1958

November 4.

S. K. G. SUGAR LTD.

v.

SRI ALI HASSAN, CHAIRMAN, INDUSTRIAL TRIBUNAL, BIHAR & OTHERS

(S. R. DAS, C. J., N. H. BHAGWATI, B. P. SINHA, K. SUBBA RAO and K. N. WANCHOO, JJ.)

Industrial Dispute—Discharge by employer of workmen pending adjudication—'Employer', Meaning of—Industrial Disputes Act, 1947 (XIV of 1947), ss. 33, 33A—Indian Companies Act, 1913 (7 of 1913), s. 171.

Gaya Sugar Mills Ltd. went into liquidation and the sugar factory owned by it was leased out to the appellant by the liquidator with the permission of the Court on December 6, 1954, to be worked in terms of the lease which provided, inter alia, that the lessee would neither be liable for any of the liabilities of the company, or of the liquidator or the outgoing lessees nor bound to engage any of their employees or those working from before except those specifically mentioned in the lease. On December 2, 1954, i.e. four days before the appellant came into possession of the sugar factory, the Bihar Government issued a notification referring a dispute between the managements of certain specified sugar factories, including Gaya Sugar Mills Ltd., and their workmen represented by their Unions, for adjudication to the Industrial Tribunal constituted by the respondent No. 1. No notice was given to the appellant and proceedings against it were all exparte. Complaints, however, were made before the Industrial Tribunal by two batches of workmen against the appellant under s. 33A of the Industrial Disputes Act alleging in one case that they had been discharged and in the other that the conditions of their service had been changed by the appellant without first obtaining the permission of the Tribunal under s. 33 of the Act. It was asserted on behalf of the appellant that there was no breach of the terms of the lease and no contravention of s. 33 of the Act. After unsuccessfully moving the High Court under Arts. 226 and 227 of the Constitution for a writ of certiorari quashing the said proceedings, the appellant came up to this Court by special leave and it was contended on its behalf that (1) no leave of the Court having been obtained under s. 171 of the Indian Companies Act by the State Government before it made the reference under s. 10(1) of the Industrial Disputes Act, the reference was bad in law and that (2) the word 'employer' in ss. 33 and 33A of the Industrial Disputes Act meant only such employer as was actually concerned with the industrial dispute which was the subject matter of the reference and the appellant having come into possession of the Mills after the reference, could not be an employer within the meaning of those sections.

Held, that the terms of the notification properly construed clearly showed that what was sought to be made a party to the reference was not the company itself but its management at the date of the reference and, therefore, no question of leave of the court under s. 171 of the Indian Companies Act could arise.

The word 'employer' occurring in ss. 33 and 33A of the Industrial Disputes Act meant the identical employer concerned with the industrial dispute, which was the subject-matter of the adjudication, and could not include an employer who merely happened to discharge or punish or alter the conditions of service of workmen unless such employer could be shown to be a mere nominee or *benamidar* of the former or fell within the category of his heirs, successors or assigns within the meaning of s. 18(3)(c) of the Act.

Since, in the instant case, the appellant satisfied none of these tests, it was not bound to seek the permission of the Tribunal under s. 33 of the Act and the proceedings under s. 33A of the Act against it must be quashed.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 793 of 1957.

Appeal by special leave from the judgment and order dated September 20, of the Patna High Court in M.J.C. No. 392 of 1955.

C. K. Daphtary, Solicitor-General of India, A. B. N. Sinha and *B. P. Maheshwari*, for the appellant.

S. P. Varma, for respondents Nos. 1,2,6-8 and 10-23.

1958. November 4. The Judgment of the Court was delivered by

Bhagwati J.

BHAGWATI, J.—This appeal with special leave is directed against the judgment of the High Court of Judicature at Patna dismissing the writ application of the appellant seeking to quash the proceedings in Miscellaneous Cases Nos. 26 and 27 of 1955 before the Industrial Tribunal, Bihar, Patna.

Gaya Sugar Mills Ltd., a Company incorporated in 1934 owned a Sugar Factory at Guraru, District Gaya. An order for the compulsory winding up of the Company was passed on November 4, 1951, and by a subsequent order dated February 1, 1952, one Dhansukh Lal Mehta was appointed liquidator of the Company. In order to preserve the aforesaid Sugar Mills at Guraru in proper running order and also for the beneficial

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winding up of the Company the liquidator obtained under s. 171 (b) of the Indian Companies Act sanction of the Court to lease out the said Mills with all the lands, factory and residential buildings and machineries etc. The Guraru Cane Development and Cane Marketing Union Ltd., were the former lessees of the said mills but on the expiration of their lease, the liquidator obtained from the Court an order on December 3, 1954, sanctioning the lease in favour of Shri Krishna Gyanoday Sugar Ltd., the appellant herein, for the period December 5, 1954, up to and inclusive of November 14, 1955. The liquidator executed in favour of the appellant a lease of the said Mills on December 6, 1954, and handed over possession of the same to the appellant the same day.

The terms and conditions of the lease, in so far as they are material for our purposes provided that the appellant would be put into possession of the leasehold properties in a proper working order and would work and run the factory without any interference or obstruction by or on behalf of the lessor and would appropriate the entire income and profit thereof and the lessor would have no concern with profit or loss made by the lessee in running the said factory and would not be entitled to any sum or amount over and above the rent therein reserved. The appellant was not to be in any way liable or responsible for any of the liabilities of the Company or of the liquidator or of the outgoing lessees incurred whether before or after the appellant entered into possession except those mentioned therein. The appellant was at its own cost entitled always to install any additional or other machinery or machineries and erect godowns or structures for the purposes of and in connection with the running of the said Mills after intimation to the lessor. The appellant was not bound to engage any or all of the employees of the lessor or of the outgoing lessees or any of the persons who had been working from before except the 18 employees who were mentioned in Cl. 11 of the lease and the appellant also agreed not to retrench any staff already employed at that date in the Factory at Guraru (vide cl. 13(v) of the lease). The

properties demised by the said lease were deemed to be in the control of the Patna High Court and any dispute between the lessor and the appellant in respect of the said lease was to be placed before the said Court for decision and the decision made by the said Court was to be binding on all the parties.

It appears that on December 2, 1954, i.e., 4 days before the execution of the said lease and delivery of possession of the said Mills by the liquidator to the appellant, the Government of Bihar issued a notification referring certain disputes between the Managements of the Sugar factories specified in Appendix I thereto and their workmen represented by the Unions specified in Appendix II for adjudication to an Industrial Tribunal of which Shri Ali Hassan, the respondent No. 1 herein, was to be the sole member.

The terms of the reference stated :—

"Whereas the State Government is of opinion that an Industrial dispute exists or is apprehended between the Management of the Sugar factories as specified in Appendix I and their workmen represented by the Unions as specified in Appendix II regarding the matters specified in Annexure A ;

Now, therefore, in exercise of the powers conferred by section 7 read with sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (XIV of 1947) and in supersession of Notification No. III/DI-14020/54L-15146 dated the 1st October, 1954, the Governor of Bihar is pleased to constitute an Industrial Tribunal of which Mr. Ali Hussan shall be the sole member and to refer the said dispute to the said Tribunal for adjudication.

Annexure "A"

1. Retaining allowance to seasonal employees in Sugar factories in Bihar.

2. Leave and holidays to the employees including seasonal employees in Sugar factories.

3. Whether the deduction made in leave and holidays of the employees of the Management of the Sugar factories is unjustified and if so what compensation or relief, the workmen are entitled to ?"

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There were as many as 28 Sugar factories specified in Appendix I and as many as 38 Labour Unions specified in Appendix II. The Gaya Sugar Mills Ltd., Guraru was the second item in Appendix I and the Chini Mazdoor Sangh Guraru was mentioned at the third item in Appendix II.

The respondent No. 1 entered upon the said reference. Even though Gaya Sugar Mills Ltd., Guraru which was then in liquidation was not specifically described as such in Appendix I, notice was given to the liquidator by the respondent No. 1 for January 11, 1955, which was the date fixed for hearing before him. The said letter however reached the liquidator on January 13, 1955, whereupon by his letter dated January 14, 1955, he informed respondent No. 1 about it. Respondent No. 1 however satisfied himself by merely endorsing on the letter of the liquidator that the hearing had already concluded and nothing further than enquiring of the post office as to the reason of the delay in the delivery of the letter could be done. Respondent No. 1 made his award on February 17, 1955, and it was published in the Official Gazette on February 23, 1955. The adjudication proceedings which had thus commenced on the date of the reference viz., December 2, 1954, came to a conclusion on the expiry of 30 days of the publication of the award viz., on March 25, 1955, under s. 20(3) of the Industrial Disputes Act, 1947. It appears that an appeal was taken to the Labour Appellate Tribunal against this award and the appeal was decided on August 31, 1956.

Even though the appellant was in possession of the said Mills under the terms of the lease dated December 6, 1954, no notice was given by respondent No. 1 to the appellant and the appellant therefore could not and did not appear before respondent No. 1. So far as the appellant was concerned the proceedings before respondent No. 1 were ex parte. Two applications were, however, made on March 23, 1955, under s. 33A of the Industrial Disputes Act, one by 15 persons alleging that the appellant had without any reason and without any notice discharged them from employ one by one during the months of January and February

1955 and the other by 5 persons alleging that the appellant had changed their conditions of service without any reason, contending that the said discharges and the change in conditions of service had been effected by the appellant during the pendency of the disputes before the Industrial Tribunal aforesaid without the permission of the Industrial Tribunal having been obtained under s. 33 of the Act. These applications were numbered as Miscellaneous Cases Nos. 26 and 27 of 1955 and the appellant received on April 7, 1955, two notices from respondent No. 1, both dated March 25, 1955, informing the appellant about the filing of the two miscellaneous cases and calling upon the appellant to file statements showing cause by April 19, 1955. The appellant accordingly filed before respondent No. 1 two applications or statements contending inter alia that the application under s. 33-A of the Industrial Disputes Act, filed by those persons (respondents Nos. 4 to 23 herein) were not maintainable and were otherwise fit to be rejected. It was asserted on behalf of the appellant that the appellant as lessee of the said Mills had strictly complied with the terms and conditions of the lease and there had been no contravention on its part of s. 33 of the Act, in regard to any of the workmen concerned in the aforesaid two miscellaneous cases. It was pointed out that none of the persons who had filed the said applications was comprised in the 18 persons who were specifically mentioned in Cl. 11 of the lease and who were specifically exempted from the operation of the said clause nor were they comprised in the category of members of the staff whom the appellant as lessee was not entitled to retrench under Cl. 13(v) of the lease, with the result that none of the said clauses of the lease could be said to have been violated by the appellant.

On July 13, 1955, the appellant filed in the High Court of Judicature at Patna a writ application under Arts. 226 and 227 of the Constitution being Miscellaneous Judicial Case No. 392 of 1955 impleading the Chairman, Industrial Tribunal, Bihar as respondent No. 1, the State of Bihar as respondent No. 2, the liquidator as respondent No. 3 and the applicants in

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the said miscellaneous cases Nos. 26 and 27 of 1955 pending before the Industrial Tribunal as respondents Nos. 4 to 23 for a writ of certiorari quashing the said Miscellaneous Cases Nos. 26 and 27 of 1955, a writ of Mandamus restraining the respondent No. 1 from proceeding with or otherwise dealing with the said miscellaneous cases costs and further and other reliefs.

The main contentions urged by the appellant in the said petition were :—

(1) that under each one of the points referred for adjudication, considerable burden was sought to be imposed on the sugar factories concerned ; that all the properties and effects of the Gaya Sugar Mills Ltd., were in the custody of the Court as from the date of the order for winding up viz., November 14, 1951 ; that the said notification did not purport to include Gaya Sugar Mills Ltd., in that light and did not describe the company as having already gone into liquidation ; that no leave of the Court was obtained before commencing or continuing the proceedings before the Tribunal and in fact the liquidator was neither named as a party nor was any notice given to him of the commencement of the proceedings and that therefore so far as the Gaya Sugar Mills Ltd., (In Liquidation) was concerned there was no proceeding in the eye of the law before respondent No. 1 and as such the Miscellaneous Cases Nos. 26 and 27 of 1955 of which notices had been sent to the appellant were not maintainable ; and

(2) that no notice of the adjudication proceedings arising out of the aforesaid Notification dated December 2, 1954, was at any stage given to the appellant who was in possession under the terms of the lease granted by the Court ; that the appellant being lessee under orders and under terms of the lease approved by the Court was liable for breach of the terms of the lease, if any, and that also to the Court alone ; that there was no violation of s. 33 of the Industrial Disputes Act, if the appellant bona fide acted up to the terms of the lease and being itself no party to any adjudication proceedings before any Tribunal or before respondent No. 1 there could be no breach of s. 33 of

the Act and as such no application under s. 33A of the Act could be maintained against the appellant.

No affidavit in reply was filed by or on behalf of any of the respondents and the application came up for hearing before Ramaswami, C. J. and Raj Kishore Prasad, J. who delivered the judgment of the Court on September 20, 1956, dismissing the application with costs.

Assuming but without expressing any opinion that the reference made by the State Government under s. 10(1) of the Industrial Disputes Act was a legal proceeding within the meaning of s. 171 of the Indian Companies Act the High Court held that s. 10(1) of the Industrial Disputes Act, was not controlled by s. 171 of the Indian Companies Act and therefore no leave of the Court was necessary before making a reference of the Industrial Disputes under s. 10 (1) of the Industrial Disputes Act. It was also of opinion that even though the reference under s. 10(1) of the Industrial Disputes Act was made by the State Government on December 2, 1954, and the applicant had taken the lease of the said Mills subsequently i. e., on December 6, 1954, the applicant was an "employer" within the meaning of the term used in ss. 33 and 33A of the Act, and that it was not necessary for the application of either of those sections that the employer who discharges or punishes the workmen or who alters the conditions of service of the workmen should be the identical employer concerned in the industrial dispute which is the subject-matter of adjudication. It was sufficient for invoking the provisions of either of those sections that there is the relationship of employer and employee at the time the workman is discharged or punished or at the time his conditions of service are altered to his prejudice. It was further of opinion that even though the liquidator was not made a party to the reference made by the State Government under s. 10(1) of the Industrial Disputes Act, the Gaya Sugar Mills Ltd., Guraru was specifically mentioned as one of the parties in Appendix I, that the Gaya Sugar Mills Ltd., continued to be a legal personality though an order for winding up had been made and that there-

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fore the Company was properly made a party to the reference under s. 10(1) of the Act. The fact that the notice given to the liquidator on January 11, 1955, might have been received late by the liquidator did not, in the opinion of the Court, make any difference to the position inasmuch as the award of the Industrial Tribunal was made on February 17, 1955, i. e., long after the date of the notice and there was no lack of jurisdiction in the Industrial Tribunal to make the award valid and binding on the Gaya Sugar Mills Ltd., Guraru. The High Court accordingly rejected the application as stated above.

The applicant applied for leave to appeal to this Court on November 9, 1956, but the High Court refused to grant the certificate on the ground that the proceeding for grant of a writ of certiorari under Art. 226 is not a civil proceeding within the meaning of Art. 133 of the Constitution. The applicant thereupon applied for and obtained from this Court on April 1, 1957, special leave to appeal and the appeal has now come up for hearing and final disposal before us.

The two main contentions which were urged before us by the learned Counsel for the appellant were :—

(1) that the Gaya Sugar Mills Ltd., Guraru had been taken into liquidation and respondent No. 3 had been appointed the liquidator thereof; that the reference made by the State Government to the Industrial Tribunal on December 2, 1954, involved considerable financial burden on the said Mills and the State Government ought to have obtained the sanction of the Court under s. 171 of the Indian Companies Act before making a reference of the industrial disputes to the Industrial Tribunal under s. 10(1) of the Industrial Disputes Act, qua the said Mills and that not having been done, the reference was bad in law and there was no question of the applicability of either s. 33 or s. 33A of the Act, and

(2) that on a true construction of ss. 33 and 33A of the Act, the "employer" therein mentioned could only be the "employer" concerned in the industrial dispute which was the subject-matter of reference, that the applicant had taken the lease of the said

sugar Mills on December 6, 1954, 4 days after the date of reference made by the State Government under s. 10(1) of the Act, and that therefore the applicant was not an "employer" within the meaning of the terms as used in s. 33 or s. 33A of the Act, and even if the allegations made by the applicants in Miscellaneous Cases Nos. 26 and 27 of 1955 before respondent No. 1 were correct, it was not necessary for the applicant to have obtained the permission of the Industrial Tribunal under s. 33 of the Act, and therefore the said applications under s. 33A of the Act, filed by respondents 4 to 23 were not maintainable.

It will be appropriate at this stage to set out the relevant sections of the Indian Companies Act and the Industrial Disputes Act, 1947 (as they then stood) which fall to be considered by us in this appeal.

S. 171 (Indian Companies Act):

"*Suits stayed on winding up order:* When a winding up order has been made or a provisional liquidator has been appointed no suit or other legal proceeding shall be proceeded with or commenced against the company except by leave of the Court, and subject to such terms as the Court may impose."

S. 10(1) (Industrial Disputes Act, 1947):—

Reference of disputes to Boards, Courts or Tribunals:

Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing—

(a) refer the dispute to a Board for promoting a settlement thereof;

(b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or

(c) refer the dispute or any matter appearing to be connected with or relevant to, the dispute to a Tribunal for adjudication:

Provided that where the dispute relates to a public utility service and a notice under section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so

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to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced."

S. 33 (Ibid): *Conditions of service etc., to remain unchanged during pendency of proceedings*:

"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 dipute,

save with the express permission in writing of the conciliation officer, Board or Tribunal, as the case may be."

S. 33-A (Ibid): *Special provisions for adjudication as to whether conditions of service etc., changed during pendency of proceedings*:

"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 provision of this Act shall apply accordingly."

As to (1):—Section 171 of the Indian Companies Act occurs in Part V which relates to the winding up of companies and prescribes that once a winding up order has been made no suit or other legal proceedings shall be proceeded with or commenced against the Company except by leave of the winding up Court and subject to such terms as the Court may impose. The Court is in custody of all the properties and assets of the Company through the liquidator and is in control of the winding up proceedings with a view to the proper realization of the assets and the equitable

distribution thereof amongst the creditors of the Company. No suit or other legal proceeding can therefore be proceeded with or commenced against the Company except by leave of the Court and such leave is a necessary prerequisite of the prosecution of such legal proceeding. In order to decide the question of the applicability of s. 171 of the Indian Companies Act it has to be ascertained (a) whether the reference in question is a proceeding against the Company, and, if so, (b) whether such reference can be said to be a legal proceeding within the meaning of s. 171 of the Indian Companies Act.

There has been unfortunately a considerable confusion of thought in the court below and the facts have not been properly appreciated. The first question to determine was who was the party to the reference. It appears to have been assumed that the Gaya Sugar Mills Ltd., was a party to the reference and that the only defect in the order of reference was that the liquidator was not made a party to the reference. This difficulty was sought to be got over by holding that the Gaya Sugar Mills Ltd., continued to be a legal personality though an order for winding up had been made, that the Company had not ceased to exist as a legal entity, and, therefore, the Company was properly made a party to the reference under s. 10(1) of the Industrial Disputes Act. This was, however, not the correct position on a true interpretation of the terms of reference. The reference was between the managements of the Sugar factories specified in Appendix I and their workmen represented by the Unions specified in Appendix II. Gaya Sugar Mills Ltd., Guraru was mentioned as item 2 in Appendix I but it is quite clear that what was intended to be made a party to the reference under this item was the management of the Sugar factory which belonged to the Company called the Gaya Sugar Mills Ltd., whoever that management may be. The mention of the Company was to indicate and to point out the particular factory whose management for the time being was to be one of the parties to the reference and

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it required to be ascertained who was comprised within the "management" of the Mills. The State Government could not have been oblivious of the fact that the Company had gone into liquidation and a liquidator of the Company had been appointed by the court and was leasing out the factory to different lessees. If the Company itself were a party to the reference the liquidator ought to have been mentioned there as such but that apparently was not done for the simple reason that the factory was being worked by the lessees under the terms of the leases duly sanctioned by the court. The liquidator was therefore not in management of the factory and the only persons who were in management were the then lessees to whom leases were granted by the liquidator with the sanction of the court. The Industrial Tribunal was obviously in error when it gave notice of the proceedings to the liquidator. The liquidator was no more in management of the factory and was therefore not entitled to be served with any notice; the then lessees were in management and they were the only parties to whom notice of the proceedings should have been given. The liquidator no doubt wrote to the Industrial Tribunal that he had received the notice too late for him to attend. This letter of the liquidator was treated with scant courtesy by the Industrial Tribunal who merely endorsed at the foot of the letter that the hearing had already concluded and nothing further than enquiring of the Post Office as to the reason of the delay in the delivery of the letter could be done. The Industrial Tribunal proceeded to make its award on February 17, 1955, without having before it the management of the factory, viz., the lessees who had obtained the lease of the said Mills from the liquidator and for all practical purposes the said award was ex parte so far as the lessees who were at the date of the reference in management of the factory and were obviously intended to be a party to the reference were concerned. The appellant came into management of the factory after the reference and could not at the date of the reference be in contemplation of the State Government as a party and in any

event, no notice whatever was given to the appellant of the proceedings before the Tribunal. By no stretch of imagination could it be said that the Company (In Liquidation) was a party to the reference, the said Mills having been given on lease to the lessees who worked the Mills thereafter not for and on behalf of the Company but on their own account, they being responsible for the profit and loss in the working of the Mills. The Company thus not being a party to the reference the proceedings which were commenced on December 2, 1954, before the Tribunal were not proceedings against the Company (In Liquidation). This being the position on a true construction of the terms of the notification by which the reference was made the question whether the reference was a legal proceeding within the meaning of s. 171 of the Indian Companies Act does not arise for our decision and we prefer not to express any opinion on that part of the question.

As to (2):—The next question to consider is the connotation of the term "employer" as used in ss. 33 and 33A of the Industrial Disputes Act. These sections postulate the pendency of a proceeding of an industrial dispute. It requires two to raise a dispute. An Industrial Dispute is thus defined in s. 2(k) of the Act:—

"Industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with conditions of labour, of any person.

If this definition is bodily lifted from s. 2 (k) and substituted for the expression "industrial dispute" occurring in s. 33 and ss. 33 and 33A of the Act are then read, it will at once become clear that the employer can be no other than the employer with whom the workers had the industrial dispute and cannot mean merely an employer who discharges or punishes or who alters the conditions of service of the workmen concerned. If the interpretation adopted by the High Court was correct it would mean that the Industrial

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dispute which is referred for adjudication to the Industrial Tribunal may have arisen between employer A and his workmen but during the pendency of those proceedings employer B who had nothing to do with employer A would be prevented from discharging or punishing the workmen or altering their conditions of service, provided only that the workmen concerned happened to be interested in the industrial dispute which was pending before the Industrial Tribunal. If there is no connection at all between the employer A and the employer B in the illustration given above, one fails to see how a mere identity of the establishments or the identity of the workmen could be enough to bring the employer B within the purview of these sections. The very purpose of the enactment of ss. 33 and 33A of the Industrial Disputes Act is, as observed by this Court in the *Automobile Products of India Ltd.* v. *Rukmaji Bala* (1):

"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 proceedings 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 scope of the enquiry under section 33 of the Industrial Disputes Act has also been the subject-matter of adjudication by this Court and it was held in *Atherton West & Co., Ltd.* v. *Suti Mill Mazdoor Union* (2) that the authority:

"concerned would institute an enquiry and come to the conclusion whether there was a prima facie case

(1) [1955] 1 S.C.R. 1241, 1256. (2) [1953] S.C.R. 780, 787.

made out for the discharge or dismissal of the workman and the employer, his agent or manager was not actuated by any improper motives or did not resort to any unfair practice or victimisation in the matter of the proposed discharge or dimissal of the workman."

A similar ratio would apply where an employer changes the conditions of service of the workmen concerned. If this be the criterion for determining whether an employer was entitled to discharge or punish the workmen or alter their conditions of service without the permission in writing of the authority concerned that employer cannot be any other than the one who is concerned in the industrial dispute which is the subject matter of adjudication. If employer B has nothing to do at all with employer A who is really the party concerned in such industrial dispute which is the subject-matter of adjudication, there will be no question of attributing any improper motives or unfair practice or victimization to the employer B in regard to the action which he proposed to take against the workmen. Whether the employer B would be entitled to such action or not would have to be determined in other proceedings which may be taken in the matter of industrial disputes which may subsequently arise between himself and his workmen after such action was taken. But he would certainly not be bound before taking such action to seek the permission in writing of the Industrial Tribunal before which an industrial dispute was pending as between those workmen and another employer with whom he had no concern. The latter interpretation is therefore more in consonance with the principle underlying the enactment of s. 33 of the Industrial Disputes Act and it must be held that the employer contemplated by ss. 33 and 33A of the Industrial Disputes Act must be the identical employer concerned in the industrial dispute which is the subject-matter of adjudication. In other words, the employer contemplated by ss. 33 and 33A of the Industrial Disputes Act must be the employer with whom the workmen mentioned as aggrieved under s. 33 had a subsisting relationship of employer

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and employees at the commencement of the proceedings referred to in those sections. The identity of the employer at the commencement of the reference with the employer who intends to take proceedings within the ban of s. 33 of the Act must be established and if the latter has no concern with or relationship with the former ss. 33 and 33A of the Act do not come into operation at all. Such identity could in the event of change in the employers be established by showing that the latter employer was merely a nominee or Benamidar of the former or that on the analogy of s. 18(3)(c) of the Industrial Disputes Act he came within the description of "his heirs, successors or assigns" in respect of the establishment to which the dispute relates, in which event the award made by the Industrial Tribunal would be binding on him just as much as on the former employer of the workmen concerned. These are, however, the only cases in which according to the provisions of the Industrial Disputes Act the identity of the employers at the commencement of the proceedings and the intended discharge or punishment or change in the conditions of service of the workmen concerned could be established and unless the employer who intended to discharge or punish or change the conditions of service of the workmen was in this sense identical with the employer who was concerned in the industrial dispute which is the subject-matter of adjudication no question could arise of the operation of section 33 or section 33A of the Industrial Disputes Act.

What then was the position of the appellant under the reference in question ? It does not appear from the record as to who was the management of the said Mills on December 2, 1954. The lease in favour of the old lessees, Gurarn Cane Development and Cane Marketing Union Ltd., had apparently come to an end by efflux of time, the period of the lease presumably being up to the end of the crushing season which would end some time in the month of November, 1954. An application had been made by the liquidator to grant a lease in favour of the appellant and this application was granted by the Court on December 3, 1954, so that in any event before December 3, 1954, the appellant could

not be said to be in management of the said Mills. As a matter of fact, the lease was executed in favour of the appellant on December 6, 1954, and the possession of the said Mills was also given to the appellant by the liquidator on the same day. It could not, therefore, be said that the appellant was comprised within the description of the management of the Gaya Sugar Mills Ltd., at the date when the reference was made by the State Government. If that was so, a reference of a previous date, without anything more, could not comprise the appellant within its scope and that appears to have been the position as understood even by the Industrial Tribunal which gave no notice to the appellant but gave notice of the proceedings erroneously as we hold to the liquidator of the Company. The appellant was not in management of the said Mills and it could not be bound by the reference because at no stage was any attempt made either to amend the terms of the reference or even to serve on the appellant a notice of the proceedings which were to take place before the Industrial Tribunal. Under the Industrial Disputes (Central) Rules, 1947, enacted by the Central Government in exercise of the powers conferred upon it by section 38 of the Industrial Disputes Act, intimation of the place and time of hearing had got to be given to the parties to the reference (Rule 10); and the Industrial Tribunal was enjoined to call upon the parties at the first sitting to state their case (Rule 11); the only power given to the Industrial Tribunal to proceed ex parte was when a party to the proceedings failed to attend or to be represented without good cause shown (Rule 19); and the representatives of the parties appearing before an Industrial Tribunal were to have the right of examination, cross-examination and of addressing the Tribunal when evidence had been called (Rule 24): The whole of this procedure envisaged the parties to the reference being properly notified of the proceedings before the Industrial Tribunal and taking part therein either by themselves or through their authorised representatives. The fact that no such notice was given to the appellant by the Industrial Tribunal goes to show that in the circum-

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stances that obtained the appellant was certainly not understood by the Tribunal as having been a party to the reference and it could not be said on the terms of the reference itself which was made on December 2, 1954, that the appellant, which came into existence as the lessees of the said Mills on December 6, 1954, was a party to the said reference. If the old lessees were in management of the said Mills on December 2, 1954, there was no identity of employers as between them and the appellant, the appellant certainly did not claim under the old lessees nor could it be described as their "heirs, successors or assigns" in respect of the establishment to which the dispute related within the meaning of s. 18(3) (c) of the Industrial Disputes Act. There is no suggestion whatever that the appellant was or is a *benamidar* of the previous lessees. In no event could the appellant therefore be held to be bound either by the reference or the award made by the Industrial Tribunal, the identity of the employers at the date of the reference with the employers at the time when the acts complained of in the applications under s. 33-A of the Industrial Disputes Act were purported to be done by them not having been established.

If that is the true position, no question of the appellant obtaining written permission of the Industrial Tribunal under s. 33 of the Act for discharging or punishing or for effecting a change in the conditions of service of the workmen concerned could arise. If no such permission were needed, s. 33A of the Act also could not come into operation and the applications in Miscellaneous Cases Nos. 26 and 27 of 1955 were not maintainable.

The result is no doubt unfortunate, because the Industrial disputes which were referred to the Industrial Tribunal by the reference in question were general in their nature and would comprise within their scope the workmen who were working in the Gaya Sugar Mills Ltd., at all relevant times. The appellant came in management of the said Mills from and after December 6, 1954, and it was certainly intended that these disputes which had either existed or were apprehended between the appellant on the one hand and the workmen

working in the said Mills on the other should be adjudicated upon under the terms of that reference. If the appellant could be comprised within the description of the " management " of the said Mills at the date of the reference, viz., December 2, 1954, the object and the purpose of the reference qua the workmen of the said Mills would be accomplished. The difficulty, however, is that the several managements which would come into existence on successive leases being granted by the Court in the present case cannot be said to have been comprised within the term "managements of the Sugar factories specified in Appendix I" even though the Gaya Sugar Mills Ltd., Guraru is mentioned as item 2 therein. Such a construction would make the several successive lessees who came into existence during the whole of the period when the reference was pending before the Industrial Tribunal parties to the reference involving fresh notices to be issued, fresh statements of case to be furnished, fresh hearing to be granted, to each of the successive lessees under the Industrial Disputes (Central) Rules, 1947, a result which certainly could not have been contemplated by the State Government when the reference was made.

It, therefore, follows that the appellant was not by any count a party to the reference dated December 2, 1954, and not being such a party was not an "employer" within the meaning of ss. 33 and 33-A of the Industrial Disputes Act qua the workmen who filed the applications in Miscellaneous Cases Nos. 26 and 27 of 1955. If the workmen felt that they have been victimised or that there had been an unfair labour practice, they could perhaps raise fresh industrial disputes and press the State Government to make a fresh reference of their industrial disputes under s. 10(1) of the Act, as to which we say nothing, but it is quite clear to us that the workmen cannot in the circumstances of this case raise an industrial dispute indirectly by having recourse to an application under s. 33-A of the Act. In the premises if the appellant was not bound, as we hold it was not, to ask for the written permission of the

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Industrial Tribunal before discharging, punishing or effecting a change in the conditions of service of the workmen concerned no application under s. 33-A of the Act could be maintained against it even on the assumption that the allegations made in the said applications were correct.

The result, therefore, is that the proceedings in Miscellaneous Cases Nos. 26 and 27 of 1955 before the respondent No. 1, Industrial Tribunal, Bihar, Patna are without jurisdiction and liable to be quashed. The appeal of the appellant will therefore be allowed, the order made by the High Court on September 20, 1956, will be set aside and a writ of certiorari will issue against respondent No. 1 quashing the proceedings in the said Miscellaneous Cases Nos. 26 and 27 of 1955. The appellant will be entitled to its costs throughout against the contesting respondents.

Appeal allowed.

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November 4.

THOMAS DANA

v.

THE STATE OF PUNJAB

(and connected appeal)

(S. R. DAS, C. J., N. H. BHAGWATI, B. P. SINHA, K. SUBBA RAO and K. N. WANCHOO, JJ.)

Sea Customs—Confiscation of goods and imposition of penalty by Collector of Customs—Subsequent conviction and sentence by Magistrate, if violative of fundamental right to protection against double jeopardy—Constitution of India, Art. 20(2)—Sea Customs Act, 1878 (8 of 1878), ss. 167(8) and 167(81).

The two petitioners were apprehended while attempting to smuggle a huge amount of Indian and foreign currency and other contraband goods out of India and the Collector of Central Excise and Land Customs passed orders confiscating the seized goods and imposing heavy personal penalties on both of them under