of the proviso had to be complied with. So far as the present case is concerned, the requirements have been complied with. The only argument stressed before us is that the requirements should be complied with before the close of the accounting year or before making of the profit and loss account. In our opinion, it was open to the assessee to make these entries at any time before the assessment was completed. The entries only become final as and when they are accepted or rejected by the Income-tax Officer, i.e., when the assessment is made. Till then, they are in fluid state and any error or defect in them could be corrected.

(5) For the reasons recorded above, we reply the question referred to us in the affirmative, that is, against the Department. There will be no order as to costs.

B. S. G.

CIVIL MISCELLANEOUS

Before S. S. Sandhawalia, J.

THE MUNICIPAL COMMITTEE,—*Petitioner.*

versus

THE INDUSTRIAL TRIBUNAL, PUNJAB, ETC.,—*Respondents.*

Civil Writ No. 3502 of 1968

October 28, 1970.

The Industrial Disputes Act (XIV of 1947)—Sections 22 and 24—The Industrial Disputes (Central) Rules (1957)—Rule 71 and Form 'L' of the Schedule—Persons employed in a 'Public utility Service'—Such persons going on strike—Requirements of notice before the strike—Whether mandatory—Notice of strike not in the prescribed form 'L' and not giving the date of the commencement of the strike—Strike in consequence thereof—Whether legal.

Held, that the right of the Industrial worker to go on strike has now become well-recognised and has been even sometimes termed as fundamental. The Industrial Disputes Act, however, aims at the blending of this right and the liability of the employers and the employees as best as possible to suit the condition of the country. The Act as regards strikes and lock-outs makes a clear distinction between persons employed in a public utility service and

those employed in ordinary Industrial occupations. The enactment of sections 22 and 24 of the Act is with a clear purpose to prevent a hand-full of public utility service workmen from holding the general public at ransom by indulging in lightening strikes. Such workers are not shorn of their right to go on strike but a qualification is attached thereto requiring them to fulfil certain essential conditions as enumerated in the four different clauses (a), (b), (c) and (d) of section 22(1) of the Act. These are with the purpose of providing safeguards in the matter of public utility service as otherwise it would result in great inconvenience to the Society and the general public. Equally crucial is the requirement of the statutory rule 71 of Industrial Disputes (Central) Rules, 1957, read with form 'L' in the schedule regarding the precise specifications of the date on which the strike is to commence. The obvious object is to enable the authorities to make alternative arrangements for running a public utility service vital to the day to day life of the community in the event of a strike. These conditions are essential and have to be fulfilled in order to clothe a strike by public utility service workmen with the mantle of legality. Hence the requirement of notice in the prescribed form 'L' by public utility workmen before going on strike is mandatory. (Para 7)

Held, that where a communication sent by the public utility workmen not in prescribed form 'L' but making certain demands and then mentioning a mere veiled threat of 'serious steps' without even using the word strike and not specifying the precise date from which the strike is to commence is not remotely equated with the precise requirements of law laid down by the statute for a strike notice by public utility service workmen. The strike resorted to by such workmen following such a notice is illegal within the meaning of section 24 of the Act. (Para 9)

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of Certiorari, Mandamus or any other appropriate writ, order or direction be issued quashing the award, dated 15th June, 1968, given by the Respondent No. 1.

M. M. PUNCHI, ADVOCATE, for the petitioner.

BALBIR SINGH BINDRA AND J. C. VERMA, ADVOCATES, for the respondents.

JUDGMENT

SANDHAWALIA, J.—The Municipal Committee of Pathankot by way of this writ petition challenges the award of the Industrial Tribunal upholding the legality of the strike and the entitlement to wages of the respondent-workmen for the strike period from 18th of April, 1967, to the 12th of May, 1967.

(2) It has been averred that there existed certain differences regarding the implementation of the resolution, dated the 27th of July, 1966, passed by the petitioner-Committee and the workmen of the conservancy staff employed by the petitioner. On the 26th of March, 1967, the President and the General Secretary of the Municipal Safai Karamchari Union served a notice of demand on the petitioner-Committee failing which the action contemplated by the Union was delineated as follows:—

> "Therefore, for the reason of the pressing circumstances, as stated, a notice of 15 days' duration is being sent to you that if you do not consider and decide the demands mentioned in this notice, then the Union might be compelled to take serious steps, and the responsibility thereof would be that of the officers concerned. The demands are as follows .....".

It is expressly averred that this notice of demands gave no indication of any specific intention of going on a general strike by the workers and it was only by a notice, dated the 10th of April, 1967, and received by the petitioner-Committee on the 11th that it was clearly intimated that a general strike would be resorted to within a week of its service if no settlement was made with the Union by the petitioner. In pursuance of this notice the workmen went on strike from the 18th of April, 1967, and it is averred that the same was wholly illegal being in contravention of sections 22(b) and 24 of the Industrial Disputes Act. Subsequently on the 28th of April, 1967, the petitioner-committee considered it fit to dismiss 40 sweepers after all efforts to persuade to call off the strike had failed. It is further averred that the workmen sought and secured the intervention of the Government and on the intercession of the Labour Minister of the then United Front Government the resolution of the Committee so far as it related to punishment or threat of punishment to the sanitary workers, etc., was annulled. The dispute between respondent-workmen and the petitioner-Committee was ultimately referred by the Government to the Industrial Tribunal and the relevant question so referred was in the following terms:—

> "Whether all the striking workmen including 40 mentioned in Annexure 'A' are entitled to any wages for the strike period commencing from 18th April, 1967? If so, at what rate and with what details."

The Tribunal thereafter gave the award, dated the 15th of June, 1968, which is the subject-matter of challenge in this petition.

(3) In the return filed on behalf of respondent No. 2, it is stated that the demand notice, dated the 26th of March, 1967, implied and included a notice of going on strike if the demands were not fulfilled. It is further averred that the subsequent notice on the 10th of April, 1967, was served in order to give more time to the Committee as well as the authorities to intervene and was incontinuation of the earlier notice. It is stated that the strike was both justified and legal and the petitioner-Committee was responsible for the same, who had refused to meet the just demand in spite of the directions of the Government.

(4) Mr. Punchi in support of the petition first places reliance upon sections 22 and 24 of the Industrial Disputes Act (hereinafter referred to as the Act) and plausibly argues that the categorical challenge on behalf of the petitioner-committee before the Tribunal was directed to the legality of the strike in view of the flagrant violations of the statutory provisions above-said. It is argued that the Tribunal wholly mis-directed itself by deviating from the crucial issue of illegality and strayed into extraneous considerations of the justifiability or otherwise of the strike. The award is hence assailed as disclosing of flagrant legal error on its face and further arriving at findings without any evidence whatsoever.

(5) At the outset it deserves notice that the accepted position of the parties before the Tribunal, in the present writ petition, and the argument in Court is that the respondent-workmen would fall within the ambit of a public utility service. This is so in view of section 2(n)(v) of the Act, which is as under:—

"2(n) 'public utility service' means—

(i) * * *

(ii) * * *.

(iii) * * *.

(iv) * * *.

(v) any system of public conservancy or sanitation."

(6) Mr. Bindra on behalf of the respondents very fairly did not contest that the respondents would be covered by the above-said provision. I, therefore, proceed upon the accepted premises that the workmen would be governed by sections 22, 24 and 26 of the Act and as the primary argument revolves around these provisions, the relevant portion thereof may be set down for facility of reference:—

"S. 22. *Prohibition of strikes and lock-outs.*—(1) No person employed in a public utility service shall go on strike in breach of contract—

(a) without giving to the employer notice of strike, as hereinafter provided within six weeks before striking; or

(b) within fourteen days of giving such notice; or

(c) before the expiry of the date of strike specified in any such notice as aforesaid ; or

(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

(2) * * *.

(3) * * *.

(4) The notice of strike referred to in sub-section (1) shall be given by such number of persons to such person or persons and in such manner as may be prescribed.

Section 24. *Illegal strikes and lock-outs.*—(1) A strike or a lock-out shall be illegal if—

(i) it is commenced or declared in contravention of section 22 or 23 ; or

* * * *.

Section 26. *Penalty for illegal strikes and lock-outs.*—(1) Any workmen, who commences, continues or otherwise acts in furtherance of a strike which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.

(2) * * * *."

A plain reading of the language of the above-quoted section 22(1) makes it evident that the requirements laid out in clauses (a), (b), (c) and (d) thereof are essential requirements of the law. Confining ourselves to sub-clauses (a), (b) and (c), it is obvious that the requirements of the notice and the form in which they are to be given when read in conjunction with sub-clause (4) are mandatory provisions. This is evident from the repeated use of the word 'shall' both in sub-section (1) and sub-section (4) of section 22 of the Act. This conclusion is further fortified by the fact that the mode and manner of giving notice mentioned in sub-section (4) has been duly prescribed in the rules framed under the Act and the Schedule attached thereto. The relevant rule of the Industrial Disputes (Central) Rules, 1957, is in the following terms:—

> "71. *Notice of strike.*—(1) The notice of strike to be given by workmen in a public utility service shall be in Form L.
>
> (2) On receipt of a notice of a strike under sub-rule (1), the employer shall forthwith intimate the fact to the Conciliation Officer having jurisdiction in the matter."

Form 'L' framed under the above-said rule finds place in the Schedule and the relevant part thereof is in the following terms:—

> "Dear Sir/Sirs,
>
> In accordance with the provisions contained in sub-section (1) of section 22 of the Industrial Disputes Act, 1947, I/we hereby give you notice that I propose to call a strike/we propose to go on strike on..... 19 , for the reasons explained in the annexure.
>
> Yours faithfully.
>
> Secretary to the Union.
>
> (Five representatives of the workmen duly elected at a meeting held on .....,—*vide* resolution attached.)"

Reading the relevant statutory provisions under section 22(1) and (4) in conformity with rule 71 and the contents of form 'L' it appears to be self-evident that the statutory requirements of the notice are of a mandatory nature.

(7) Apart from the language and the contents of the statutory provisions above, the intention of the legislature in enacting the relevant provisions as culled from the scheme of the Industrial Disputes Act does not appear to be in any doubt. The right of the Industrial worker to go on strike has now become well-recognised and has been even sometimes termed as fundamental. The Act, however, aims at the blending of this right and the liability of the employers and the employees as best as possible to suit the condition of the country. The Act as regards strikes and lock-outs makes a clear distinction between persons employed in a public utility service and those employed in ordinary Industrial occupations. The enactment of sections 22 and 24 appears to be with a clear purpose to prevent a hand-full of public utility service workmen from holding the general public at ransom by indulging in lightening strikes. Such workers are not shorn of their right to go on strike, but a qualification is attached thereto requiring them to fulfil certain essential conditions as enumerated in the four different clauses (a), (b), (c) and (d) of section 22(1) of the Act. Obviously these are with the purpose to provide safeguards in the matter of public utility service as otherwise it would result in great inconvenience to the society and the general public. Equally crucial is the requirement of the statutory rule 71, read with form 'L' regarding the precise specification of the date on which the strike is to commence. The obvious object is to enable the authorities to make alternative arrangements for running a public utility service vital to the day to day life of the community in the event of a strike. These conditions are essential and have to be fulfilled in order to clothe a strike by public utility service workmen with the mantle of legality. It is idle to contend that the provisions of section 22 are merely directory and a patent violation of these provisions would entail no legal consequences. Indeed compliance with the provisions of section 22 is the core of the matter for determining whether a particular strike would be legal or otherwise.

(8) On the above construction of the statute it is evident that the strike in the present case was illegal because of its flagrant violation of section 22, read with rule 71 and Form 'L' of the Schedule. It is beyond dispute and is in fact admitted on behalf of the respondents that the communication, dated the 26th of March, 1967, making certain demands on the petitioner-municipality was not in accordance with the statutory provisions and not in Form 'L' as required by law. A reference to annexure 'A' would show that

it does not bear even a remote resemblance to the requirements of law prescribed by Form 'L'. Once that is so, necessary consequences of the illegality of strike, therefore, must flow from this. If an authority was required for so plain a proposition, it exists in a Division Bench judgment—*State of Bihar* v. *Deodar Jha and others* (1), wherein it is observed as follows:—

> "It is not denied in the present case that 14 days' notice was not given to the Company by the Union. There is no controversy about the non-fulfilment of the four conditions as given in the four clauses following sub-section (1). A strike of the employees or workers, will, therefore, automatically become an illegal one punishable under section 26 of the Act."

(9) Even at the highest the case for the respondents that there was substantial compliance with the requirements of the law (though I have held that strict compliance of the statutory provisions is called for) cannot withstand a moment's scrutiny. A close perusal of annexure 'A' would show that far from making any mention of the statutory provisions under which the notice was given or even the specific date on which the strike was to commence, it in fact does not even mention the word 'strike' in the whole body of the communication. This is in sharp contrast with the subsequent communication, annexure 'B', of the 10th April, 1967, which specifically used the words 'general strike' apart from threatening other agitations by way of protests. It is evident, therefore, that the respondents were well aware of the use of the word 'strike' in contrast with other modes of agitation. It is hence that the very absence or reference to the word 'strike' in annexure 'A' is of patent significance. There are innumerable weapons in the armoury of the agitating employees including *gheraos, dharnas,* demonstrations and the like. A mere veiled threat of serious steps mentioned in annexure 'A' (as quoted in the earlier part of this judgment) without more, cannot be remotely equated with the precise requirements of law laid down by the statute for a statutory strike notice by public utility service workmen. Equally significant is the fact that annexure 'A' specified no precise date from which the strike

(1) A.I.R. 1958 Pat. 51.

would commence. In *Employees of Dewan Bahadur Ramgopal Mills, Ltd.* v. *Dewan Bahadur Ramgopal Mills, Ltd.* (2), it has been held whilst construing rule 52(1) of the Hyderabad Industrial Disputes Rules, 1950, which is in *pari materia* with rule 71 of the Industrial Disputes (Central) Rules as follows:—

> "A perusal of form 'E' shows that the notice of strike shall specify the date of strike. Rule 71 of the Industrial Disputes (Central) Rules of 1957 contains similar provision. It is contended that neither the so-called notice of strike Ex. M. 7 is on the prescribed form nor does it specify any date of strike. In my opinion, the provision of rule 52 cited above is mandatory and contravention thereof renders the alleged notice Ex. M. 7, ineffective as a statutory notice, as contemplated by section 22(1) of the Industrial Disputes Act, 1947."

In view of the above, there exists no factual basis whatsoever or any evidence to construe or equate annexure 'A' as substantial compliance with the requirements of the statutory notice and the Tribunal could not possibly arrive at such a finding.

(10) Of equal weight is the argument on behalf of the petitioner-committee that the Tribunal strayed into wholly extraneous considerations of justifiability of the strike for determining the issue of the illegality of the strike. A perusal of the impugned award clearly shows that the issue was raised in unequivocal terms on behalf of the petitioner-committee and is noticed as follows:—

> "While admitting the correctness of the facts as mentioned by the workmen in their statement of claim, their claim for wages for the period of strike has been opposed on the sole ground that the strike was illegal on account of short notice given for the purpose. It has been added that according to sub-section (b) of section 22 of the Industrial Disputes Act the workmen should have given 14 days' notice before going on a strike. The strike notice is stated to have been received in the office of the Committee on 11th April, 1967, while the strike started on 18th April, 1967."

(2) (1958) 2 L.L.J. 115.

However, the Tribunal then proceeded to arrive at a finding foreign to the issue before it in the following terms:—

> "As would appear from the Union's letter copy Exh. A. 15, they were prepared to call off the strike if the committee arrived at some agreement with them in the light of the letter of the Examiner, Local Fund Accounts, but it appears that in spite of all this the committee stuck to its original position and it was after a good deal of hesitation and persuasion that the demands of the workmen were ultimately accepted. The strike was clearly justified and it was so admitted by the committee itself though under pressure from the Government, *vide* its resolution, a copy whereof is Exh. A 24. Now to say that the strike was illegal is rather beside the point."

It is evident from the above that the primary question before the Tribunal was whether the sarike was illegal or otherwise and to brush aside this main issue on the ground of factual justifiability or otherwise of the strike was wholly unwarranted. That the Tribunal was wholly motivated in arriving at the finding which it did on the ground of justifiability is again evident from the *penultimate* paragraph of the award :—

> "The Committee, however, remained adamant, though ultimately demands had to be accepted. It would thus appear that the workmen had no alternative, but to take to the weapon of strike in order to have their demands accepted by the Committee. Therefore, they are entitled to their wages for the strike period, i.e., from 18th April, 1967, to 12th May, 1967, and the same shall be calculated as if they had not gone on strike. I make an award accordingly."

(11) Considerations of factual justifiability and the legality or otherwise of the statutory notice under section 22(1) of the Act are considerations far apart. It was impermissible to confuse the two, and it is in this context that the following observations of their Lordships in *I. G. Navigation and Railway Co.* v. *Their Workmen* (3), had to be kept in mind—

> "* * *. The law has made a distinction between a strike which is illegal and one which is not, but it has not

(3) A.I.R. 1960 S.C. 219.

made any distinction between an illegal strike which may be said to be justifiable and one which is not justifiable. This distinction is not warranted by the Act and is wholly misconceived, specially in the case of employees in a public utility service. * * *. Therefore, the tendency to condone what has been declared to be illegal by statute must be deprecated, and it must be clearly understood by those who take part in an illegal strike that thereby they make themselves liable to be dealt with by their employers."

In view of the foregoing discussion, it is evident that the Tribunal failed to notice the necessary legal results that flow from a strike given without the requisite statutory notice; had arrived at findings without any evidence; and was further motivated by extraneous considerations of factual justifiability in determining the issue of legality of the strike. These are errors of law apparent on the face of the record necessitating interference under Article 226 of the Constitution of India. I would, therefore, accept this writ petition and quash the impugned award. In the circumstances of the case, there will be no order as to costs.

B. S. G.

CIVIL MISCELLANEOUS

Before H. R. Sodhi, J.

T. S. SHERGIL, ETC.,—*Petitioners.*

versus

THE STATE OF PUNJAB, ETC.,—*Respondents.*

Civil Writ No. 2934 of 1970

November 4, 1970.

Punjab Municipal Act (III of 1911)—Sections 61(1)(c) and 61(2)—Toll-tax on loaded motor vehicles entering the limits of a Municipal Committee—Whether can be levied under section 61(1)(c)—Such tax—Whether valid under section 61(2).