider what the effect of Mr. Justice Shah's judgment would be. The effect of Mr. Justice Shah's judgment in substance would be that there will be two awards in regard to the same industrial dispute. The award of the Appellate Tribunal being set aside as against the petitioner, the award passed by the Industrial Tribunal will stand as far as he is concerned, and there will be the other award constituted by the order passed by the Appellate Tribunal which award has taken the place of the award originally made by the Industrial Tribunal. Now, such a situation would be entirely contrary to the scheme of the Industrial Disputes Act and to the policy underlying this Act. With regard to the same dispute the appellant will have his rights determined by one award and with regard to the same dispute the other workers will have their rights determined by another award. Two awards will be in the field with regard to the same dispute and will differently determine the rights of employers and workers. In our opinion, we should

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not permit such a situation to arise by the order of the Appellate Tribunal being quashed only to the extent that it affects the rights of the appellant. In our opinion, Mr. Justice Shah should have set aside the order of the Appellate Tribunal as a whole so that if the Appellate Tribunal was so minded it could have heard the appeal again and passed such award as it thought proper.

The other point urged by Mr. Phadke is that the learned Judge was in error in remanding the matter back to the Appellate Tribunal. Here also Mr. Phadke seems to be right. When the Court issues the high prerogative writ of *certiorari*, it directs the judicial tribunal against which it is acting to transmit its record to the Court, and if necessary to quash the order which the Tribunal has passed. It must not be forgotten that in issuing the writ this Court is not acting as a Court of appeal. It is exercising supervisory powers conferred upon it, and those powers are exercised by means of issuing high prerogative writs. But the power and jurisdiction of the Court is limited. The power which the Court of appeal has to remand the matter back to the lower Court cannot be exercised by the High Court when it is called upon to issue a writ of *certiorari*. This Court is only concerned with the question as to whether the Tribunal exercising judicial functions has or has not acted without jurisdiction or whether in the exercise of its jurisdiction it has contravened the principles of natural justice. If it has acted without jurisdiction or if it has contravened the principles of natural justice, then the jurisdiction of this Court is to quash the order passed without jurisdiction or in contravention of the principles of natural justice. There the power of the High Court stops. It has no power to go further and to direct the Tribunal to hear the matter again or to deal with that matter in a manner directed by the High Court. It would be left to the Tribunal whether to hear the matter again or not. But that is a matter on which the High Court cannot give any direction. Therefore, in our opinion, the learned Judge should not have issued any direction upon the Appellate Tribunal to hear the matter because that was not a matter before him nor was he concerned with what would or should happen after the order of the Appellate Tribunal was quashed.

Mr. Vimadalal says that it would be the duty of the Appellate Tribunal to deal with the appeal after the order has been quashed. If the Appellate Tribunal fails to discharge its

statutory duty, it may be that on proper proceedings taken the High Court could compel it to discharge that statutory duty. But that question does not arise before us today. There is no suggestion that the Appellate Tribunal will fail to discharge its statutory duty as the Appellate Tribunal. The appellant has made no grievance of it, and obviously so because he is satisfied with the award of the lower Court and he is not interested in seeing that the appeal is prosecuted before the Appellate Tribunal.

The final point urged by Mr. Phadke is that the learned Judge's order as regards the costs is erroneous. The order which the learned Judge made was that the costs of the petitioner and respondent No. 1, who are the Elephant Oil Mills, Ltd., will be the costs before the Industrial Tribunal, and respondent No. 1 i.e., the Appellate Tribunal, will be entitled to its costs from respondent No. 2. Now, Mr. Phadke says that as the petitioner has succeeded in his petition, costs should have followed the event, and respondent No. 2 should have been ordered to pay the costs of the petitioner. Ordinarily, we would not have interfered with the discretion of the learned Judge as regards costs. But now that we are modifying the order made by the learned Judge and there is no direction to the Appellate Tribunal to hear the appeal, the order of costs as made by the learned Judge obviously cannot stand. We will also, therefore, vary that order of costs.

The result will be that the appeal will be allowed and that the order of the learned Judge will be varied by substituting for the order made by him the following order: "order made by the Appellate Tribunal is quashed." Respondent No. 2 will pay the costs of the petitioner and respondent No. 1 throughout.

Attorneys for appellant: *Vakil, Dadabhoy & Bharucha.*

Attorneys for respondents: *Crawford, Bailey & Co.*; *M. V. Jaykar.*

Appeal allowed.

A. J. P.