APPELLATE CIVIL

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

THE TEXTILE LABOUR ASSOCIATION *v.* THE LABOUR APPELLATE TRIBUNAL AND OTHERS.* 1955 Oct. 3

Bombay Industrial Relations Act (Bom. XI of 1947), ss. 68, 78—Industrial Disputes (Appellate Tribunal) Act (LXVIII of 1950), ss. (c), 7—Arbitration Act (X of 1940), ss. 30, 14, 31, 46—Arbitration under Bombay Industrial Relations Act—Award, whether can be set aside on ground of misconduct of arbitrator—Whether Labour Court has power to set aside award—Whether appeal from Labour Court's decision setting aside award lies to Labour Appellate Tribunal.

In arbitrations under the Bombay Industrial Relations Act, 1946, the provisions of the Arbitration Act, 1940, for setting aside an award on the ground of misconduct of an arbitrator are applicable.

Under s. 68 of the Bombay Industrial Relations Act, 1946, the Labour Court and the Industrial Court have powers to deal with an application to set aside an award.

The Labour Court exercising powers under s. 68 of the Bombay Industrial Relations Act, 1946, is an Industrial Court as defined in s. 2 (c) of the Industrial Disputes (Appellate Tribunal) Act, 1950; an appeal from its decision therefore lies to the Labour Appellate Tribunal under s. 7 of the latter Act.

Special Civil Application under art. 227 of the Constitution of India.

The facts are sufficiently set out in the Judgment.

D. H. Buch, with *C. L. Dudhia*, for the Petitioners.

N. A. Palkhivala, with *V. B. Patel*, for Opponent No. 2.

Chagla C. J.—There was a dispute between the Textile workers in Ahmedabad and the Millowners' Association and in regard to those disputes and future disputes there was a submission to arbitration on July 31, 1952. On September 9, 1953, respondent No. 2 company gave a notice to its workers to close down the second shift from October 10, 1953. On October 2, 1953, the petitioners, who are the Textile Labour Association, wrote to respondent No. 2 company pointing out that the action that they sought to take was covered by the general submission made on July 31, 1952, and before closing down this shift they should have the matter adjudicated upon by the arbitrators. Respondent No. 2 company did not accept this contention of the petitioners and the second shift was closed down from October 10, 1953. At that time an industrial dispute was pending before the Labour Appellate Tribunal and the petitioners made a complaint under s. 23 of the Industrial Disputes (Appellate Tribunal) Act, 1950, that the

*Special Civil Application No. 1562 of 1955.

1955

TEXTILE LABOUR ASSOCIATION v. LABOUR APPELLATE TRIBUNAL

Chagla C. J.

respondent No. 2 company had dismissed its employees without the necessary permission of the Labour Appellate Tribunal under s. 22. This dispute between the petitioners and the respondent No. 2 company was referred to arbitration on December 18, 1953, and the submission paper signed by the General Secretary of the Textile Labour Association and the Manager of the respondent No. 2 company stated that the parties shall refer within a week the dispute involved in the present application to the arbitration of Sheth Shri Sakarlal Balabhai and Shri S. R. Vasavda under the terms of the arbitration agreement between the Millowners Association and the Textile Labour Association of Ahmedabad, and this was the reference to the general submission made on July 31, 1952. The submission to arbitration was registered under s. 66 of the Bombay Industrial Relations Act, 1946, on January 17, 1954, and the dispute which was referred is the dispute regarding the closure of the second and third shifts to the arbitration of Vasavda and Sakarlal Balabhai. The arbitrators differed and the matter was referred to Mr. Divatia who acted as the Umpire, and Mr. Divatia gave his award on September 16, 1954. Respondent No. 2 company then applied to the Labour Court to set aside the award on the ground of legal misconduct on the part of Mr. Divatia. The Labour Court held that the application was not maintainable and dismissed the application. Respondent No. 2 company appealed to the Labour Appellate Tribunal. The Labour Appellate Tribunal took the view that the application was well founded, set aside the order of the Labour Court and remanded the matter to the Labour Court to dispose of the application of the respondent No. 2 company on merits. The petitioners have now come before us on this petition.

The contention of Mr. Buch is that in arbitrations under the Bombay Industrial Relations Act, 1946, the provision contained in the Arbitration Act for setting aside an award on the ground of misconduct of an arbitrator does not apply. Chapter XI of the Bombay Industrial Relations Act deals with arbitration and s. 66 provides for submission to arbitration of any industrial dispute by an employer and a representative Union or any other registered union and the submission may be to a private arbitrator or to a Labour Court or the Industrial Court. Section 68 provides:

> "The proceedings in arbitration under this Chapter shall be in accordance with the provisions of the Arbitration Act, 1940, in so far as they are applicable and the powers which are exercisable by a Civil Court under the said provisions, shall be exercisable by a Labour Court and the Industrial Court."

Section 72 confers upon the State Government the power to refer any matter to arbitration of a Labour Court or the Industrial Court, and s. 73 also confers upon the State Government the power to refer to the arbitration of the Industrial Court certain cases mentioned in that section. Section 73A confers power upon Unions to refer matters to arbitration. Section 74 (*1*) provides that the arbitrator, if he is a private arbitrator, or the Labour Court or the Industrial Court, as the case may be, shall forward copies of the award made by him or it to the parties, the Commissioner of Labour and the Registrar, and sub-s. (*2*) of s. 74 casts a duty upon the Registrar, on receipt of such award, to enter it in the register kept for the purpose and to publish it in such manner as may be prescribed. Section 75 provides for the coming into operation of the award and it lays down that it shall come into operation on the date specified in the award or where no such date is specified therein on the date on which it is published under s. 74. Section 76 provides that the arbitration proceedings shall be deemed to have been completed when the award is published under s. 74.

Briefly put Mr. Buch's argument is that s. 68, when it makes the provisions of the Arbitration Act applicable to proceedings in arbitration under Chapter XI of the Bombay Industrial Relations Act, only makes those provisions of the Arbitration Act, 1940, applicable which deal with matters connected with arbitrations antecedent to the making of the award. According to Mr. Buch, once the award is made there is no provision under the Arbitration Act, 1940, which can be made applicable to an arbitration entered into under Chapter XI of the Bombay Industrial Relations Act, 1946. Such a contention is untenable looking to the wide language used by the Legislature in s. 68. All the provisions of the Arbitration Act, in so far as they are applicable, have been applied to arbitrations under Chapter XI of the Bombay Industrial Relations Act, 1946, and the powers which a Civil Court exercises under the Arbitration Act are to be exercised by a Labour Court and the Industrial Court. In other words, the Legislature, instead of setting up a separate machinery for arbitration under Chapter XI, incorporated the provisions of the Arbitration Act into the Bombay Industrial Relations Act, 1946. It is true that if we consider any provision of the Arbitration Act it would be necessary to inquire whether that particular provision is applicable looking to the scheme of the Bombay Industrial Relations Act, 1946. If any provision is inconsistent with the scheme of the Bombay Industrial Relations Act, 1946, then the provision of the Arbitration Act to that extent would not be applicable. One salient fact which becomes immediately apparent is that Chapter XI does not provide for any machinery for setting aside an award. If the arbitrator is guilty

1955

TEXTILE LABOUR ASSOCIATION v. LABOUR APPELLATE TRIBUNAL

Chagla C. J.

of misconduct or if the award is otherwise invalid, there is nothing in Chapter XI which confers any right upon the aggrieved party to challenge the award. Mr. Buch does not suggest—indeed he cannot suggest—that an aggrieved party should be without a remedy, but his contention is that the remedy is to be found not within the four corners of the Arbitration Act, 1940, but outside that Act. But before we seek the remedy outside the Arbitration Act, we must be satisfied that the remedy provided in the Arbitration Act itself is a remedy which cannot be resorted to looking to the scheme of Chapter XI.

Turning to the Arbitration Act, 1940, s. 30 lays down the grounds for setting aside an award, and the award of Mr. Divatia has been challenged by respondent No. 2 company on one of the grounds mentioned in s. 30. Whether they succeed in making good that ground or not is another matter with which we are not concerned on this petition. Therefore, as far as s. 30 is concerned there is no reason why the provisions of s. 30 should not be made applicable to arbitration under Chapter XI of the Bombay Industrial Relations Act, 1946. But what is pointed out by Mr. Buch is that when you look at some of the other provisions of the Act it is clear that the machinery set up under the Arbitration Act for setting aside the award cannot possibly be made applicable to arbitrations under the Bombay Industrial Relations Act. In the first place, attention is drawn to s. 14 and it is pointed out that that section deals with the filing of the award and it is pointed out that as far as the Bombay Industrial Relations Act is concerned the provisions with regard to filing of the award are different from the provisions contained in s. 14. To that extent Mr. Buch may be right that when an award is made in an arbitration under Chapter XI of the Bombay Industrial Relations Act, the award has to be filed not as provided by s. 14 of the Arbitration Act but as provided by s. 74 of the Bombay Industrial Relations Act. But that does not present any insurmountable difficulty with regard to an application to set aside an award. Then reliance is placed on s. 31 of the Arbitration Act and that is the section which confers jurisdiction upon the Courts to take an award on file and to deal with awards which have been so filed. It is the Courts mentioned in s. 31 which either may pass a decree on the award or which may set aside the award or which may remit the award to the arbitrator, and what is relied upon is that the Court in which the question regarding the validity of the award can be raised is the Court in which the award has been filed and no other Court, and it is contended that inasmuch as the award cannot be filed as provided by s. 14 of the Arbitration Act, there is no jurisdiction under s. 68 of the Bombay Industrial Relations Act upon the Labour Court or the Industrial Court to consider and adjudicate

upon the validity of an award. It is perfectly true that under the Arbitration Act an award has got to be filed under s. 14 and it is only that Court in which the award has been filed or where the award may be filed that has jurisdiction to deal with the question of the validity of an award under s. 30. But s. 68— and that is the whole purpose of s. 68—substitutes a Labour Court or an Industrial Court for the Civil Court which exercises jurisdiction with regard to awards under s. 31. The powers which are exercisable by a Civil Court are exercisable by a Labour Court and the Industrial Court, and it is difficult to understand why a Labour Court or an Industrial Court cannot deal with the validity of an award in the same way as a Civil Court can under the provisions of the Arbitration Act. Obviously, the provisions of the Arbitration Act must be applied to the Bombay Industrial Relations Act *mutatis mutandis*. Under the Arbitration Act an award has to be filed as provided by s. 14 and then an application to set aside an award has to be made to a Court having jurisdiction under s. 31. Under the Bombay Industrial Relations Act the award has to be filed as provided by s. 74, but once the award has been filed there seems to be no principle which could justify the contention that the Labour Court or the Industrial Court, which are Courts upon which jurisdiction has been conferred by s. 68, cannot deal with an application to set aside the award.

Mr. Buch suggested that an aggrieved party would not be without a remedy because he could file a suit challenging the award. The whole principle underlying the Arbitration Act is to make it a self-contained Code and s. 32 of the Act bars suits which question the existence, effect or validity of an arbitration agreement or award. It is difficult to accept the contention that the Bombay Industrial Relations Act should have deprived an aggrieved party of the summary and more expeditious remedy of challenging an award by the procedure laid down in the Arbitration Act and should have driven the party to a Civil Court to have his right adjudicated upon. The whole object of Labour legislation is to get quick decisions with regard to industrial disputes and it cannot be seriously suggested that Labour legislation contemplated an award being challenged by the rather leisurely, expensive and slow method of a civil suit being filed with regard to the validity of the award.

It is then urged by Mr. Buch that even if a suit would not lie to determine the validity of the award, the aggrieved party could always come to this Court under art. 226 or art. 227. What we are looking for is an ordinary legal remedy afforded to the aggrieved party. An application to this Court under art. 226 or 227 is an extraordinary remedy and an aggrieved party has no right to get relief at the hands of this Court under art. 226 or 227. The Arbitration Act gives the aggrieved party a right

1955

TEXTILE LABOUR ASSOCIATION v. LABOUR APPELLATE TRIBUNAL

Chagla C. J.

which cannot be denied to him of having the award set aside if the arbitrator is guilty of misconduct, and to suggest that in place of that legal right a mere discretionary remedy is possible to a party aggrieved with regard to an arbitration under Chapter XI of the Bombay Industrial Relations Act is really not to meet the difficulty at all.

It is then pointed out that under s. 75 of the Bombay Industrial Relations Act it is provided that the award is to come into operation on the date specified in the award, or where no such date is specified therein on the date on which it is published under s. 74, and it is seriously urged that the Bombay Industrial Relations Act, 1946 does not contemplate any proceeding between the filing of the award and the coming into force of the award. In other words, it is urged that once the award is filed it automatically comes into operation and nothing could prevent the coming into operation of the award. The award that shall come into operation under s. 75 is obviously a valid award. If the award itself is not valid and it can be successfully challenged, surely the Legislature did not intend that an invalid award shall come into operation.

Mr. Buch also drew our attention to s. 46 of the Arbitration Act and that section applies the provisions of the Act, except certain sections, to statutory arbitrations. The sections which are excepted do not deal with the question of the validity of the award or the setting aside of the award. Therefore the provisions of the Arbitration Act with which we are concerned are made applicable to statutory arbitrations. What s. 46 provides is that the provisions of the Arbitration Act shall apply except in so far as the Arbitration Act is inconsistent with any other enactment or the rules made thereunder which provide for a statutory arbitration. Section 46 deals with those statutory arbitrations where the statute itself is looked upon as an arbitration agreement and it may be said that as far as the case with which we are concerned it is not a statutory arbitration in the sense in which s. 46 intends it to be. We are dealing with an arbitration under s. 66 where parties by a written submission go to the arbitration of a private party. This is not a case where the State refers the dispute to arbitration and the statutory provision itself constitutes an arbitration agreement. But even assuming that s. 46 applied, Mr. Buch has failed to satisfy us that there is anything in the provisions of the Arbitration Act with regard to the setting aside of an award which is inconsistent with the provisions contained in Chapter XI of the Bombay Industrial Relations Act.

Mr. Buch wanted to draw our attention to the scheme of the Bombay Industrial Relations Act, 1946, with regard to the appointment of the Labour Court or the Industrial Court as the arbitrator. It is always undesirable to lay down any principle of

law with regard to a matter which is not directly under the consideration of the Court, and the only question which we are concerned with here and which we are deciding is a case of a submission under s. 66 to private arbitrators and to a private Umpire. We will consider the question when it arises whether what we are laying down today could also apply to a case when the arbitrator is the Labour Court or the Industrial Court.

The next contention urged by Mr. Buch is that the Labour Appellate Tribunal had no jurisdiction to hear the appeal from the decision of the Labour Court, and what is pointed out is that the application of respondent No. 2 company was made to the Labour Court to set aside the award because the matter fell under s. 78 (*1*) (A) (*a*) (*iii*) and an appeal from a decision of the Labour Court under s. 78 lies to the Industrial Court under s. 84 and the proper appellate authority was the Industrial Court and not the Labour Appellate Tribunal. It is erroneous to suggest that the Labour Court was exercising its jurisdiction under s. 78 in dealing with the application made by respondent No. 2 company. The Labour Court was dealing with an application to set aside an award and the Labour Court would have no jurisdiction to entertain such an application under s. 78 at all. Its jurisdiction springs from the provisions of s. 68. It is that section which confers jurisdiction upon the Labour Court to exercise the powers exercisable by a Civil Court under the Arbitration Act, and the question that we have to consider is, when a Labour Court exercises the power of a Civil Court under the Arbitration Act under s. 68, whether an appeal lies and if so to which Court. The reason why respondent No. 2 company went to the Labour Court and not to the Industrial Court on this petition was that the subject matter of the reference to arbitration fell within the jurisdiction of the Labour Court under s. 78. But even though the subject matter of the reference might have fallen within the jurisdiction of the Labour Court under s. 78, the Labour Court was not dealing with that subject matter but was dealing with the question of the validity of the award under s. 68, and as far as the Bombay Industrial Relations Act is concerned there is no provision with regard to appeal from a decision of the Labour Court exercising its powers under s. 68. For that purpose we have really to turn to the Industrial Disputes (Appellate Tribunal) Act and under s. 2 (*c*) an industrial tribunal is defined as in relation to other cases, where no appeal lies under any law referred to in sub-cl. (*ii*), any court, board or other authority set up in any State under such law, and it is not disputed that under this definition the Labour Court under s. 68

1955

TEXTILE LABOUR ASSOCIATION v. LABOUR APPELLATE TRIBUNAL

Chagla C. J.

would be an industrial tribunal, and if the Industrial Court would be an industrial tribunal under s. 2 then an appeal is provided against the decision of the Industrial Court under s. 7 to the Appellate Tribunal and it is under this provision that the appeal was entertained by the Labour Appellate Tribunal. In our opinion the appeal was rightly entertained and the Labour Appellate Tribunal had jurisdiction to entertain the appeal.

The result is that the petition fails and must be dismissed. No order as to costs.

Petition dismissed.

K. B. S.

APPEAL FROM ORIGINAL CIVIL, GENERAL AND INHERENT JURISDICTION

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

1955 Oct. 5

THE INCOME-TAX APPELLATE TRIBUNAL, BOMBAY AND OTHERS, APPELLANTS *v.* MESSRS. S. C. CAMBATTA & CO., LTD., BOMBAY, RESPONDENTS.*

Indian Income-Tax Act (XI of 1922), ss. 33 & 66—Reference to High Court—Income-Tax Appellate Tribunal passing orders in accordance with directions given by High Court on such reference—Question of law arising out of such orders—Whether further reference lies under s. 66?

Where a reference is made to the High Court under s. 66 (*1*) or (*2*) of the Indian Income-Tax Act, 1922, the decision of the Income-Tax Appellate Tribunal out of which the reference arose cannot be regarded as final. It is only when the question of law is decided by the High Court and the Tribunal passes an order giving effect to the directions given by the High Court that the appeal before the Tribunal is finally disposed of. Such order of the Tribunal is, therefore, an order passed under sub-s. (*4*) of s. 33 of the Act; and if any question of law arises out of such order, the assessee or the Commissioner has the right to have such question of law referred to the High Court under s. 66 (*1*) or (*2*) of the Act.

Facts appear in the Judgment.

G. N. Joshi with *M. P. Amin*, Advocate General for the Appellants.

N. A. Palkhivala with *B. A. Palkhivala* for the Respondents.

Chagla C. J.—The question that arises for our consideration in this appeal does not seem to have been considered by any Court. Perhaps the reason is—so it seems to us—that the answer is very obvious. It appears that the petitioner company transferred to a subsidiary company the business of Eros

*Appeal No. 2 of 1955; Miscellaneous Application No. 377 of 1954.