1960

December 15.

THE BATA SHOE CO. (P) LTD.

v.

D. N. GANGULY & OTHERS

(P. B. GAJENDRAGADKAR and K. N. WANCHOO, JJ.)

Industrial Dispute—Illegal Strike—Managerial enquiry and dismissal of workmen—Settlement without approval of conciliation officer — Competence of Reference — Management's action against employees—Interference by Tribunal, if and when justified—Industrial Disputes Act, 1947 (14 of 1947), ss. 12, 18.

During the course of conciliation proceedings in respect of a dispute between the appellant company and its workmen a settlement was arrived at between the parties on February 18, 1954. Despite the settlement some of the workmen went on strike on February 23, 1954, but eventually it was called off on March 19 and 20, 1954. On the ground that the strike was illegal because it took place during the currency of a settlement, the appellant took steps to serve chargesheets on the workmen who had joined the strike and, after a managerial inquiry, dismissed sixty of them. There were conciliation proceedings in respect of the dismissal of the workmen before the Labour Commissioner and an agreement was arrived at between the appellant and the union on September 2, 1954. The Labour Commissioner was apprised of this settlement, but since it was found that the union was opposing reinstatement of certain workmen, he proposed to hold further conciliation proceedings. The appellant was against holding further conciliation steps and, therefore, the Labour Commissioner reported the matter to the Government under s. 12(4) of the Industrial Disputes Act, 1947.

A reference was accordingly made and the Tribunal gave the award under which all the dismissed workmen were to be reinstated on the ground that they had not been shown to have taken part in violence and there were extenuating circumstances in their case inasmuch as they were misled to join the strike in order to oust the old office bearers of the union so that others might be elected in their place, and that though a much larger number of workmen had taken part in the illegal strike and the union took up the case, only these sixty were eventually dismissed while the rest were reinstated. The appellant objected to the award on the grounds (1) that as a settlement had been arrived at during the course of conciliation proceedings on September 2, 1954, which specifically dealt with the case of these sixty workmen, the reference was incompetent in view of s. 18 of that Act, (2) the reference was also incompetent because what was referred was not an industrial dispute but a dispute between the employer and its individual workmen, and (3) the Tribunal's order of reinstatement was in any case unjustified.

Held: (1) under ss. 12 and 18 of the Industrial Disputes Act, 1947, a settlement which is binding under s. 18 on the ground that it was arrived at in the course of conciliation proceedings is a settlement arrived at with the assistance and concurrence of the conciliation officer, and that a settlement which is not binding under s. 18 will not be a bar to a reference by the Government.

In the present case the agreement of September 2, 1954, did not have the approval of the conciliation officer and, consequently, the reference based on the report of the conciliation officer under s. 12 of the Act was competent.

(2) that the reference was not bad on the ground that an individual dispute had been referred to the Tribunal for adjudication, because the dispute in the present case was originally sponsored by the union and related to the dismissal of a much larger number of workmen.

(3) that where the finding of the Tribunal was that there was misconduct which merited dismissal under the Standing Orders and that the managerial inquiry was proper, the Tribunal was not justified in interfering with the action of the management unless it found unreasonable discrimination in the matter of taking back employees, or unfair labour practice or victimisation against the employees.

Indian Iron and Steel Co. Ltd. and Another v. *Their Workmen*, [1958] S.C.R. 667, followed.

I. G. N. and Railway Co. Ltd. v. *Their Workmen*, [1960] 2 S.C.R. 1, distinguished.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 32 and 33 of 1960.

Appeals by special leave from the Award dated February 24, 1959, of the Industrial Tribunal, Bihar, Patna, in Reference nos. 10 of 1959 and 1 of 1955.

M. C. Setalvad, Attorney-General for India, Nooni Coomar Chakravarti and *B. P. Maheshwari*, for the appellant.

B. C. Ghose and *P. K. Chatterjee*, for the respondents.

1960. December 15. The Judgment of the Court was delivered by

Wanchoo J.

WANCHOO, J.—These are two connected appeals by special leave in an industrial matter and relate to the dismissal of sixty workmen of the appellant-company. The dispute was referred by two references;

1960

Bata Shoe Co. (P) Ltd.
v.
Ganguly

Wanchoo J.

one relates to 31 workmen and the other to 29 workmen. They have been disposed of by a common award, though, as the references were two, there are two appeals before us.

The brief facts necessary for present purposes are these: On November 10, 1953, a general meeting was held by the workmen of the appellant and a no confidence motion was passed against the executives of the workmen's union and Shri Shahabuddin Bari was elected as the new president of the union. On February 6, 1954, the newly elected president served a strike notice on the management. On February 18, 1954, a settlement was arrived at between the management and Shri Fateh Narain Singh, the general secretary of the old executive committeee. On February 23, 1954, the strike was launched in accordance with the notice served by Shri Bari and the strike continued for about a month. The strike was called off on March 19 and 20, 1954. The case of the appellant was that the strike which began on February 23, 1954, was an illegal strike as it took place during the currency of a settlement arrived at in the course of conciliation proceedings with the assistance of the Labour Commissioner who acted as conciliation officer. Consequently, the appellant took steps to serve chargesheets on the workmen, who had joined the illegal strike, on March 4, 1954. This was followed by the dismissal of these sixty workmen after a managerial inquiry. It is said that thereafter there were conciliation proceedings which failed and consequently the two references were made.

The main findings of the tribunal are that the settlement of February 18, 1954, was a *bona fide* settlement arrived at during the course of conciliation proceedings and was therefore binding on the workmen; and consequently the strike which began on February 23, 1954, was in breach of the terms of the settlement and was therefore illegal. The tribunal further held that the strike was staged in hot-haste and no reasonable opportunity was given to the management to reply to the demands made before launching the strike. It also held that the trouble arose because of the election of

Shri Bari and the new office bearers. This matter was referred to the Registrar of Trade Unions and he held that the meeting at which Shri Bari and the new office bearers were elected was irregular and in consequence the old office bearers of the union continued to remain validly elected executives of the union. This decision was given on February 22, 1954, and the strike was launched on February 23 immediately thereafter. The tribunal was not sure whether this decision had been communicated to Shri Bari before the strike was launched; but in any case it was of the opinion that there was no reason to stage the strike in such hot-haste after the settlement of February 18, 1954. Having thus held that the strike was illegal and there was no reason why it should have been launched in such hot-haste, the tribunal went on to consider the case of these sixty workmen who were dismissed. It held that no charge of violence was brought home to these workmen and even the charge-sheets which were originally issued to the workmen did not contain any charge of violence. The tribunal then divided the sixty workmen into three batches of 47, 11 and 2. In the case of 47 workmen, it held that they must be assumed to have been served with chargesheets as they refused to accept them and that proper inquiry was held into the charges, though in their absence. In the case of 11 workmen, it was of opinion that charge sheets had not been served on them and therefore any inquiry held in their absence was of no avail. In the case of two workmen, it held that no attempt was made to serve any charge-sheet on them. Further, it set aside the order of dismissal with respect to 13 of the workmen on the ground that they were either not served with any charge-sheet or no charge-sheet was issued to them; as for the remaining 47, though it found that charge-sheets had been issued to them and they had refused to accept them and proper inquiry had been held in their case, it set aside the order of dismissal on the ground that they had not been shown to have taken part in violence and there were extenuating circumstances in their case inasmuch as they were misled to join the strike in order to oust the old office

1960

Bata Shoe Co. (P) Ltd.
v.
Ganguly

Wanchoo J.

bearers of the union so that others might be elected in their place. It further pointed out that though a much larger number of workmen had taken part in the illegal strike and the union took up their case, only these sixty were eventually dismissed while the rest were reinstated. It was of the view that there was no reason for the appellant to make any distinction between these workmen and the others who were reinstated. It therefore ordered reinstatement of these 47 workmen also. Finally, it held that the workmen were sufficiently penalised, they being out of employment from March 1954 to February 1959 when it made the award and that there was no reason in the cricumstances to maintain their dismissal. It awarded 50% of the back basic wages to the two workmen in whose case charge-sheets were not even issued and 25 per cent of the back basic wages to the 11 workmen who were not served with charge-sheets; no back wages were allowed to the forty-seven workmen who had refused to accept the charge-sheets sent to them.

Three points have been raised on behalf of the appellant before us; namely, (i) as a settlement had been arrived at during the course of conciliation proceedings on September 2, 1954, which specifically dealt with the case of these sixty workmen, the references were incompetent; (ii) the references were incompetent because what was referred was not an industrial dispute but a dispute between the employer and its individual workman; and (iii) the tribunal's order of reinstatement was in any case unjustified.

Re. (*i*).

It appears that after the dismissal of a large number of workmen consequent on the illegal strike that took place on February 23, 1954, there were conciliation proceedings before the Labour Commissioner, Bihar, with respect to these dismissals and other matters. These conciliation proceedings appear to have begun some time before May 1, 1954, for we find that on that day the Labour Commissioner wrote to the appellant that its objection that conciliation proceedings were illegal and without jurisdiction was baseless. It seems

1960

Bata Shoe Co. (P) Ltd. v. Ganguly

Wanchoo J.

that efforts at conciliation continued right up to the end of August 1954, for we find another letter of August 31, 1954, from the Labour Commissioner to the appellant saying that he had heard that mutual negotiations were going on between the appellant and its workmen for the settlement of their dispute and September 2 had been fixed for that purpose. The Labour Commissioner therefore gave notice to the appellant that he would hold conciliation proceedings on September 3 at 3 p.m. in his office in case the disputes were not mutually settled before that date. It seems that an agreement was arrived at between the appellant and the union on September 2. In this agreement it was noted that 76 dismissed workmen had already been employed; it was further provided that 110 workmen would also be employed in the same manner as the seventy-six. Further 31 dismissed workmen were to remain dismissed and would not be considered for further employment or for any other benefit. 30 other dismissed workmen would for the time being remain dismissed and it would be decided later on between the union and the appellant whether their dismissal should be confirmed like those of 31 mentioned above or whether they should be given the option to wait for employment as and when vacancies arose or should be treated as retired on the date of dismissal in order to enable them to receive the benefits of gratuity and refund of provident fund. It may be added that the present references are with respect to sixty workmen out of these sixty-one. It seems that the Labour Commissioner was apprised of this settlement. Consequently he wrote on September 3, 1954, to the appellant that the conciliation proceedings proposed to be held on that date were cancelled. The Labour Commissioner further pointed out that the union was opposing reinstatement of certain workmen; he therefore proposed to hold further conciliation proceedings in the case of such workmen on September 6, 1954, at 3 p.m. before making his final recommendations to government in this matter. The appellant protested to the Labour Commissioner

1960

Bata Shoe Co. (P) Ltd. v. *Ganguly*

Wanchoo J.

against the holding of any further conciliation proceedings after the agreement of September 2 and apparently did not attend the meeting fixed for September 6. Nothing further therefore seems to have taken place in the conciliation proceedings. Presumably the Labour Commissioner must have reported thereafter to the government under s. 12(4) of the Industrial Disputes Act, No. XIV of 1947 (hereinafter called the Act). Then followed the two references by the government; the first on October 8, 1954, relating to 31 workmen and the other on January 15, 1955, relating to 29 workmen.

On these facts the contention on behalf of the appellant is that the references were incompetent because of the agreement made on September 2, 1954. Reliance in this connection is placed on ss. 18 and 19 of the Act, as they were at the relevant time. Sec. 18 provided that a settlement arrived at in the course of conciliation proceedings would be binding on all parties to the industrial dispute and others indicated therein and s. 19 provided that such settlement would come into force on such date as was agreed upon between the parties and if no date was agreed upon then on the date on which the memorandum of the settlement was signed by the parties. Such settlement would be binding for such period as was agreed upon by the parties and if no such period was agreed upon, for a period of six months and would continue to be binding upon the parties thereafter until the expiry of two months from the date on which a notice in writing to terminate the settlement was given by one of the parties to the other party or parties to the settlement. The contention on behalf of the appellant is that the agreement of September 2, 1954, arrived at during the course of conciliation proceedings between the appellant and the union was binding on all workmen and therefore it was not open to the government to make these references within six months of it.

The question thus posed raises the question as to what is meant by the words "in the course of conciliation proceedings" appearing in s. 18 of the Act. One thing is clear that these words refer to the duration

when the conciliation proceedings are pending and it may be accepted that the conciliation proceedings with respect to these dismissals, which began sometime before May 1, 1954, were certainly pending upto September 6, 1954, and may be a little later, as is clear from the two letters of the Labour Commissioner. But do these words mean that any agreement arrived at between the parties during this period would be binding under s. 18 of the Act? Or do they mean that a settlement arrived at in the course of conciliation procedings postulates that that settlement should have been arrived at between the parties with the concurrence of the conciliation officer? As we read this provision we feel that the legislature when it made a settlement reached during the course of conciliation proceedings binding not only on the parties thereto but also on all present and future workmen intended that such settlement was arrived at with the assistance of the conciliation officer and was considered by him to be reasonable and therefore had his concurrence. Sec. 12 of the Act prescribes duties of the conciliation officer and provides that the conciliation officer shall for the purpose of bringing about settlement of the dispute without delay investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he may think fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute: (*vide* s. 12(2)). Then comes s. 12(3), which provides, "If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings the conciliation officer shall send a report thereof to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute".

Reading these two provisions along with s. 18 of the Act, it seems to us clear beyond doubt that a settlement which is made binding under s. 18 on the ground that it is arrived at in the course of conciliation proceedings is a settlement arrived at with the assistance and concurrence of the conciliation officer, for it is the duty of the conciliation officer to promote

1960

Bata Shoe Co. (P) Ltd.
v.
Ganguly

Wanchoo J.

a right settlement and to do everything he can to induce the parties to come to a fair and amicable settlement of the dispute. It is only such a settlement which is arrived at while conciliation proceedings are pending that can be binding under s. 18. In the present case it is obvious that the Labour Commissioner took no steps to promote the actual agreement which was arrived at between the appellant and the union on September 2. The letter of August 31 made it clear that the Labour Commissioner would take action under s. 12(2) on September 3 if no mutual agreement was arrived at between the appellant and the union. It seems that a mutual agreement was arrived at between the appellant and the union without the assistance of the Labour Commissioner and it did not receive his concurrence even later; on the contrary evidence shows that the Labour Commissioner did not approve of the settlement which excluded the reinstatement of a large group of workmen and so he did not act under s. 12(3). In the circumstances such a mutual agreement could not be called a settlement arrived at in the course of conciliation proceedings even though it may be accepted that it was arrived at at a time when conciliation proceedings were pending. A settlement which can be said to be arrived at in the course of conciliation proceedings is not only to be arrived at during the time the conciliation proceedings are pending but also to be arrived at with the assistance of the conciliation officer and his concurrence; such a settlement would be reported to the appropriate government under s. 12(3). In the present case the agreement of September 2, 1954 was not arrived at with the assistance and concurrence of the conciliation officer, namely, the Labour Commissioner, which will be clear from his letter of September 3, 1954. In the circumstances it is not a settlement which is binding under s. 18 of the Act and therefore will not bar a reference by the Government with respect to these sixty workmen.

Re (ii).

The next point that is urged is that it is not an industrial dispute but a dispute between the employer

and its individual workmen, even though their number may be large and therefore the Government had no jurisdiction to make the references. We are of opinion that there is no force in this contention. We have already set out the history of the conciliation proceedings in this case. It is obvious from the letter of the Labour Commissioner dated September 3, 1954, that he must have made a report to the Government under s. 12(4) and it must be on that report that these references must have been made under s. 12(5) read with s. 10(1). It is not in dispute that originally the case of dismissal of a much larger number of workmen was under consideration during the conciliation proceedings but on September 2, 1954, a mutual agreement was arrived at between the appellant and the union, which in a sense excluded the case of these sixty workmen. The Labour Commissioner apparently was not prepared to concur with this action of the parties as appears from his letter of September 3 and must therefore have made a report to the Government under s. 12(4) which was followed by references under s. 10. In the circumstances we fail to understand how what began as an industrial dispute and was sponsored by the union, related to the dismissal of a much larger number of workmen (including these sixty) and as such became the subject-matter of conciliation proceedings under s. 12(1) would turn into an individual dispute because a mutual agreement was arrived at between the appellant and the union with which the Labour Commissioner was not in entire agreement and in consequence of which he apparently made a report to the Government under s. 12(4) which was followed by the two references under s. 10(1). In these circumstances we are satisfied that the references are not bad on the ground that an individual dispute had been referred to the tribunal for adjudication.

Re (iii)

We now come to the merits of the case. We shall deal with the sixty workmen in three batches in the same manner as the tribunal did. We shall first take the case of 47 workmen. In the case of these workmen, the tribunal held that they were guilty of

1960

Bata Shoe Co. (P) Ltd.
v.
Ganguly

Wanchoo J.

taking part in an illegal strike and that there was no reason for staging such an illegal strike in hot haste. It also held that they were sent charge-sheets which they refused to take. The Standing Orders provide that a workman who refuses to accept a charge-sheet or to submit an explanation on being charged with an offence will be deemed to have admitted the charge against him. It also provides that a workman who refuses to accept any communication addressed to him by the company will be liable to disciplinary action for insubordination. The tribunal also held that in the case of these workmen, a proper inquiry was held, though in the circumstances in their absence. It further held that such misconduct as merited dismissal under the Standing Orders was committed by these 47 workmen. On these findings we should have thought that the tribunal would not have interfered with the order of dismissal, for the case would be clearly covered by the principles governing the limits of the tribunal's power of interference with the findings of the managerial inquiry laid down by this Court in *Indian Iron and Steel Co. Ltd. and another* v. *Their Workmen* (1). Learned counsel for the respondent-workmen in this connection relies on *Indian General Navigation and Railway Co. Ltd.* v. *Their Workmen* (2). In that case it was laid down that—

> "to determine the question of punishment, a clear distinction has to be made between those workmen who not only joined in such a strike but also took part in obstructing the loyal workmen from carrying on their work, or took part in violent demonstrations, or acted in defiance of law and order, on the one hand and those workmen who were more or less silent participators in such a strike on the other hand."

These observations have however to be read in the context of that case, which was (i) that it was not shown in that case that an employee merely taking part in an illegal strike was liable to be punished with dismissal under the Standing Orders and (ii) that there was no

(1) [1958] S.C.R. 667. (2) [1960] 2 S.C.R. 1.

1960

Bata Shoe Co. (P) Ltd. v. Ganguly

Wanchoo J.

proper managerial inquiry. In these circumstances the quantum of punishment was also within the jurisdiction of the industrial tribunal. In the present case, however, the finding of the tribunal is that there was misconduct which merited dismissal under the Standing Orders and that the managerial inquiry was proper. In these circumstances those observations torn from their context cannot be applied to the facts of this case. The reasoning of the tribunal therefore that as these 47 workmen had not taken part in violence the appellant was not justified in dismissing them cannot be accepted on the facts of this case. The other reason given by the tribunal for setting aside the dismissal is that the appellant had taken back a large number of other employees who had taken similar part in the illegal strike and had absented themselves and there was no reason to discriminate between those employees and these 47 workmen. It is clear from the award of the tribunal that no discrimination was made when taking back the workmen on the ground that these workmen supported Shri Bari, for the award shows that a number of other workmen who supported Shri Bari were taken back. Reliance in this connection is placed on *Messrs. Burn and Co. Ltd.* v. *Their Workmen* (1), where, it was observed when dealing with the workmen involved in that case that it could not be said that mere participation in the illegal strike would justify the suspension or dismissal particularly when no clear distinction could be made between those persons and the very large number of workmen who had been taken back into service although they had participated in the strike. There is no doubt that if an employer makes an unreasonable discrimination in the matter of taking back employees there may in certain circumstances be reason for the industrial tribunal to interfere; but the circumstances of each case have to be examined before the tribunal can interfere with the order of the employer in a properly held managerial inquiry on the ground of discrimination. In *Burn & Co.'s case* (1) there was apparently no reason whatsoever for

(1) A.I.R. 1959 S.C. 529.

1960

Bata Shoe Co. (P) Ltd. v. Ganguly

Wanchoo J.

making the discrimination. In the present case, however, the circumstances are different. It is not the appellant which has made the discrimination; in the present case so far as the appellant is concerned it was prepared to take back even those who supported Shri Bari and did actually take back a large number of such workmen. The genesis of the trouble in this case was a dispute within the union itself which led to the illegal strike, the history of which we have already given. The mutual agreement of September 2, 1954, shows that the union which represented the workmen was not agreeable that sixty-one workmen should be taken back and these forty-seven workmen are out of these sixty-one. The appellant in this case was therefore placed in the position that it had to choose between the large majority of workmen and sixty-one workmen whom the union did not want to be taken back. It was in these circumstances that the appellant did not take back those sixty-one workmen out of whom are these forty-seven. The charge of discrimination therefore cannot be properly laid at the door of the appellant in this case and if there is anybody to blame for it it is the union. In these circumstances when the managerial inquiry was held to be proper and the misconduct committed is such as to deserve dismissal under the Standing Orders, there was no reason for the tribunal to interfere with the order of dismissal passed by the appellant in the case of these forty-seven workmen. It may be that participation in an illegal strike may not necessarily and in every case be punished with dismissal; but where an inquiry has been properly held and the employer has imposed the punishment of dismissal on the employee who has been guilty of the misconduct of joining the illegal strike, the tribunal should not interfere unless it finds unfair labour practice or victimisation against the employee.

Then we come to the case of two workmen to whom no charge-sheets were given at all. They are Jagdish Lal (respondent 31) and L. Choudhary (respondent 60). It is not in dispute that no charge-sheets were issued to these workmen. The appellant

however contends that under the Standing Orders it was not necessary to issue any charge-sheet to them. The Standing Orders provide that—

> "any workman charged with an offence under these Orders, except in cases of lateness and absenteeism, shall receive a copy of such charge but in all cases will be given an opportunity of offering his explanation before any decision is arrived at."

It is said that the charge against these two workmen was only for absenting themselves; it was not therefore necessary to frame any charge-sheet against them. This is not quite correct so far as Jagdish Lal in concerned as will appear from the letter of dismissal sent to him; but assuming it to be so, Standing Orders provide that though the charge-sheet may not be given no action can be taken against a workman for any misconduct unless he is given an opportunity of offering his explanation before any decision is arrived at. There is no proof in this case that any opportunity was given to these two workmen of offering their explanation before the decision of dismissal was arrived at in their case. In these circumstances even though no charge-sheet might have been necessary in the case of these two workmen their dismissal was against the provision of the Standing Orders, for no explanation was taken from them before arriving at the decision to dismiss them. The order of the tribunal with respect to these two workmen must be upheld.

This brings us to the case of eleven workmen who are: Mohd. Mansoor (respondent 6), Ram Kuber Das (respondent 9), Ramasis (respondent 15), Mohd. Zafir (respondent 19), Mohd. Islam (respondent 20), Mohd. Zafir (respondent 22), Rajeshwar Prasad (respondent 26), Chirkut (respondent 27), Lal Das (respondent 43), Inderdip (respondent 47) and Mohd. Nazir (respondent 58). In their case the tribunal held that though charge-sheets were issued to them, they could not be served and the inquiry took place without their knowing anything about the charges or the date of the inquiry. In those circumstances the tribunal held

1960

Bata Shoe Co. (P) Ltd. v. *Ganguly*

Wanchoo J.

that the inquiry was no inquiry and therefore ordered their reinstatement. It is contended on behalf of the appellant that the case of these eleven workmen is similar to the case of forty-seven who refused to take the charge-sheets sent to them by registered post. In any case it is urged that the charge-sheets were notified on the notice board and notices were issued in the newspapers and that should be deemed sufficient service of the charge-sheets on them. In this connection reliance was placed on *Mckenzie & Co. Ltd.* v. *Its Workmen*(1). In that case the Standing Orders provided that notice would be served on a workman by communicating the same orally to the workman concerned and/or by affixing the same on the company's notice-board and the company had acted in conformity with the Standing Orders by affixing the notices on its notice-board. It was found in that case that the company first sent notices by registered post acknowledgement due to the workmen concerned. When some of the notices came back unserved the company wrote to the secretary of the union asking for the addresses of the workmen but the secretary gave no reply to the letter. It was then that the company affixed the notices on the notice-board both inside and outside the mill-gate. In those circumstances it was held that the company did all that it could under the Standing Orders to serve the workmen and the affixing of the notices on the notice-board was sufficient service.

The facts in the present case however are different. All that the Standing Orders provide is that the workmen charged with an offence shall receive a copy of such charge. It is also provided that a workman who refuses to accept the charge-sheet shall be deemed to have admitted the charge made against him. There is no provision in the Standing Orders for affixing such charge-sheets on the notice-board of the company. The charge-sheets in this case were sent to the eleven workmen by registered post and returned unserved, because they were not found in their villages. On the same day on which the charge-sheets were sent by registered post it appears that notices were

(1) [1959] Suppl. 1 S.C.R. 222.

issued in certain newspapers to the effect that a group of workmen under a common understanding had engaged in an illegal strike from February 23, 1954, and that all such workmen were liable to strong disciplinary action and that in consequence they had been charged under the Standing Orders and Rules of the company and such charge-sheets had been sent to them individually by registered post acknowledgement due and had also been displayed on the notice-boards inside and outside the factory gate and they were required to submit the explanations by March 9, 1954. These notices did not contain the names of the workmen to whom charge-sheets were sent and in whose case charge-sheets were displayed on the notice-boards. In the circumstances it can hardly be said that these eleven workmen would have notice that they were among those to whom charge-sheets had been sent or about whom charge-sheets had been displayed on the notice-boards. The proper course in our view was when the registered notices came back unserved in the case of these eleven workmen to publish notices in their names in some newspaper in the regional language with a wide circulation in Bihar along with the charges framed against them. It would have been a different matter if the Standing Orders had provided for service of charge-sheets through their display on the notice-boards of the appellant. In the absence of such provision, the proper course to take was what we have mentioned above. If that course had been taken, the appellant would have been justified in saying that it did all that it could to serve the workmen; but as that was not done, we agree with the tribunal that these eleven workmen had no notice of the charges against them and the date by which they had to submit their explanations as well as the date of inquiry. In these circumstances the order of the tribunal with respect to these eleven workmen must also be upheld.

We therefore allow the appeal so far as the first group of forty-seven workmen are concerned and set aside the order of the tribunal reinstating them. We dismiss the appeals so far as the remaining thirteen

are concerned, namely, Jagdish Lal (respondent 31), L. Choudhary (respondent 60), Mohd. Mansoor (respondent 6), Ram Kuber Das (respondent 9), Ramasis (respondent 15), Mohd. Zafir (respondent 19), Mohd. Islam (respondent 20), Mohd. Zafir (respondent 22), Rajeshwar Prasad (respondent 26), Chirkut (respondent 27), Lal Das (respondent 43), Inderdip (respondent 47) and Mohd. Nazir (respondent 58) and confirm the order of the tribunal with respect to them. In the circumstances the parties will bear their own costs of this Court.

Appeal partly allowed.

1960
December 16.

SARJOO PRASAD
v.
THE STATE OF UTTAR PRADESH

(J. L. KAPUR, M. HIDAYATULLAH and J. C. SHAH JJ.)

Food Adulteration—Sale of adulterated oil by servant—Servant, whether liable—Mens rea, if necessary—Second offence—Sentence, lesser than minimum prescribed when can be given—Prevention of Food Adulteration Act, 1954 (37 of 1954) ss. 7, 16.

The appellant was an employee of one T, a vendor of edible oils. He was found to have sold adulterated mustard oil and he and T were prosecuted for an offence under s. 7 read with s. 16 of the Prevention of Food Adulteration Act, 1954. Both were found guilty; T was sentenced to pay a fine of Rs. 200, but in view of a previous conviction the appellant was sentenced to one year's rigorous imprisonment and Rs. 2,000 fine, the minimum prescribed by s. 16(ii). The appellant contended: (i) that a servant who sold food on behalf of his employer was not liable unless it was known that he had done so with the knowledge that the food was adulterated, and (ii) that there were special and adequate reasons justifying the imposition of a penalty less than the minimum prescribed for a second offence.

Held, that s. 7 of the Act enjoins everyone, whether an employer or a servant, not to sell adulterated food, and anyone who contravenes this provision is punishable under s. 16 without proof of *mens rea*.