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considered this a merely formal error and not a serious defect which went to the root of the matter and which vitiated the whole institution of the suit to such an extent that the Court must consider that the suit was not properly instituted at all. If Sir John Beaumont was right in the view that he took, then the suit before the Privy Council was never instituted as far as the co-plaintiffs were concerned. Therefore, with very great respect, in my opinion the learned Chief Justice was in error in the view that he took. Ordinarily I would have been bound by his judgment as a judgment of co-ordinate authority, but there is the judgment of Mr. Justice Mirza and also the judgment of the Privy Council to which I have referred. With respect I prefer the judgment of Mr. Justice Mirza in *Nanjibhai* v. *Popatlal.*

I, therefore, set aside the order passed by the learned Judge below and direct that he should allow the plaintiff to amend the plaint by striking out the signature of the plaintiff's son and allowing the plaintiff to sign the plaint. No order as to costs.

Order set aside.

K. B. S.

APPELLATE CIVIL

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

BATUK K. VYAS *v.* SALIM M. MERCHANT AND OTHERS.*

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Industrial Disputes Act (XIV of 1947), ss. 33, 33A—Dispute pending before Industrial Tribunal—Dismissal of employee without Tribunal's permission—Complaint against dismissal—Tribunal deciding upon merits of dismissal—Jurisdiction of Tribunal to go into merits— Decision of Tribunal on question of law—Power of High Court to quash decision by issuing writ.

The jurisdiction of a Tribunal adjudicating upon a complaint made to it under s. 33A of the Industrial Disputes Act, 1947, is not limited merely to considering whether there has been a contravention of s. 33 of the Act; it can go into the merits of the dispute between the employer and the workman with regard to the change in the conditions of service or the discharge of the employee by the employer.

* Civil Application No. 124 of 1952.

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The mere fact that two views are possible on a question of law decided by a Tribunal with jurisdiction does not make its decision bad on the ground that it has erred in law and such error is apparent on the face of the record. A prerogative writ is issued to correct only that error which is clearly apparent on the face of the record and not one which becomes apparent only by a process of examination or argument.

PETITION under the Constitution of India for the issue of writs in the nature of *certiorari* and *mandamus*.

Batuk K. Vyas (petitioner) was an acting employee of the Surat Borough Municipality (respondent No. 3) since November 4, 1949. On May 15, 1950, the Government of Bombay referred certain industrial disputes including the one relating to revision of pay-scales between respondent No. 3 and its workmen to the adjudication of the Industrial Tribunal (respondent No. 1).

On February 13, 1951, respondent No. 3 on coming to know that the petitioner was standing as a candidate for the Rander Municipal elections to be held on February 26, 1951, served a memorandum informing the petitioner that having regard to Rule 17 (4) of the Conduct Rules for Surat Municipal Employees he should either withdraw his candidature or immediately resign from the service. In reply the petitioner challenged the authority of the Municipality to frame such a rule under the provisions of the Bombay Municipal Boroughs Act, 1925, but the petitioner's contention was not accepted by respondent No. 3 and on February 24, 1951, he was discharged from service without first obtaining express permission in writing of respondent No. 1 as required by s. 33 of the Industrial Disputes Act.

On March 15, 1951, the petitioner preferred a complaint to respondent No. 1 under s. 33A of the Act and contended that inasmuch as there was an admitted contravention of s. 33 he should be reinstated in service without respondent No. 1 enquiring into the question whether the discharge was justified on merits or not. That plea was overruled by respondent No. 1, and on May 11, 1951, the complaint was dismissed on the ground that the rule under which the petitioner was dismissed was *intra vires* and that respondent No. 3 had sufficient cause to dispense with the services of the petitioner under the said rule.

On appeal to the Labour Appellate Tribunal of India at Bombay (respondent No. 2), the order was confirmed on November 6, 1951.

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On January 21, 1952, the petitioner applied to the High Court for a writ of *certiorari* to quash the orders passed by respondents Nos. 1 and 2 and for a writ of *mandamus* requiring respondent No. 1 to dispose of his complaint according to law.

The application was heard.

N. V. Phadke with *M. V. Paranjape*, for the petitioner.

M. P. Amin, Advocate General with *Messrs. Little & Co.*, for respondent No. 1.

M. W. Pradhan, for respondent No. 2.

I. C. Bhatt, with *K. D. Desai*, for respondent No. 3.

CHAGLA C. J. This is a petition by a dismissed employee of the Surat Municipal Borough complaining that the decision given by the Industrial Tribunal and the Labour Appellate Tribunal was without jurisdiction and asking us to set right that decision by a prerogative writ. The facts briefly are that the petitioner joined the Surat Municipal Borough on November 4, 1949. There was a dispute between the Municipality and its workmen which was referred to the Industrial Tribunal on May 15, 1950. While that dispute was pending before the Tribunal, the Surat Municipal Borough dismissed the petitioner. An application was made by the petitioner under s. 33A to the Tribunal complaining against his dismissal by the Surat Municipal Borough. The Tribunal came to the conclusion that the Surat Municipal Borough was justified in terminating the services of the petitioner. There was an appeal to the Labour Appellate Tribunal and the Labour Appellate Tribunal upheld the decision of the Industrial Tribunal.

A very able argument has been advanced before us by Mr. Phadke as to the scope and extent of the inquiry contemplated by s. 33A before the Labour Appellate Tribunal. Section 33 of the Act prohibits an employer from altering to the prejudice of the workmen concerned in any pending dispute the conditions of service applicable to them immediately before the commencement of such proceeding, and also prohibits him from discharging or punishing, whether by dismissal or otherwise, any workman concerned in such dispute; and it is common ground that the petitioner was concerned in the pending dispute before the Tribunal. Now, this prohibition is not absolute. It would be open to the employer to alter the conditions of the workmen to their prejudice or even discharge or punish them if he obtained the express permission

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in writing of the conciliation officer, Board or Tribunal. If he did not obtain such a sanction and he acted to the prejudice of the workmen, a penalty is provided under s. 31 and the penalty is that any employer who contravenes the provisions of s. 33 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Therefore, reading ss. 33 and 31, no difficulty presents itself. The Legislature has chosen to protect the rights of workmen pending industrial disputes by prohibiting the employer from doing anything to their prejudice without the express sanction of the conciliation officer, Board or Tribunal before whom there is a pending reference. In this particular case it is again common ground that the petitioner was discharged by the Surat Municipal Borough without the permission of that Tribunal and in having done so the Municipal Borough undoubtedly contravened the provisions of s. 33. It would also appear that by doing so it rendered itself liable to be prosecuted and punished under s. 31. Then we come to s. 33A, the interpretation of which may suggest certain difficulties. The head note of that section is, "Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceedings", and the section provides that

> "Where an employer contravenes the provisions of s. 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 was under this section that the petitioner made a complaint to the Tribunal and it was acting under this section that the Tribunal made its award. The contention of Mr. Phadke is that the scope and ambit of an inquiry under this section is limited and confined to a mere inquiry as to whether there has been a contravention of s. 33. Mr. Phadke says that if the Tribunal comes to the conclusion that the employer contravened the provisions of s. 33, then the only award that the Tribunal can make is to restore the *status quo* either by ordering the reinstatement of the workman if he has been discharged or by restoring the previous conditions of service if those conditions have been altered to his prejudice. But Mr. Phadke says that it is not competent to the Tribunal to go into the

merits of the change made by the employer to the prejudice of the workman. Therefore, according to Mr. Phadke the Tribunal acted without jurisdiction when it adjudicated upon the question as to whether the employer was justified in discharging the petitioner.

Now, it is necessary to consider what the law was before s. 33A was incorporated into the Industrial Disputes Act. That section was incorporated by Act XLVIII of 1950 and before that incorporation s. 33 was the only section dealing with a change made by the employer pending a reference. Under the old law, if an employer changed the conditions of service of a workman to his prejudice or discharged him, the workman had no remedy available to him. A reference undoubtedly could be made to the Tribunal, but that reference could only be made by Government. The workman might move the Government to make the reference, but it was left to the discretion of the Government whether to make the reference or not. Therefore, under the old law, although the employer was liable to be punished for a contravention of s. 33, the workman had no remedy in himself to move the Tribunal to adjudicate upon what the employer had done to his prejudice. Therefore, s. 33A confers an important right upon the workman. He has a right to make a complaint to the Tribunal and the Tribunal has been given the right to adjudicate upon the complaint as if it were a dispute referred to or pending before it and the Tribunal has been also conferred the jurisdiction to submit an award in respect of this dispute to the appropriate Government. Therefore, prima facie, it seems clear that the object of s. 33A was to avoid a multiplicity of proceedings. Instead of Government making an independent reference and calling upon the Tribunal to adjudicate upon that reference, a more summary procedure was provided by which the workman himself, if he objected to the change or objected to his discharge, could go to the Tribunal and ask the Tribunal to adjudicate upon the dispute between himself and his employer. It seems to us difficult, on the language used by s. 33A, to hold that the ambit and scope of the inquiry to be held by the Tribunal is as limited as Mr. Phadke would suggest. If the intention of the Legislature was that all that the Tribunal could do under s. 33A was merely to determine the simple question as to whether a change to the prejudice of the workman had been brought about by the employer without the express permission in

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writing of the Tribunal, and if that decision was against the employer, the only power that the Tribunal had was to restore the *status quo,* it seems to us that the language used by the Legislature in s. 33A would have been very different from the language it has actually used. The very fact that the Legislature treats the complaint as if it were a dispute referred to or pending before it, goes to show that the jurisdiction of the Tribunal was not limited merely to consider the question of the contravention of s. 33, but to decide on the substantive dispute between the employer and the workman with regard to the change in the conditions of service or the discharge of the employee by the employer.

Reliance has also been placed by Mr. Phadke on the headnote to s. 33A. The headnote is not as unequivocal as Mr. Phadke would have us believe. But even if it were so worded as to support the contention of the petitioner, it obviously cannot control or limit the scope and ambit of the inquiry dealt with in the section itself. At best the headnote is intended to indicate the drift of the section.

It has been argued with considerable force by Mr. Phadke that if the petitioner has been discharged in contravention of s. 33, the discharge is illegal and an illegal discharge can never be justified and upheld by the Tribunal. Mr. Phadke further contends that it is not open to an employer to urge the propriety of his action in discharging his workman if his act is prohibited by law. Put in that form the argument seems difficult to meet. But when one closely analyses that argument it is clear that it is not tenable. The functions of the Tribunal acting under s. 33A in adjudicating upon the dispute and the functions of a criminal Court considering the violation of s. 33 are different and the two tribunals approach the matter from entirely different aspects. A criminal tribunal trying the employer who is prosecuted for violating s. 33 would confine itself to the sole question as to whether there was a breach of the law. If there was a breach of the law the tribunal would have to proceed to inflict the punishment provided by s. 31. The Industrial Tribunal's functions are different and much wider. Apart from the breach of the law under s. 33 for which a penalty is provided the Tribunal would be concerned with the question as to whether on merits the employer was justified in discharging the petitioner or changing the conditions of service to his prejudice. Take this very case. It is perfectly true that the Surat Municipal Borough discharged

the petitioner in contravention of s. 33. The Municipal Borough would have no answer if a prosecution had been launched against them by Government. But when the matter comes before the Tribunal and a complaint is made by the workman under s. 33A, the answer given by the Municipal Borough is that although in not taking the sanction of the Tribunal it undoubtedly committed a breach of the law, it was justified in discharging the petitioner because on the particular facts of the case it had the right to discharge him. Now is it suggested that when that answer is given by the employer, the Tribunal must confine its attention merely to the question of the breach of the law and ignore the answer given by the employer on the merits of the case? In our opinion, the object of enacting s. 33A is not merely to confine the jurisdiction of the Tribunal to the simple question of the breach of the law, but to confer upon the Tribunal the wider jurisdiction of deciding the merits of the dispute between the employer and the workman.

Now, it is suggested by Mr. Phadke that this interpretation of ours would permit the employer to evade the law and would be highly prejudicial to the workman. We are conscious of the fact that we are interpreting a statute which was intended to confer benefits upon the working classes and the underlying principle of all such legislation is that the workman should be protected against the employers and therefore we must always hesitate to put any interpretation upon labour legislation which is likely to prejudice the rights of workmen. But we feel certain that in placing the interpretation that we are doing, we are in no way prejudicing the rights of the workmen. Let us consider why Mr. Phadke thinks that the rights of the workmen will be prejudiced. What Mr. Phadke says is that an employer, hoping that his action would be ultimately upheld by the Tribunal, would take the law into his own hand, dismiss an employee or alter conditions of his service to his prejudice, without taking the sanction of the Tribunal. The answer to this is two-fold. In the first place, the employer would run the risk of being prosecuted. In the second case, it is difficult to understand why an employer, who could get the sanction of the Tribunal if his action could ultimately be justified at the hearing, would not do so and would, without any reason whatsoever, indulge in violating the law as laid down in s. 33. There is one possible prejudice of which we are conscious and the possible prejudice is that

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if the employer were to ask for sanction of the Tribunal before taking action, the Tribunal would have to hear the matter, and it is only after the Tribunal has given its decision that the employer could act as he intended to act. In this very case, if the Surat Municipal Borough had applied to the Tribunal for sanction for dismissing or discharging the petitioner, the Municipal Borough could not have discharged him till after the permission had been granted. In other words, the discharge of the petitioner would have been postponed for some time and during that period he would have earned his salary. But even this prejudice can be obviated by the Tribunal in proper cases awarding compensation to the workman when he has been discharged without the sanction of the Tribunal. The Tribunal may well say that although your action is justified, inasmuch as you did not take the sanction of the Tribunal, inasmuch as you committed a breach of the law, we will penalise you and compel you to give compensation to the workman for such period as the Tribunal thinks proper. It may be said in fairness to the Industrial Tribunal in this case that it did consider the question of compensation and on the facts of this particular case it came to the conclusion that no compensation should be awarded to the petitioner.

It is then argued by Mr. Phadke that this interpretation of s. 33A would make the law discriminatory in favour of the employer and would give him an additional right which he did not enjoy before, and the additional right suggested is that by violating s. 33 he could get a reference under s. 33A which he would otherwise not have had. This seems to us to be a totally wrong approach to the purpose for which s. 33A was enacted. It is left to the workman whether to have a reference with regard to the industrial dispute under s. 33A or not. It is only if the workman feels that what the employer has done is without justification that he would proceed to make a complaint before the Tribunal, and therefore if a reference is brought about and there is an adjudication and award, it is at the instance of the workman and not strictly at the instance of the employer. Before s. 33A was enacted as we have already pointed out, the employer could have, risking a prosecution, acted to the prejudice of the workman and it was left to the discretion of Government whether to come to the relief of the workman or not. Today the position is entirely different. The workman can protest against the action of the employer and protest effectively by going before

the Tribunal and getting the adjudication of the Tribunal upon the matters in dispute. Apart from that it is always open to the employer to get an adjudication on the question of the change that he proposes to make under s. 33 by applying to the Tribunal for permission. It is difficult to understand why he should prefer a way by which he risks a prosecution and the possibility of having to pay compensation to the employee whom he has discharged or whose conditions of service he has altered to his prejudice. It is also difficult to understand why the Tribunal cannot exercise the same jurisdiction when a complaint is made by the workman, when the Tribunal admittedly could go into the same question if the employer had asked for the necessary permission under s. 33. Therefore, in our opinion, both the Industrial Tribunal and the Labour Appellate Tribunal were right when they took the view that they had jurisdiction to go into the merits of the dispute between the employer and his workmen.

Mr. Phadke has then attempted to argue that on merits both the Tribunals below were in error in holding that the employer was justified in discharging the workman. It is clear that on this petition we are only concerned with the jurisdiction of the Tribunal. If the Tribunal had jurisdiction, then any decision it arrived at with jurisdiction could not be challenged by a writ. What is suggested by Mr. Phadke is that there is an error of law apparent on the face of the record. It seems that the Surat Municipal Borough acted under r. 17 (4) which had been framed under s. 58 of the Municipal Boroughs Act in discharging the petitioner. The petitioner wanted to stand and in fact stood for the election to the Rander Municipality and according to r. 17 (4) framed by the Surat Municipal Borough it was not competent to an officer of the Surat Municipal Borough to stand for election to any other Municipality, and the contention of the petitioner was that r. 17 (4) was *ultra vires* of the Municipality, and, therefore, in dismissing the petitioner the Municipality acted under an incompetent rule. Both the Industrial Tribunal and the Labour Appellate Tribunal took the view that r. 17 (4) was *intra vires*. Mr. Phadke says that r. 17 (4) goes beyond the scope of s. 58 of the Act. It is difficult to understand how this is an error of law apparent on the face of the record. Even assuming that there is force in the argument advanced by Mr. Phadke, the mere fact that two views are possible on a question of law does not make the decision of a Tribunal

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with jurisdiction bad on the ground that it has erred in law and the error is apparent on the face of the record. We have had occasion several times to point out that only that error will be corrected by this Court which is clearly apparent on the face of the record and which does not become apparent only by a process of examination or argument. With some hesitation Mr. Phadke has also attempted to argue that the decision of the Tribunal with regard to the competency of r. 17 (4) is a decision as to jurisdiction. It is obviously not, because r. 17 (4) has nothing to do with the jurisdiction of the Tribunal, but it has something to do with the jurisdiction of the Municipality, and the Tribunal was perfectly competent to decide whether the Municipality was right in dismissing its servant under r. 17 (4).

The result is that the petitioner fails. Rule discharged. No order as to costs.

Rule discharged.

M. W. P.

APPELLATE CIVIL

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

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MESSRS. RAMPRATAP JAIDAYAL (ORIGINAL DEFENDANTS), APPELLANTS *v.* THE UNION OF INDIA (ORIGINAL PLAINTIFF), RESPONDENT.*

Bombay Rents, Hotel and Lodging House Rates Control Act (Bom. LVII of 1947), s. 4 (1)—Constitution of India, art. 14—Exemption for Government owned premises from operation of Rent Act—Constitutional validity of provision—Essentials of classification—Relevancy between class exempted and object of legislation—Reasonable basis for exclusion of class— Expression "the Government" in s. 4 (1) of Bombay Act (LVII of 1947) whether includes Central Government—General Clauses Act (X of 1897), ss. 3 (23), 4A—Vested right of tenant to protection under Rent Act—Subsequent purchase of premises by Government—Applicability of presumption against interference with vested rights.

S. 4 (1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, which exempts the Government from the operation of the Act does not offend against art. 14 of the Constitution of India.

Art. 14 is intended to safeguard against arbitrary or unreasonable discrimination between subject and subject and emphasises the equality

* First Appeal No. 937 of 1951.