

Cri. Appeal No. 572/34

In His Majesty's High Court of Judicature,
Appellate Side, Bombay.

CRIMINAL JURISDICTION.

APPEAL No. 592 OF 1934 (BY THE GOVERNMENT OF BOMBAY).

IMPERATOR

versus

A. A. Alwe, No. 1; V. B. Karnik, No. 2; Miss Maniben Kara,
No. 3; B. T. Randive, No. 4; Abdul Majid, No. 5; K. N.
Joglekar, No. 6; R. S. Nimbkar, No. 7; and S. C. Mahapankar,
No. 8.

Offence—Under the Trade Disputes Act VII of 1929—Sections 16 and 17.

Order—Acquitted.

Date of Order—23rd October 1934.

Court—Sir H. P. Dastur, Kt., Chief Presidency Magistrate, Bombay.

Previous Order of the High Court (Coram : Beaumont C. J. and N. J. Wadia J.)—
Admit. 8th January 1935.

CRIMINAL DEPARTMENT

The Government of Bombay

by report on...
sent. to...
...
I wd admit...
lyb

The advocate general
with
(by Advocate Mr. *the Govt. Pleader*)

dated the *21st* December 1934

Appeal against the *order passed*
Apply for revision of the *conviction recorded*

against and the sentence passed upon
by the Chief Presidency Magistrate,

on the
Bombay, on the *23rd* October
1934, acquitting the Respondents
(accused) of the offence under
§§ 16 & 17 of the Trades Disputes
Act *III* of 1929, pray for setting
aside the order of acquittal and
for an order to deal with the opponents
according to law

Criminal Appeal... No. *592* of 1934
(By the Govt. of Bombay)
Application for Revision No. of 193

lyb
8/1/35

ORDER BY THE COURT.

(Coram:—)

* Writ No. *33* } *11-1-35*
Notice G.P.P. 32
Notice No. *52/33*
Notice in Ver. to Nos. 2 to 7
Notice in Ver. also *to Nos. 1 & 8*
Received on the *21/12*
Registered on the *22/12*
Brought on in Court on the *22-2-35*

426
5-2-34
by Regr.
Notice to
Nos 1 & 8
609
22-2-35
by Regr.

Judgments recorded by the High Court in Criminal Appeal No. 592 of 1934 (By the Government of Bombay) in the case of Imp. vs. A.A. Alwe No.1 and 7 others.

The Advocate General with the Government Pleader for the Government of Bombay. Counsel Dr. Ambedkar and Messrs. S.C. Joshi and M.B. Samarth with Messrs. A.S. Asyekar and A.G. Kotwal for accused No.1.

Mr. M.H. Vakil with Mr. P.B. Gajendragadkar for the accused No.2

Messrs. M.H. Vakil and K.B. Sukhtankar for accused No.3.

Counsel Mr. Y.B. Rege with Mr. R.B. Godambe for accused Nos. 4 & 6.

Mr. M.H. Vakil with Mr. P.S. Joshi for accused No.5.

Mr. M.H. Vakil with Mr. K.N. Dharap for accused No.7.

Mr. S.G. Patwardhan for accused No.8.

Coram:- Beaumont, C.J. & N.J. Wadia, J.

28th August 1935.

Oral Judgment per Beaumont, C.J.

This is an appeal by the Government of Bombay against the acquittal of the accused by the Chief Presidency Magistrate. The accused were charged with committing an offence under section 17 of the Trade Disputes Act of 1929, in that they instigated and declared an illegal strike. The strike in question was a strike of the textile industry throughout the whole of India, and it was declared on the 23rd of April 1934 as a result of a resolution passed by a body called the All-India Textile Workers' Conference on the 28th of January 1934. The Conference was called by a body called the Bombay Girni Kamgar Union, in which all the accused were interested.

The Conference formulated 20 demands, which they proposed and hoped to secure as a result of the strike. The resolution of the Conference and the 20 demands are contained in Ex. A. Four of those demands, namely those numbered 3, 17, 19 and 20, were demands of a political character, which could only be granted by Government, or as a result of legislation.

Section 17 of the Trade Disputes Act provides that "if any person declares, instigates, incites others to take part in or otherwise acts in furtherance of, a strike or lock-out which is illegal under the provisions of section 16, he shall be punishable" as therein provided.

"Strike" is defined in section 2, sub-section (i) as meaning " a cessation of work by a body of persons employed in any trade or industry acting in combination, on a refusal under a common ~~under~~standing, of any number of persons who are or have been so employed to continue to work or to accept employment".

Section 16 defines a strike, which is illegal. A strike is illegal, which, under sub-section (a), "has any object other than the furtherance of a trade dispute within the trade or industry in which the strikers or employers locking out are engaged"; and, under sub-section (b), "is designed or calculated to inflict severe, general and prolonged hardship upon the community and thereby to compel the Government to take or abstain from taking any particular course of action".

The sub-sections are connected by the copulative "and", so that a strike rendered illegal is one which falls within the terms of both sub-sections. The class of strike, therefore, which is rendered illegal, is one, which has objects beyond the furtherance of a particular trade dispute, and which is designed or calculated to coerce Government by inflicting severe, general and prolonged hardship upon the community.

The Chief Presidency Magistrate held that, in this case, the conditions of sub-~~section~~ clause (a) were complied with, because the strike had objects other than the furtherance of a trade dispute within the textile trade; and, with that decision, I entirely agree. It was argued on behalf of the accused that, if the strike had both, - objects in furtherance of a trade dispute within the particular trade and other objects -, the sub-section did not apply. But, in my opinion, that is not the meaning of the sub-section. As the strike in this case had objects beyond the furtherance of the trade dispute in the particular trade, I think that ~~the~~ case fell within sub-section (a).

The real question is, whether the strike also fell within sub-section (b), and that sub-section presents certain difficulties of construction.

In the first place, x having regard to the General Clauses Act, I think the "Government" referred to in the section may be either the Government of India or the local Government, and the meaning of the expression "community" must depend on what Government is referred to. If the Government referred to be the Government of India, the "community" must mean the general public in British India. If, on the other hand, the Government referred to is the local Government, then the "community" would mean the general public in the territory over which the local Government exercises sway. Whether it would be sufficient to bring the case within the sub-section to prove that the general public in particular locality was subjected to severe, general and prolonged hardship, it is not necessary, in this case, to determine. At any rate, the "community" must, in my opinion, mean the general public as distinct from any section, and particularly as distinct from the persons engaged in the particular trade to which the strike relates.

The next question, which arises on the construction of the section, is as to the meaning of the words "designed or calculated". That the words were intended to bear distinct meanings, seems to me clear from the fact that sub-section (4) deals only with the word "calculated" and provides that a strike "shall not be deemed to be calculated to compel the Government unless such compulsion might ^{reasonably} be expected as a consequence thereof". As the words are connected by the disjunctive "or", it is sufficient to prove either design or calculation.

In my opinion, the word "designed" is equivalent to "planned". The section does not say by whom the design is to be formed; but, I take it, that it must be by the persons responsible for the strike. I think, therefore, that the Court has to determine whether the persons responsible for the strike designed or planned to inflict severe, general and prolonged hardship upon the community and thereby to compel the Government to take or abstain from taking any particular course of action. Difficulties ~~xx~~ may no doubt sometimes arise, because the persons responsible for a strike may not all have the same design or plan. Some of them may design that the strike should have objects which would render it illegal under section 16, whilst others may be in favour of confining the strike entirely to the furtherance of a particular trade dispute. But, whatever the difficulties may be, the Court has to determine what the design of those responsible for the strike was at the time when they instigated it or did the other acts specified in section 17.

On the other hand, the word "calculated" seems to me to be directed to probable consequences which may be expected to follow from the ~~strike~~^{strike}, apart from what was in the minds of those responsible. In order to show that the strike was calculated to have the effect referred to in sub-section (1) (b), I think the Court must hold,

having regard to the nature

having regard to the nature of the strike and the circumstances prevailing at the date of the instigation or other acts specified in section 17 that the natural and probable consequences of the strike will be to inflict such severe, general and prolonged hardship upon the community that either the Government of India or the local Government may reasonably be expected in consequence thereof to be compelled to take or abstain from taking any particular course of action.

The Chief Presidency Magistrate held that all the accused, ~~except~~ accused No.8, instigated this strike, and I see no reason to differ from him in that finding. But he held that, although the strike fell within subsection 1(a) of section 16, it was not proved that it was designed or calculated to inflict severe, general and prolonged hardship upon the community as distinct from those engaged in the textile industry; and the question in this appeal really is, whether that part of the decision is right.

The Advocate General relies mainly on the word "designed". His argument is that the accused are intelligent and sincere labour leaders, that the objects of the strike included obtaining political concessions from Government which the accused, if they were really in earnest, must have intended to compel Government to grant, that the only possible means of compulsion would be by the infliction of severe, general and prolonged hardship upon the community, and that we ought to hold, therefore, that that was the design of the accused.

It is true that the accused in their speeches and also in their statements to the Court attached great importance to, - what I may call--, the political part of their demands, and further, expressed the belief that the strike would have serious consequences. Some of the accused, particularly accused Nos.2,5 and 6, expressed

in some of their speeches the hope and belief that other industries would join in the strike. But there is no evidence that any attempt was made to induce other industries to join in the strike. It is true ~~th~~ also that one cannot divide the community into water-tight economical departments, and that severe loss suffered by those engaged in the textile trade would be bound to occasion loss, direct or indirect, to persons engaged in other industries. But, pecuniary losses occasioned to individuals or industries cannot be said to amount to severe, general and prolonged hardship to the community. In my opinion, in the absence of any evidence of any attempt to induce those engaged in other industries to take part in the strike, we cannot say that the accused designed or planned to inflict severe, general and prolonged hardship upon the community. They may have thought that, if they could organize a general and prolonged strike in the textile industry, Government would be likely to grant some of their ~~extra~~ demands in order to save the industry from ruin and in order to avoid loss of revenue. The accused, I think, can hardly have supposed that their more extreme demands would be likely to be granted by Government, whatever the result of the strike.

In my view, therefore, the evidence is not sufficient to show that the accused designed to bring compulsion to bear on Government by inflicting, upon the community, severe, general and prolonged hardship. Nor, in my opinion, can it be said on the evidence that the strike was calculated to produce such a result. The textile industry is not an industry, like the transport industry, in which one might say, from the nature of the case, that any prolonged stoppage would be bound to occasion severe hardship to the community. There is no evidence at all as to the position which the textile

trade occupies in the general economic life of the country. There is no evidence as to what the probable effect of a prolonged stoppage in that trade would be on the price of clothing, or on the price obtainable for cotton grown in India. There is really no evidence, which would justify us in holding that a strike in the textile trade, however prolonged, would necessarily or probably cause severe, general and prolonged hardship to the community as opposed to those engaged in the textile trade.

That being so, I think the decision of the learned Chief Presidency Magistrate was right, and the appeal must be dismissed.

Per N.J.Wadia, J.

The facts in this appeal are not disputed. All the 8 accused were members of the Council of Action appointed at the Conference of All-India Textile Workers held in Bombay on the 28th of January 1934 and of the Joint Strike Committee, which was subsequently appointed. The strike, which began in Bombay on the 24th of April 1934, was in pursuance of a resolution moved by accused No.7 (Nimbkar) and passed by the Conference to organize an All-India Textile Strike. Within the first seven days of the strike, 38 out of the 52 mills in Bombay had to be closed and about 80,000 men employed in the mill industry in Bombay went out. The strike ended on the 23rd of June.

Under section 16(1) of the Trade Disputes Act, 1929, a strike is illegal if it has any object other than the furtherance of a trade dispute within the trade or industry in which the strikers are engaged, and is designed or calculated to inflict severe, general and prolonged hardship upon the community and thereby to compel the Government to take or abstain from taking any particular course of action.

It is not denied by the prosecution that in this case there was a genuine trade dispute in the

textile industry in Bombay in connection with the wage cut, the rationalisation scheme and unemployment benefits. Sixteen out of the 20 demands put forward by the strikers related to this dispute. With regard to the other four demands, namely, (3) unemployment benefit and maternity insurance at the expense of Government and owners; (17) right of organisation, speech, assembly, etc; (19) trade union legislation and right of trade union organisation within Native States; and (20) withdrawal of all repressive laws and ~~xxx~~ anti-working class legislation and release of all political prisoners, there can ~~be~~ in my ~~an~~ opinion be no doubt that these demands were not in furtherance of a trade dispute within the textile industry, that is, a dispute between employers and workmen, or ~~between~~ between workmen and workmen, which was connected with the employment or non-employment or the terms of employment, or with the conditions of labour, of persons in the textile industry.

The question of the grant of unemployment benefits by Government from public funds could ~~not~~ be a matter of dispute between mill-workers and employers, and trade union legislation in the Indian States is a question entirely beyond the control of employers or even of Governments in British India.

It is argued, however, that these four ~~of~~ demands were included in the resolution and in the ~~the~~ speeches of the accused and in the letter sent to the Home Member on the 9th of May 1934 only as part of the general demands of textile workers, and as mere labour propaganda, and were not meant to be regarded as equally important with the other 16 or as the irreducible minimum. In support of this, we have been referred to the evidence of Mr. Joshi, a member of the Girni Kamgar Union and one of the Joint Secretaries of the Joint Strike Committee, that the Joint Strike Committee was

prepared to call off the strike if 60 per cent. of the dear food allowance were restored and the trade unions recognized by the Millowners' Association, and that the 20 demands were merely matter of labour propaganda and many of them had nothing to do with the strike. This statement, however, is not borne out by other evidence. In fact, it is contradicted by the speeches and statements made by 7 out of the 8 accused. From these speeches and statements it is clear that the four demands, which admittedly were not directly connected with any trade dispute, were considered as important as any of the other 16, and it was the clear intention of those responsible for the strike that it should not be called off until all the 20 demands were granted. The view of the learned Magistrate, therefore, that these four objects of the strike were not in furtherance of a trade dispute within the textile trade, must be considered as correct.

The next question is, whether the strike was designed or calculated to inflict severe, general and prolonged hardship upon the community as a whole, and thereby to compel Government to take or abstain from taking any particular course of action.

The strike lasted two months. Evidence has been led to show that it caused a considerable loss to the mill industry; but there is no evidence to show that the public as a whole, other than that section of it which was concerned with the mill industry, suffered hardship or inconvenience which could properly be called severe and prolonged.

It is argued by the prosecution that the word "designed" in section 16 means no more than "intended" ^{or} "planned", and that the question must be judged not by the actual results of the strike but by what the accused and those who were prime movers in it intended it to produce.

I am not prepared to say that the word "designed" in the section means ~~it~~ no more than "intended" or "planned". If it did, a strike in some very minor industry, which could not by any possibility cause any serious hardship to anybody outside that particular industry, could be brought within the scope of this section, if the promoters of it, out of some exaggerated notion of their own importance or for purposes of propaganda, announced their intention or hope that the strike would seriously inconvenience the whole community. Where no actual hardship of the nature referred to in the section has been caused, it must, I think, be shown that the nature of the strike or the means which those responsible for it took to start or continue it were such that severe, general and prolonged hardship to the community as a whole must reasonably be expected.

In the present case, it seems to me that the evidence is not sufficient to show that such severe, general and prolonged hardship to the community as a whole was either intended, so far as the intentions of the accused can be gathered from their speeches and acts, or was likely in the natural course of things to result. Although some of the accused in their speeches referred to the possibility or desirability of workers in other industries joining the strike, no actual attempt is proved to have been made by any of them, at any time before or during the continuance of the strike, to bring about a sympathetic general strike in other industries, and no such sympathetic strike actually occurred in any industry.

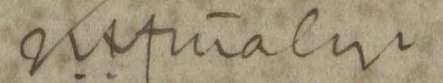
The learned Magistrate has held, and, I think, rightly-, that the accused intended the struggle to be a long and severe one and that the strike was calculated to cause severe and prolonged hardship to those concerned in the mill industry.

From the fact that the accused had deliberately included the four ~~ix~~ more or less political demands among their declared objects, - demands which they knew could only be obtained from Government and not from the millowners -, it must, I think, be presumed that the accused hoped and intended that, as a result of the hardship which the strike would cause to the mill industry, they would be able to force Government to concede some ~~xxxx~~ or all of the four demands. But the mere ~~fact~~ fact that they hoped to bring pressure upon Government in this way, by inflicting hardship upon a very important industry, would not bring their actions within the purview of section 16(1)(b). The section requires that the intention must have been to bring pressure upon Government by causing severe, general and prolonged hardship to the community as a whole, not upon some particular section or sections of it.

In my opinion, the evidence in this case is not sufficient to show that the strike was designed or calculated to cause hardship to persons other than those concerned in the mill industry. On that view, the strike cannot be considered illegal within the meaning of section 16.

The acquittal of the accused was therefore correct, and the appeal must fail.

By the Court,


Ag. Deputy Registrar.

G.P.—J 189—2000—8-29—P8

[Spl.—H.C. A.S. Civil 56

J.D., No. 4398 dated 3-7-16

APPEAL No. 592 OF 1934 ~~FROM~~ ^{ORIGINAL} ~~DECREE~~ _{APPELLATE}
(By the Govt. of Bombay).

Date of decision. 28th August 1935.

4-5-34

For Approval and Signature.

The Hon'ble the CHIEF Justice *WNS*

The Hon'ble Mr. Justice N. J. WADIA. *WNS*

Whether Reporters of Local Papers may be allowed to see the judgment? *WNS*

To be referred to the Reporter or not? *WNS*

Whether their Lordships wish to see fair copy of the judgment? *WNS*

Wadia

29-8-35.

IN HIS MAJESTY'S HIGH COURT OF JUDICATURE,
APPELLATE SIDE, BOMBAY.

Criminal Appeal No. 592 of 1934 (By the
Government of Bombay).

IMPERATOR

versus

A. A. Alwe, No.1; V.B.Karnik, No.2;
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No.4; Abdul Majid, No.5; K.N.Joglekar
No.6; R.S.Nimbkar, No.7; and S.C.
Mahapankar, No. 8.

The Advocate General with the Government
Pleader for the Government of Bombay.

Counsel Dr. Ambedkar, and Messrs. S.C.
Joshi and M.B.Samarth, with Messrs. A.S.
Asyekar and A.G.Kotwal for Accused No. 1.

Mr. M. H. Vakil with Mr. P. B. Gajendra-
gadkar for Accused No. 2.

Messrs. M. H. Vakil and K.B.Sukhtankar
for Accused No. 3.

Counsel Mr. Y.B.Rege with Mr. R.B.
Godambe for Accused Nos. 4 and 6.

Mr. M. H. Vakil with Mr. P.S.Joshi for
Accused No. 5.

Mr. M. H. Vakil with Mr. K. N. Dharap
for accused No. 7.

Mr. S. G. Patwardhan for Accused No. 8.

Coram: BEAUMONT, C.J., & N.J.WADIA, J.

28th August 1935.

Oral Judgment: (Per BEAUMONT, C.J.) - -

This is an appeal by the Government of Bombay against the acquittal of the accused by the Chief Presidency Magistrate. The accused were charged with committing an offence under Section 17 of the Trade Disputes Act of 1929, in that they instigated and declared an illegal strike. The strike in question was a strike of the textile industry throughout the whole of India, and it was declared on the 23rd of April 1934 as a result of a resolution passed by a body called the All-India Textile Workers' Conference on the 28th of January 1934. The Conference was called by a body called the Bombay Girni Kamgar Union, in which all the accused were interested.

The Conference formulated 20 demands, which they proposed and hoped to secure as a result of the strike. The resolution of the Conference and the 20 demands are contained in Ex. A. Four of those demands, namely those numbered 3, 17, 19 and 20, were demands of a political character, which could only be granted by Government, ~~in some~~

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Section 17 of the Trade Disputes Act provides that "if any person declares, instigates, incites others to take part in, or otherwise acts in furtherance of, a strike or lock-out which is illegal under the provisions of section 16, he shall be punishable" as therein provided.

"Strike" is defined in Section 2, sub-section (i) as meaning "a cessation of work by a body of persons employed in any trade or industry acting in combination, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment".

Section 16 defines a strike, which is illegal. A strike is illegal, which, under sub-section (a), "has any object other than the furtherance of a trade dispute within the trade or industry in which the strikers or employers locking out are

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engaged"; and, under sub-section (b), "is designed or calculated to inflict severe, general and prolonged hardship upon the community and thereby to compel the Government to take or abstain from taking any particular course of action".

The sub-sections are connected by the copulative "and", so that a strike rendered illegal is one which falls within the terms of both sub-sections. The class of strike, therefore, which is rendered illegal, is one, which has objects beyond the furtherance of a particular trade dispute, and which is designed or calculated to coerce Government by inflicting severe, general and prolonged hardship upon the community.

The Chief Presidency Magistrate held that, in this case, the conditions of sub-clause (a) were complied with, because the strike had objects other than the furtherance of a trade dispute within the textile ~~industry~~ trade; and, with that decision, I entirely agree. It was argued on behalf of the accused that, if the strike had both, -
objects

objects in furtherance of a trade dispute within the particular trade and other objects -, the ^{the} section did not apply. But, in my opinion, that is not the meaning of the ^{the} section. As the strike in this case had objects beyond the furtherance of the ~~trade dispute in the~~ particular trade, I think that the case fell within sub-section (a).

The real question is, whether the strike also fell within sub-section (b), and that sub-section presents certain difficulties of construction.

In the first place, having regard to the General Clauses Act, I think the "Government" referred to in the section may be either the Government of India or the local Government, and the meaning of the expression "community" must depend on what Government is referred to. If the Government referred to be the Government of India, the "community" must mean the general public in British India. If, on the other hand, the Government referred to is the

local Government, then the "community" would mean the general public ^{in the territory} over which the local Government exercises sway. _____

_____ Whether it would be sufficient to bring the case within the sub-section to prove that the general public in a particular locality was subjected to severe, general and prolonged hardship, it is not necessary, in this case, to determine. At any rate, the "community" ^{must,} in my opinion, mean the general public as distinct from any section, and particularly as distinct from the persons engaged in the particular trade to which the strike relates.

The next question, which arises on ~~the~~ the construction of the section, is as to the meaning of the words "designed or calculated". That the words were intended to bear distinct meanings, seems to me clear from the fact that sub-section (4) deals only with the word "calculated" and provides that a strike "shall not be deemed to be calculated to compel the Government unless

such compulsion might reasonably be expected as a consequence thereof". As the words are connected by the disjunctive "or", it is sufficient to prove either design or calculation.

In my opinion, the word "designed" is equivalent to "planned". The section does not say by whom the design is to be formed; but, I take it, that it must be by the persons responsible for the strike. I think, therefore, that the Court has to determine whether the persons responsible for the strike designed or planned to inflict severe, general and prolonged hardship upon the community and thereby to compel the Government to take or abstain from taking any particular course of action. Difficulties may no doubt sometimes arise, because the persons responsible for a strike may not all have the same design or plan. Some of them may design that the strike should have objects which would render it illegal under Section 16, whilst others may be in favour of confining the strike entirely to the furtherance of a particular trade dispute. But, whatever the difficulties

difficulties may be, the Court has to determine what the design of those responsible for the strike was at the time when they instigated it or did the other acts specified in Section 17.

On the other hand, the word "calculated" seems to me to be directed to probable consequences which may be expected to follow from the strike, apart from what was in the minds of those responsible. In order to show that the strike was calculated to have the effect referred to in sub-section (1) (b), I think the Court must hold, having regard to the nature of the strike and the circumstances prevailing at the date of the instigation or other acts specified in Section 17 that the natural and probable consequences of the strike will be to inflict such severe, general and prolonged hardship upon the community that either the Government of India or the local Government may reasonably be expected in consequence thereof to be compelled to take or abstain from taking any particular course of action.

The Chief Presidency Magistrate held

that

that all the accused, except accused No. 8, instigated this strike, and I see no reason to differ from him in that finding. But he held that, although the strike fell within subsection 1 (a) of Section 16, it was not proved that it was designed or calculated to inflict severe, general and prolonged hardship upon the community as distinct from those engaged in the textile industry; and the question in this appeal really is, whether that part of the decision is right.

The Advocate General relies mainly on the word "designed". His argument is that the accused are intelligent and sincere labour leaders, that the objects of the strike included obtaining political concessions from Government which the accused, if they were really in earnest, must have intended to compel Government to grant, that the only possible means of compulsion would be by the infliction of severe, general and prolonged hardship upon the community, and that we ought to hold, therefore, that that was the design of the accused.

It is true that the accused in their speeches and also in their statements to the Court attached great importance to, what I may call -, the political part of their demands, and further, expressed the belief that the strike would have serious consequences. Some of the accused, particularly accused Nos. 2, 5 and 6, expressed in some of their speeches the hope and belief that other industries would join in the strike. But there is no evidence that any attempt was made to induce other industries to join in the strike. It is ~~also~~ true also that one cannot divide the community into water-tight economical departments, and that severe loss suffered by those engaged in the textile trade would be bound to occasion loss, direct or indirect, to persons engaged in other industries. But, pecuniary losses occasioned to individuals or industries cannot be said to amount to severe, general and prolonged hardship to the community.

In my opinion, in the absence of any evidence of any attempt to induce those engaged in other industries to take part in the strike, we cannot say that the accused designed or planned to inflict severe, general and prolonged hardship upon the community. They may have thought that, if they could organize a general and prolonged strike in the ^{textile} ~~mill~~ industry, Government would be likely to grant some of their demands in order to save the industry from ruin and in order to avoid ~~the~~ loss of revenue. The accused ~~could~~, I think, ^{can} hardly have supposed that their ~~most~~ ^{are} extreme demands would be likely to be granted by Government, whatever the result of the strike.

In my view, therefore, the evidence is not sufficient to show that the accused designed to bring compulsion to bear on Government by inflicting, upon the community, severe, general and prolonged hardship. Nor, in my opinion, can it be

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said on evidence that the strike was
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~~or~~ hardship to the community. There is
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There is no evidence as to what the
probable effect of a prolonged stoppage
~~is~~
~~of~~ that trade would be on the price of
clothing, or on the price ~~which would be~~
obtainable for ~~the~~ cotton grown in India.
There is really no evidence, which would
justify us in holding that a strike in
the textile trade, however prolonged,
would necessarily or probably cause
severe, general and prolonged hardship
to the community as opposed to those
engaged in the textile trade.

That being so, I think the
decision of the learned Chief Presidency
Magistrate ^{is} ~~is~~ right, and the appeal must
be dismissed.

(Per N.J.WADIA, J.) --

Madigar
29-8-35.

(Per N. J. WADIA, J.) - -

The facts in this appeal are not disputed. All the 8 accused were members of the Council of Action appointed at the Conference of All-India Textile Workers held in Bombay on the 28th of January 1934 and of the ~~General~~ ^{Joint} Strike Committee, which was subsequently appointed. The strike, which began in Bombay on the 24th of April 1934, was in pursuance of a resolution moved by accused No. 7 (Nimbkar) and passed by the Conference to organize an All-India Textile Strike. Within the first seven days of the strike, 38 out of the 52 mills in Bombay had to be closed ~~on account of the strike~~, and about 80,000 men employed in the mill industry in Bombay went out. The strike ended on the 23rd of June.

Under Section 16 (1) of the Trade Disputes Act, 1929, a strike is illegal if it has any object other than the furtherance of a trade dispute within the trade or industry in which the strikers are engaged, and is

designed

designed or calculated to inflict severe, general and prolonged hardship upon the community and thereby to compel the Government to take or abstain from taking any particular course of action.

It is not denied by the prosecution that in this case there was a genuine trade dispute in the textile industry in Bombay in connection with the wage cut, ^{the} rationalisation scheme and unemployment benefits.)

Sixteen out of the 20 demands put forward by the strikers related to this dispute. With regard to the other four demands, namely, (3) unemployment benefit and maternity insurance at the expense of Government and owners; (17) right of organisation, speech, assembly, etc; (19) trade union legislation and right of trade union organisation within Native States; and (20) withdrawal of all repressive laws and anti-working class legislation and release of all political prisoners, there can in my opinion be no doubt that these ^{demands} ~~objects~~

were not in ~~the~~ furtherance of a trade dispute within the textile industry, that is, a dispute between employers and workmen, or between workmen and workmen, which ^{was} ~~is~~ connected with the employment or non-employment or the terms of ~~the~~ employment, or with the conditions of labour, of persons in the textile industry.

The question of the grant of unemployment benefits by Government from public funds could not be a matter of dispute between mill-workers and employers, and trade union legislation in the Indian States is a question entirely beyond the control of employers or even of Governments in British India.

It is argued, however, that these four demands were included in the resolution and in the speeches ^{of the accused} and ~~the~~ ^{in the} letter sent to the Home Member on the 9th of May 1934 ^{only} as part of the general demands of ~~the~~ textile workers, and as mere labour propaganda, and were not meant

to be regarded as equally important with the other 16 or as the irreducible minimum. In support of this, we have been referred to the evidence of Mr. Joshi, a member of the Girni Kamgar Union and one of the Joint Secretaries of the Joint Strike Committee, that the Joint Strike Committee was prepared to call off the strike if 60 per cent. of the dear food allowance were restored and the trade unions recognized by the Millowners' Association, and that the 20 demands were merely matter of labour propaganda and many of them had nothing to do with the strike. This statement, however, is not borne out ^{by other evidence,} In fact, it is contradicted by the speeches and statements made by 7 out of the 8 accused. From these speeches and statements it is clear that the four demands, which admittedly were not directly connected with any trade dispute, were considered as important as any of the other 16, and it was the clear intention of those responsible for the

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the strike that it should not be called off until all the 20 demands were granted. The view of the learned Magistrate, therefore, that these four objects of the strike were not in ~~the~~ furtherance of a trade dispute within the textile trade, must be considered as correct.

The next question is, whether the strike was designed or calculated to inflict severe, general and prolonged hardship upon the community as a whole, and thereby to compel Government to take or abstain from taking any particular course of action.

The strike lasted two months. Evidence has been led to show that it caused a considerable loss to the mill industry; but there is no evidence to show that the public as a whole, other than that section of it which was concerned with the mill industry, suffered hardship or inconvenience which could properly be called severe and prolonged.

It is argued by the prosecution that the word "designed" in Section 16 means no

more than "intended" or "planned", and that the question must be judged not by the actual results of the strike but by what the accused and those who were prime movers in ~~the strike~~ ^{it} intended it to produce.

I am not prepared to say that the word "designed" in the section means no more than "intended" or "planned". If it did, a strike in some very minor industry, which could not by any possibility ^{cause} ~~produce~~ any serious hardship to anybody outside that particular industry, could be brought within the scope of this section, if the promoters of it, out of some exaggerated notion of their own importance or for ~~the~~ purposes of propaganda, announced their intention or hope~~s~~ that the strike would seriously inconvenience the whole community. Where no actual hardship of the nature referred to in the section has been caused, it must, I think, be shown that the nature of the strike or the means which those responsible for it took to start or continue

it were such that severe, general and prolonged hardship ^{to} ~~upon~~ the community as a whole must reasonably be expected.

In the present case, it seems to me that the evidence is not sufficient to show that such severe, general and prolonged hardship to the community as a whole ~~was~~ either ~~was~~ intended, so far as ^{the} intentions ^{of the accused} can be gathered from ^{their} speeches and acts, or was likely in the natural course of things to result. Although some of the accused in their speeches referred to the possibility or desirability of workers in ~~the~~ other industries joining the strike, no actual attempt is proved to have been made by any of ^{them,} ~~the accused~~ either at any time before or during the continuance of the strike, to bring about a sympathetic general strike in other industries, and no such sympathetic strike actually occurred in any industry.

The learned Magistrate has held, - and, I think, rightly -, that the accused

intended the struggle to be a long and severe one and that the strike ^{was} calculated to cause severe and prolonged hardship to those concerned in the mill industry.

From the fact that the accused had deliberately included the four more or less political demands among their declared objects, - demands which they knew could only be obtained from Government and not from the millowners -, it must, I think, be presumed that the accused hoped and intended that, as a result of the hardship which the strike would cause to the mill industry, they would be able to force Government to concede some or all of the four demands. But the mere fact that they hoped to bring pressure upon Government in this way, by inflicting hardship upon a very important industry, would not bring their actions within the purview of Section 16 (1) (b). The section requires that the intention must have been to bring pressure upon Government by causing severe, general and prolonged

hardship to the community as a whole, not upon some particular section or sections of it.

In my opinion, the evidence in this case is not sufficient to show that the *strike was designed or calculated* ~~accused intended or planned~~ to cause hardship to persons other than those concerned in the mill industry. On that view, the strike cannot be considered illegal within the meaning of Section 16.

The acquittal of the accused was therefore correct, and the appeal must fail.

Madigan
30-8-35.

CHIEF PRESIDENCY MAGISTRATE'S OFFICE BOMBAY.
31 AUG. 1935
Inward No. 298-A
File No.

In His Majesty's High Court of Judicature,
Appellate Side, Bombay

APPEAL No. 592 OF 1934 (By the Government of Bombay)

No. 2208 of 1935

The 28th day of August 1935

To Chief Presidency Magistrate, Bombay.
THE ~~SESSIONS JUDGE~~ OF

Upon reading the WRIT issued by this COURT on the 8th day of

January 1935, No. 33 and the RETURN thereunto made by Sir H. P. Dastur, Knight, Chief Presidency Magistrate

Esquire, Sessions Judge of Bombay, dated the 13th day of

March 1935,

No. 4-H/25 in the case marginally noted, and upon reading the RECORD AND PROCEEDINGS in the case

and hearing ~~the~~ Advocate General with Mr. P. B. Shengne Government Pleader for the Government of Bombay and Counsel Dr. Ambedkar and Messrs. A. C. Joshi and K. B. Samarth with for the Appellant and Advocate Messrs. A. S. Asyekar Mr. and A. G. Kotwal for accused No. 1; Mr. M. H. Vakil with Mr. P. B. Gajendraogarkar for accused No. 2; Mr. M. H. Vakil with Mr. K. B. Subthankar for accused No. 3; Counsel Mr. Y. B. Regal with Mr. R. B. Godambe for accused with Mr. R. B. Godambe for

Names: A. A. Alwe, No. 1. V. B. Karnik, No. 2; Miss Maniben Kara, No. 3. B. J. Randive, No. 4; Abdul Majid, No. 5; K. N. Joglekar, No. 6; R. S. Nimbker, No. 7 and S. B. Mahapankar, No. 8.

Conviction
Offence: Under the Trade Disputes Act, VII of 1929 - Sections 16 and 17

Sentence
Order: Acquitted

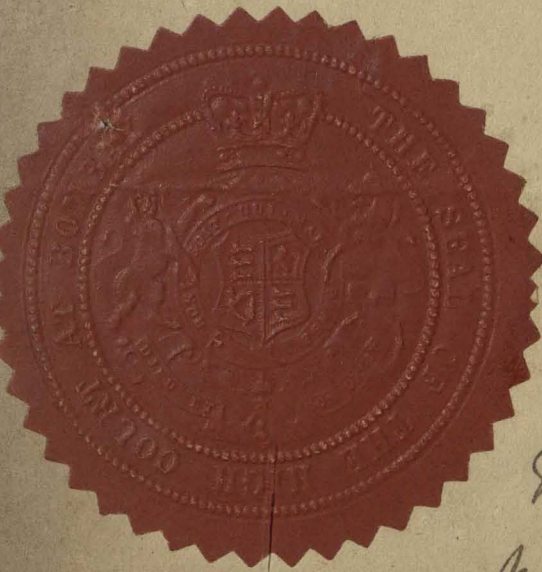
Order 23rd October 1934
Date of Sentence

Original Court Sir H. P. Dastur, Knight
Chief Presidency Magistrate,
Bombay.

No. 4 & 6, Mr. M. H. Vakil with Mr. P. S. Joshi for accused No. 5; Mr. M. H. Vakil with Mr. K. N. Dhanraj for accused No. 7 & Mr. S. G. Patil for accused No. 8
Government Pleader, for the Crown, the High Court passes the following

ORDER:— For the reasons given in the accompanying judgments, the Court confirms the order of acquittal of the Chief Presidency Magistrate, Bombay and dismisses the appeal.

will follow



By the Court,

[Signature]
Deputy Registrar.

[Signature]
Sealer.

The 30 day of August 1935

Despd. 30/8/1935

8 OCT 1935

No.298/H-25 of 1935.

Chief Presy. Magistrate's Court,
Bombay, 8th October 1935.

Duly noted and returned with compliments.

A. J. Basler

Chief Presidency Magistrate,
Bombay.

well



CRIMINAL JURISDICTION

Confirmation Case No. _____ of 193

Appeal No. 592 of 193 4

(By the Government of Bombay)

Reference No. _____ of 193

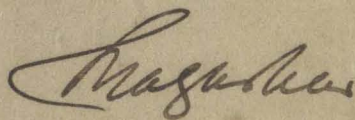
Review No. _____ of 193

Application for Revision No. _____ of 193

IMPERATOR vs. A. A. Alwe No 1 & others

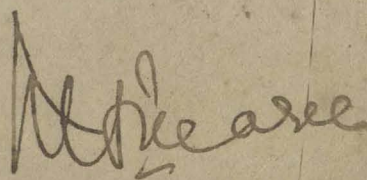
Decided on 28th August 1935

1. Placed in the Record Room, Shelf
No. _____, on the



Court Sheristedar.

2. Received and entered in the Catalogue
of Criminal Cases, Class



Record Keeper.

Bombay, 28/8/35

1936