Municipal Committee, Panipat v. Niranjan Lal

Mehar Singh, J.

the decisions of the two Courts below are correct. This appeal fails and is dismissed, but in the circumstances of the case, the parties are left to their own costs.

Grover, J.

A. N. GROVER,—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before A. N. Grover and Inder Dev Dua. J.

THE ROHTAK DELHI TRANSPORT (PRIVATE) LTD.,—*Petitioner.*

versus

RISAL SINGH AND ANOTHER,—*Respondents.*

Civil Writ No. 430 of 1961.

1962

January, 4th.

Industrial Disputes Act (XIV of 1947)—S. 10-A—Industrial dispute referred to arbitrator—Arbitrator—Whether to act in a judicial or quasi-judicial manner—Award given by the arbitrator—Whether should be a speaking order.

Held, that an arbitrator to whom an industrial dispute is referred for decision under section 10-A of the Industrial Disputes Act, 1947, has to act in a quasi-judicial manner and his decision will be a quasi-judicial decision.

Held, that the award of an arbitrator to whom an industrial dispute is referred for decision under section 10-A of the Industrial Disputes Act, 1947, being a quasi-judicial decision, must contain some particulars or grounds or reasons on which it is based. In other words, such a decision can be said to be no decision in the eye of law unless the order is supported by some grounds or points indicating how the final conclusion is arrived at. In the absence of such reasons arbitrariness or partial exercise of powers or taking into consideration extraneous circumstances cannot be eliminated and neither the parties concerned nor the High Court to which the mat-

ter has been brought up under Article 226, have any means of ascertaining how the sum awarded has been arrived at. Such an award which gives no reasons or grounds of decision is liable to be struck down.

Case referred by Hon'ble Mr. Justice Inder Dev Dua, on 10th May, 1962, to a larger Bench for decision of the important question of law involved in the case. The case was *finally decided by a Division Bench, consisting of Hon'ble Mr. Justice A. N. Grover and Hon'ble Mr. Justice Inder Dev Dua, on 4th January, 1963.*

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ in the nature of Certiorari or any other appropriate writ, order or direction be issued quashing the award of respondent No. 1, dated the 16th February. 1961 and published in Punjab Government Gazette, dated 17th March, 1961.

H. S. Wasu and B. S. Wasu, Advocates,—for the Petitioner.

Anand Swaroop, Advocate,—for the Respondents.

JUDGEMENT

GROVER, J.—This is a petition under Articles 226 and 227 of the Constitution which has been placed before us for disposal owing to an order of reference made by my learned brother on 10th May, 1962. In order to decide the points which require determination, the facts may be stated first. Grover, J.

The petitioner is a transport company and Manohar Lal was employed as a driver by it. He was driving bus No. PNR 2034 on 26th June, 1959, which was transporting passengers from Rohtak to Delhi. It appears that there was some quarrel near the Delhi traffic barrier between Manohar Lal and the checker of the company, Chaman Lal,

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during the course of which the former is alleged to have given a slap to the latter. On a complaint an enquiry was held by Shri Hargopal Singh Sawhney who was appointed for that purpose by the company. Manohar Lal was found guilty of misbehaviour towards the checker and also of obstructing him in the discharge of his duties. He was ordered to be dismissed from service on 28th December, 1959. An industrial dispute having arisen between Manohar Lal and the petitioner, it was agreed that it should be referred to the arbitration of respondent No. 1 Ch. Risal Singh, a Pleader of Rohtak, under section 10A of the Industrial Dispute Act, 1947 (hereinafter to be referred to as the Act). The matter specifically referred was as follows:—

> "Whether Shri Manohar Lal who has since been dismissed after enquiry, is entitled to any compensation; and if so, to what amount ?"

The Arbitrator gave an award on 16th February, 1961, which was published in the Government Gazette dated 17th March, 1961. The relevant portion of this award may be reproduced—

> "Both the parties filed their statements of claim and the management produced enquiry proceedings and all other relevant papers and documents, while the workmen produced evidence in support of their claims. I heard both the parties but evidence was not needed to be recorded. I examined the record and documents of the management. The enquiry had not been properly conducted and it was almost *ex-parte*. The workman Shri Manohar Lal had not been provided any opportunity for his

defence which is against the principles of natural justice and law. * * * In the light of the facts I am of the opinion that the dismissal of Shri Manohar Lal was not justified and * * * * * * and hence I make the award in favour of the workman Shri Manohar Lal, Driver * *. Shri Manohar Lal Driver, is entitled to Rs. 2,700 (Rs. two thousand and seven hundred only) including his all claims * * * *."

In paragraph 5 of the petition it was stated that the award was given without recording any evidence. The grounds on which the awards has been attacked are stated mainly in paragraph 6 and it is necessary to refer to only those which have been pressed before us. The first is that the Arbitrator went beyond the scope of the terms of reference as the only matter referred to him was as to whether respondent No. 2 was entitled to any compensation and if so, to what extent. He was never called upon to decide whether the enquiry held against respondent No. 2 as a result of which he was dismissed was proper or not. The second is that respondent No. 1 was a statutory Arbitrator and exercised quasi-judicial functions. He was expected to act in a quasi-judicial manner and give a judicial finding which he failed to do. It is not clear from the award as to how the figure of Rs. 2,700 awarded as compensation was arrived at by the Arbitrator and no basis has been disclosed for the conclusions given in the award, with the result that there was arbitrary and capricious exercise of power. The reply of respondent No. 2 in respect of para 5 as follows:—

"Paragraph 5 of the petition is admitted.

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The Arbitrator was under no obligation to record the evidence produced before him.

In replying to paragraph 6 it was stated that the Arbitrator had full power to decide the dispute in any manner he liked and that he had looked into all the relevant documents and heard the parties after receiving their respective pleadings. The award could not, therefore, be called arbitrary or capricious in any way. The position taken up in paragraph 10 of the written statement was that respondent No. 1 could not be called a statutory Arbitrator nor was he subject to the supervisory power of the High Court.

The questions that necessitated the reference to the Bench were—

(1) Whether the scheme of the Act and the rules made thereunder contemplate that an Arbitrator to whom a reference is made under section 10A should act in a judicial or a quasi-judicial manner; and

(2) Whether his award should be a speaking order ?

In *the Engineering Mazdoor Sabha* v. *The Hind Cycles Ltd.* (Civil Appeals Nos. 182 and 183 of 1962) decided on 18th October, 1962 by the Supreme Court, the answer to the first question is contained in the following observations :—

* * * * *

There is no difficulty in holding that the decisions of the Arbitrator to whom industrial disputes are voluntarily referred under section 10-A of the Act are quasi-judicial decisions and they

> amount to a determination or order under Article 136(1)."

Even before this decision was brought to our notice the learned counsel for respondent No. 2 was prepared to agree that the decision of such an Arbitrator would be a quasi-judicial decision and not a purely administrative or executive determination. No difficulty, therefore, remains in respect of the aforesaid point. It is, however, the second aspect which requires a good deal of consideration.

In *Harinagar Sugar Mills Ltd.* v. *Shyam Sunder Jhunjhunwala and others* (1), two questions came up for determination; one was whether the Central Government exercising appellate powers under section III of the Companies Act 1956, before its amendment by Act 65 of 1960, was a tribunal exercising judicial functions and was subject to the appellate jurisdiction of the Supreme Court under Article 136 of the Constitution and the second question was whether the Central Government had acted in excess of its jurisdiction or otherwise acted illegally in directing the company to register the transfer of shares in favour of certain persons. At page 1678 it was observed by Shah, J.—

> "If the Central Government acts as a tribunal exercising judicial powers and the exercise of that power is subject to the jurisdiction of this Court under Article 136 of the Constitution, we fail to see how the power of this Court can be effectively exercised if reasons are not given by the Central Government in support of its order."

(1) A.I.R. 1961 S.C. 1669.

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It was further observed—

> "We are however of the view that there has been no proper trial of the appeals, no reasons having been given in support of the orders by the Deputy Secretary who heard the appeals. In the circumstances, we quash the orders passed by the Central Government and direct that the appeals be reheard and disposed of according to law."

Applying the law laid down in this case in Civil Writ No. 288-D of 1960 decided by me on 30th May, 1962, while sitting singly in the Circuit Bench at Delhi I quashed an order of the Central Board of Revenue on the ground that there had been no proper trial or disposal of the appeal by the Board as no reasons had been given in its order by which some modification had been made in the original order of the Collector, Central Excise, Bombay. If the present case fulfilled all the conditions which existed in the Supreme Court case or in the writ petition decided by me at Delhi, there would have been little difficulty in applying the same rule and holding that the order of the Arbitrator, who would be subject to the exercise of our jurisdiction under Article 226 of the Constitution was liable to be set aside to the extent that he had failed to give any basis or reasons for awarding a sum of Rs. 2,700 as compensation to respondent No. 2. It is pointed out by the learned counsel for respondent No. 2 that the essential distinguishing feature is that the exercise of the power of the Arbitrator in the present case was not subject to the jurisdiction of their Lordships under Article 136 of the Constitution and that this has been held in the same judgment in *the Engineering Mazdoor Sabha's case* to which reference has already been made.

The decision of their Lordships is that an Arbitrator appointed under section 10-A of Act cannot be treated as a Tribunal within the meaning of Article 136 because such an Arbitrator lacks the basic, the essential and the fundamental requisites in that behalf viz., he is not invested with the State's inherent judicial power. It is, therefore, difficult to hold that the present case would be completely covered by the decision of their Lordships. It is said that where a decision can be subjected to an appeal, the reasons must be given in the order to enable the appellate Court to examine the correctness of that order.

The main question that has to be examined is whether the arbitrator's award which is a quasi-judicial decision must contain some particulars or grounds or reasons on which it is based. In other words, such a decision can be said to be no decision in the eye of law unless the order is supported by some reasons or points indicating how the final conclusion is arrived at. In the Code of Civil Procedure, section 2(9) defines a judgment to mean the statement given by the Judge of the grounds of a decree or order. Order XX, rule 4 lays down that judgments of Court of Small Causes need not contain more than the points for determination and the decision thereon but judgments of other Courts shall contain a concise statement of the case, the point for determination, the decision thereon and the reasons for such decision. It is not possible to apply these provisions to a decision or judgment given by a quasi-judicial Tribunal unless the statute under which that Tribunal is created and functions either expressly or by necessary implication provides to that effect. There is, however, no such provision in the Act or the rules framed thereunder. In *the Engineering Mazdoor Sabha's* case the learned Solicitor-General

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sought to contend that an Arbitrator appointed under section 10-A of the Act was no more than and no better than a private Arbitrator to whom a reference could be made by the parties under an arbitration agreement as defined by the Arbitration Act, 1940. This contention was negatived and it has been observed that an Arbitrator under section 10-A is clothed with certain powers, his procedure is regulated by certain rules and the award pronounced by him is given by statutory provisions a certain validity and a binding character for a specified period. His position may be said to be higher than that of a private Arbitrator and lower than that of a Tribunal appointed by the State. According to their Lordships, some of the features which characterised the proceedings before the Industrial Tribunal before an award is pronounced and which characterised the subsequent steps to be taken in respect of such an award are common to the proceedings before the Arbitrator and the award that he may make, but, as has been stated before, there was no difficulty in holding that the decision of such Arbitrators amounted to a determination or order within the meaning of Article 136(1). Can such decisions, therefore, be wholly devoid of any reasons or grounds or other indicia from which it could be found out how and in what manner the final conclusion was arrived at? In the present case after holding that the dismissal of respondent No. 2 was not justified, all that the Arbitrator said was that he was entitled to Rs 2,700 including all his claims. Nothing whatsoever is stated how this figure was arrived at and which of the claims made by the said respondent were allowed and which were disallowed and to what extent. This part of the award is by no means what can be called a speaking order. The argument of the learned counsel for respondent No. 2 is that there was no need of

stating the process by which the figure of Rs 2,700 was arrived at nor was it necessary to give any other reason, apart from what has been stated in the award, namely, that the dismissal of respondent No. 2 was not justified which by itself is sufficient to justify the award of the amount in question. It may be mentioned that the record of the Arbitrator was sent for and he has forwarded the same, by means of his letter, consisting of the following:—

1. Two copies of notices.
2. Claim of the workmen.
3. Copy of the award.

It is stated in his letter as follows:—

> "I issued formal notices to both the parties. I did not record an evidence. After hearing both the parties and going through the record and the claim of the workmen I gave my decision, the copy of which I am sending herewith."

The claim of respondent No. 2 consisted of the following items:—

			Rs
"1. Pay from the date of suspension i. e. 27th July, 1959 to 27th June, 1960, of 11 months ..	140×11	=	1,540.00
2. Security plus interest ..	100+8	=	108.00
3. Daily commission at the minimum rate of Rs 3 per day ..	78×11	=	858.00
4. Bonus equal to 4 months wages ..	140×4	=	560.00
5. Undue harassment and expenses incurred up to the case ..	572	=	572.00
6. Compensation ..	149×6	=	840.00
7. Provident fund ..	..		100.00
Total ..			4,578.00

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If the record of the Arbitrator had not been quite so bare as it is, it may have been possible to find out which items were allowed and which were disallowed but on the face of the record one cannot discover the basis or the method of fixing the aforesaid amount of compensation. Accordingly, it is difficult to accept the suggestion that the record of the Arbitrator contained sufficient indication of the manner in which the compensation has been assessed.

In England the case of *R.* v. *Northumberland Compensation Appeal Tribunal, ex P. Shaw* (2), affirmed in (3) has been described as a landmark in administrative law. As pointed out in Judicial Review of Administrative Action by S.A. de Smith, it cannot fairly be characterised as a piece of judicial legislation; it is, in truth, a new application of a long-established principle. From the seventeenth century certiorari had issued from the King's Bench to quash convictions and orders in cases where an error of law was apparent on the record but the King's Bench never required justices to set out the evidence and grounds of decision in orders in civil matters, as distinct from summary convictions. As observed by Earl Cairns L. C. in *Walsall Overseers* v. *L. and N. W. Ry. Co.* (4), after the year 1870 the jurisdiction of the Courts to grant certiorari to quash for error of law on the basis of the record was rarely invoked and the very existence of that jurisdiction seemed to have been forgotten. Smith says that its resuscitation and re-adaptation in *the Northumberland case* has meant that the supervisory jurisdiction of the High Court over administrative tribunals has extended to a sphere from which it was thought

(2) (1951) 1 K.B. 711.
(3) (1952) 1 K.B. 338.
(4) (1878) 4 App. Cas. 30 at 40.

to have been excluded but the same learned author points out that so far the impact of the speaking order doctrine in the general field of administrative law has been relatively slight. The Courts had already treated a wide range of errors of law and fact as going to jurisdiction. Those errors that lay beyond the reach of certiorari because they did not go to jurisdiction still lie beyond its reach unless they are disclosed by the record. They will not be disclosed by the record unless the tribunal has embodied in its order, in one form or another, material which reveals the grounds for its decision. In *the Norhumberland case* Denning L.J. went at length into the historical aspect of this matter. At page 352 the learned Lord Justice (as he then was) observed—

> "Following these cases, I think the record must contain at least the document which initiates the proceedings; the pleadings, if any; and the adjudication; but not the evidence, nor the reasons, unless the tribunal chooses to incorporate them. If the tribunal does state its reasons, and those reasons are wrong in law, certiorari lies to quash the decisions."

In England now the Tribunals and Inquiries Act, 1958, has been enacted. Section 12 of that Act provides that (subject to certain exceptions, which may be enlarged by statutory orders made under the section) each of the numerous statutory tribunals specified in the First Schedule to the Act must furnish a statement, either written or oral, of the reasons for its decision if requested to do so on or before the giving of its decision. Any statement of the reasons for a decision given by one of the specified tribunals, or by a Minister in the contexts

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referred to, "shall be taken to form part of the decision, and accordingly to be incorporated in the record".

In the United States of America, the "substantial evidence" rule was evolved which means that an order which affects private rights must be based upon "substantial evidence". It follows that the officer or agency making the order must make "findings" embodying such evidence. Thus the absence of the basis or essential findings required to support an order renders it void,—*vide State of Florida* v. *United States* (5), *State of North Carolina* v. *United States* (6) and *United States* v. *Baltimore and Ohio R. Co.* (7). The underlying idea is that the parties affected should know and be able to judge for themselves whether or not a particular decision is based upon evidence and so whether or not to ask for a judicial review. In *United States* v. *Chicago etc.* (8), the Supreme Court said at page 511—

> "We must know what a decision means before the duty becomes ours to say whether it is right or wrong."

It was with this end in view that the Administrative Procedure Act provides that all decisions shall become a part of the record and include a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented on the record.

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(5) 282 U.S. 194.
(6) 325 U.S. 507.
(7) 293 U.S. 454.
(8) 294 U.S. 499.

The Law Commission of India in the 14th Report, Volume II, at page 694, made the recommendation that in the case of administrative decisions, provision should be made that they should be accompanied by reasons which will make it possible to test the validity of these decisions by the machinery of appropriate writes, but so far there has been no legislation in this country on the subject. As the statutory provisions enacted in England and the United States of America cannot be applied here, the question before us will have to be determined according to the principles laid down in the pronouncements of Indian Courts which may now be considered.

In *A. Vedachala Mudaliar* v. *The State of Madras* (9), Suba Rao J. (now on the Bench of the Supreme Court) had to consider the propriety and legality of an order made by the Madras Government under the Motor Vehicles Act, 1939. After holding that the act of the Regional Transport Authority in modifying the time-table with regard to the plying of buses was a quasi-judicial order, with the result that the Central Road Traffic Board and the Government would also be regarded as functioning judicially in fixing the timings, the learned Judge observed that the order made by the Government did not *ex facie* disclose why it had expressed the view that the order of the Central Road Traffic Board was not proper and that of the Regional Transport Authority was proper. Reference was also made to the decision of another Bench consisting of the Chief Justice and Somasundaram J. who set aside the previous order of the Government in C.M.P. No. 13610 of 1950, 1942/51, 1954/51 and 1865 of 1951 with the following observations:—

> "We have quashed them (the orders) because they do not show on their face

(9) A.I.R. 1952 Mad. 276.

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why the orders were passed and because they failed to show any ground which would sustain the validity of the interference, having regard to the conditions laid down in section 64-A of the Act."

The following observations of Suba Rao, J. are noteworthy:—

> "Further if reasons for an order are given, there will be less scope for arbitrary or partial exercise of powers and the order *ex facie* will indicate whether extraneous circumstances were taken into consideration by the tribunal in passing the order. The public should not be deprived of this only safeguard, unless the Legislature expressed otherwise. I would, therefore, hold that the order of a tribunal exercising judicial functions should *ex facie* show reasons in a succinct form for setting aside the orders of the subordinate tribunals."

In *A. Annamalia v. The State of Madras and others* (10), Umamaheswaram J. followed the above rule in a case of the converse kind in which the State Government while making an order under section 64-A of the Motor Vehicles Act had not given any reasons for declining to interfere with the order passed by the Central Road Traffic Board. The learned Judge referred to another decision of his in Writ Petition No. 814 of 1951 in support of the view that it is necessary when judicial orders are passed that they must disclose on their face that the mind of the authority was directed to the

(10) A.I.R. 1957 Andh. Pra. 739.

facts and law bearing on the case and was properly applied. It was contended before him that it is only if an order is to be reversed that it is necessary to give any reasons and the Madras decision, referred to above, was pressed into service but this argument was repelled thus—

> "With great respect to the learned Judge, I would add to his observations that even in the case of confirming orders, the same safeguard should be adopted. The judicial order must *ex facie* show that the judicial body applied its mind to the facts and law bearing on the question and confirmed the decision of the subordinate authority."

In *Mohammad Irfan Khan* v. *Superintendent, Central Excise* (11), the order passed by the Central Excise authorities was quashed on the ground *inter alia* that there was no discussion of law and facts and the observations made were of a general nature which were vague and arbitrary. It is true that in *A. Vedachala Mudaliar* v. *The State of Madras* (9), the order of the subordinate tribunal or authority had been reversed without giving reasons and it would be legitimate to say that where that is being done, reasons must be stated but in the Andhra and Allahabad cases the orders were not of reversal but of affirmance and the principle that quasi-judicial orders should *ex facie* show the bases or the reasons on which they are made was accepted and applied and it is not easy to see why the present case should not be governed by the same rule. In *Pannalal Binjraj* v. *Union of India* (12), their Lordships while disposing of certain petitions under Article 32 of the

(11) A.I.R. 1960 All. 402.
(12) 1957 S.C.R. 233.

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Constitution and deciding various points raised in that case in connection with section 5(7-A) of the Indian Income-tax Act indicated at pages 262-263 the procedure that should be followed in making orders of transfer under the aforesaid section as also the contents of that order in the following words:—

> "We may, however, before we leave this topic observe that it would be prudent if the principles of natural justice are followed, where circumstances permit, before any order of transfer under section 5(7-A) of the Act is made by the Commissioner of Income-tax or the Central Board of Revenue, as the case may be, and notice is given to the party affected and he is afforded a reasonable oportupnity of representing his views on the question and the reasons of the order are reduced however briefly to writing.
>
> * * * * *
>
> * * * * *
>
> "If the reasons for making the order are reduced however briefly to writing it will also help the assessee in appreciating the circumstances which make it necessary or desirable for the Commissioner of Income-tax or the Central Board of Revenue, as the case may be, to transfer his case under section 5(7-A) of the Act, and it will also help the Court in determining the *bona fides* of the order as passed if and when the same is challenged in Court as *mala fide* or discriminatory. It is to be hoped that

the Income-tax authorities will observe the above procedure wherever feasible."

These observations are significant and illustrative of the true concept and content of orders and the manner in which they should be made by authorities or tribunals called upon to give judicial or quasi-judicial decisions. In this view of the matter it would hardly make any difference whether a particular order can be subjected to appeal or revision or review by a superior Court or tribunal. It is noteworthy that the above case unlike *the Harinagar Sugar Mills' case* had come before the Supreme Court not on appeal but under Article 32 of the Constitution. Their Lordships did not proceed on the premises that the order made by the Income-tax authorities or the Board of Revenue could be subjected to an appeal under Article 136 but something similar to the American rule was indicated, viz., the party affected should know and be able to judge for himself the reasons for making the order and also to enable the Court to know the same for deciding the validity of the order when challenged.

It is altogether unnecessary to express any general view and what has to be seen is whether in the present case the Arbitrator should have given some reason or indication for his conclusion in the matter of assessment of compensation. With regard to an award by an Arbitrator appointed under the Arbitration Act, it was contended in *Raminder Singh* .v *Mohinder Singh* (13), that the award was very brief and was bad because there was no reference to the evidence and that findings had not been given on various issues. It was held that an

(13) A.I.R. 1940 Lah. 186.

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Arbitrator was not bound by the technical rules of procedure which the Courts must follow and all that he was required to do was to give an intelligible decision which determined the rights of the parties in relation to the subject-matter of the reference. The Lahore Bench relied on the decision of the Privy Council in *Muhammad Nawaz Khan* v. *Alam Khan* (14), where an award given by an Arbitrator selected by reason of his special knowledge of the affairs of the family, and not based upon strict rules of law, but on a broad view of the dispute, was upheld. Reference was also made to the dictum of Lord Cockburn, C.J., in *In re Hopper* (15):

> "We must not be over ready to set aside awards when the parties have agreed to abide by the decision of a tribunal of their own selection, unless we see that there has been something radically wrong and vicious in the proceedings."

Both in the Lahore and Privy Council cases it was pointed out that the Arbitrator had been selected by reason of a special knowledge of the affairs of the parties. Since the Arbitration Act does not govern an ward given by the Arbitrator in the present case by virtue of sub-section (5) of section 10-A of the Act, the law laid down in the aforesaid cases cannot be applied. Moreover, the Arbitrator here has not been shown to have been selected by reason of any special knowledge pertaining to the dispute between the parties. In *In re, Banwarilal Roy* (16), Das J. (as he then was) explained what a judicial or a quasi-judicial act implies. According to him, it implies more than mere application

(14) 70 P.R. 1891.
(15) (1867) 8 B & S 100.
(16) 48 Cal. W.N. 766.

of the mind or the formation of the opinion. It has reference to the mode or manner in which that opinion is formed. It implies "a proposal and an opposition" and a decision on the issue. It vaguely connotes "hearing evidence and opposition". These observations were referred to with approval in *Gollapalli Nageswara Rao* v. *Andhra Pradesh State Road Transport Corporation* (17), by Subba Rao J. who wrote the majority judgment while considering the various tests for deciding what are judicial or quasi-judicial acts. As the Arbitrator had to decide "a proposal and an opposition"; in other words to determine a lis, the decision which he had to give could not be devoid of any reference to the mode or manner by which that opinion was formed. It may be said that he has stated in the award that he had considered the evidence and heard the parties, but then the Arbitrator gave no basis for fixing the compensation at the figure or Rs. 2,700. The record which has been sent up provides no assistance whatsoever for finding out how the above figures was arrived at. Thus arbitrariness or partial exercise of powers or taking into consideration extraneous circumstances cannot be eliminated and neither the parties concerned nor this Court to which the matter has been brought up under Article 226 have any means of ascertaining how the sum of Rs. 2,700 was determined as the compensation to be paid to respondent No. 2 by the petitioner, with the result thut the impugned order must be struck down in view of the principles and observations of the High Courts and the Supreme Court adverted to before.

As regard the other question, whether the Arbitrator went beyond the scope of the terms of reference, it is contended that the matter specifically referred to the Arbitrator was whether

(17) A.I.R. 1959 S.C. 308.

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respondent No. 2 who had been dismissed after enquiry was entitled to any compensation and if so, to what amount. It is pointed out that the Arbitrator was not authorised to go into the question whether the dismissal was justified or not or whether the order of dismissal had been made after complying with the requirements of natural justice. This contention has little force because it appears to be implicit in the reference that the Arbitrator had first to decide whether the order of dismissal was justified or not because the question of awarding compensation to him could only arise after that matter had been determined.

For all these reasons, this petition is allowed and the order of the Arbitrator is hereby quashed. In the circumstances the parties will be left to bear their own costs.

Dua, J.

DUA, J.—The question raised in this case is not free from difficulty and plausible arguments have been advanced for their points of view canvassed and pressed by the counsel for their respective sides.

My learned brother has gone into the matter at great length discussing various considerations throwing light on the controversy raised and it is unnecessary to say anything more on those aspects. I would merely add a few words for the purpose of very briefly pointing out another aspect of the problem.

The applicability of the Arbitration Act (X of 1940) has been expressly excluded from arbitration under the Industrial Disputes Act (hereinafter called the Act) with the result that even the safeguards provided by the Arbitration Act against judicial misconduct of the arbitrator and *prima facie* invalidity of the award, etc., are not available to the party

feeling aggrieved by the arbitration award under the Act. The question arises: Has the Legislature intended to give more uncontrolled power to the arbitrator under the Act? As at present advised, I do not think such an intention should be imputed to the Legislature. It is true that in the Act and the rules made thereunder a marked distinction between arbitrators and Labour Courts, etc., under the Act is clearly discernible but here again it may legitimately be asked: Is an arbitrator under the Act empowered to act arbitrarily on his sweet will or whim and without disclosing on the face of the record that he has acted in accordance with the well-recognised standards governing the actions of quasi-judicial tribunals? This question assumes importance in a country where the rule of law and not the rule of men reigns supreme. That the arbitrator has to deal with an industrial dispute adds to the importance of this aspect, for, the basic fundamental object of the Industrial Disputes Legislation is achievement of industrial peace and social justice, so that both Capital and Labour may get their due share out of the fruits of their combined efforts and the industrial development and progress of the community does not suffer adversely on account of labour discontentment. For promoting industrial peace and labour contentment it would seem to be of some importance that the award discloses on its face the minimum requirements which would reasonably show the broad working of the arbitrator's mind in coming to his conclusions in adjudicating upon the disputes, so that if the matter is brought before this Court, judicial scrutiny by it within the permissible limits under Article 226 of the Constitution is not made impossible or rendered wholly nugatory. This would apparently tend to promote a sense of satisfaction in the parties that justice has been meted out to them fairly and to that extent it would advance the cause of industrial peace. Here, it may be

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pointed out that this Court does not in writ proceedings normally admit evidence on matters of fact and, therefore an enquiry similar to that contemplated by the Indian Arbitration Act is scarcely, if ever, held. I am not unmindful of the fact that the arbitrator in the case in hand is of the party's own choice but then that would hardly constitute a strong enough factor to militate against the view that his award should disclose that it is the result of a quasi-judicial approach by one who is called upon to adjudicate upon important contested claims.

As already observed, the question is not free from difficulty and I am expressing my view not completely without hesitation, but on the whole I am inclined, as at present advised, to consider as preferable the view that the law does not intend to confer on the arbitrator under the Act wholly uncontrolled and absolute power to make the award completely bare of reasons so as to render it incapable of judicial scrutiny by this Court under Article 226.

With these words, I would agree with the order proposed by my learned brother.

B.R.T.

REVISIONAL CRIMINAL

Before Gurdev Singh, J.

AVTAR SINGH,—*Petitioner.*

versus

THE STATE,—*Respondent.*

Criminal Revision No. 747 of 1962

1963

January, 9th.

Companies Act (I of 1956)—S. 630—Whether pro-tanto repeal S. 409 of Indian Penal Code—Offence of criminal