(1957) 10 BOM CK 0018

Bombay High Court

Case No: Special Civil Application No. 1816 of 1957

Jairam Sonu		APPELLANT
	Vs	
New India Rayon Mill Co. Ltd.		RESPONDENT

Date of Decision: Oct. 30, 1957

Acts Referred:

- Bombay Industrial Relations Act, 1946 - Section 35, 36, 37, 38, 40
- Constitution of India, 1950 - Article 226, 227
- Industrial Disputes Act, 1947 - Section 2, 25B
- Payment of Wages Act, 1936 - Section 25C, 25F, 3

Citation: (1958) 60 BOMLR 539

Hon'ble Judges: Dixit, J; Badkas, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Dixit, J.
This Special Civil Application raises a short and interesting question u/s 25F of the Industrial Disputes Act, 1947. The facts of the ease, in which the question arises, are briefly these.

2. The petitioner was in service of the respondent company from January 1945 to the date of his retrenchment, which occurred on October 15, 1954. There is no dispute that the petitioner is a workman within the meaning of the Industrial Disputes Act, 1947. The respondent company is a factory and is responsible for the payment of wages to the petitioner u/s 3 of the Payment of Wages Act, 1936. While the petitioner was in service of the respondent company, the petitioner was given a notice on August 31, 1954, purporting to be a notice u/s 25F of the Act, informing the petitioner that the respondent company desired to close the department in which the petitioner was working; and that the services of the petitioner were proposed to be terminated with effect from October 1, 1954. Certain disputes

between the workmen of the respondent company and the company were, at the material time, pending before the Labour Appellate Tribunal; so the respondent company made an application u/s 22 of the Industrial Disputes (Appellate Tribunal) Act 1950, in order to obtain permission of the Tribunal for effecting the proposed retrenchment, as required by law. The learned members of the Tribunal granted the permission asked for; and the petitioner was retrenched with effect from October 15, 1954.

3. The petitioner, by his present application, then claimed an amount of Rs. 712-8-0, being the amount of compensation payable to him on the basis of 9 years and 10½ months of completed service, u/s 25F of the Act. The respondent company refused to pay the amount, but offered only a sum of Rs. 203 by way of retrenchment compensation. The petitioner, in his application before the Payment of Wages Authority at Bombay, claimed to recover a sum of Rs. 509-8-0, being the difference between the amount of compensation payable to him u/s 25F and the amount actually offered to the petitioner by the respondent company. The Authority under the Payment of Wages Act dismissed the petitioner''s application; and upon an appeal, made to the Court of Small Causes at Bombay, a learned Judge of that Court dismissed the petitioner''s application; and it is the correctness of this order, which Mr. Phadke, on behalf of the petitioner, has challenged on this petition under Article 227.

4. On this petition, two questions arise for decision. The first question is whether by reason of the petitioner having taken part in a strike between October 6, 1951,and November 24, 1951, the petitioner was not, during that period, in service of the respondent company; and the second question, which arises is, whether the petitioner is entitled to the amount of compensation claimed by him. In order to appreciate these two questions, it is necessary to mention some material facts. There is no dispute that the petitioner joined the service of the respondent company in January of 1945. There is also no dispute that the petitioner was retrenched with effect from October 15, 1954. There is again no dispute that there was a strike between October 6, 1951, and November 24, 1951. While, according to the petitioner, the strike was not illegal, according to the respondent company, the strike was illegal; and for the purposes of this case, I will assume that the strike was illegal. Moreover, learned Counsel, appearing for the petitioner, has proceeded upon the footing that the strike between these two dates was illegal. The learned Authority under the Payment of Wages Act took the view-and we think rightly-that assuming that the petitioner took part in the illegal strike between October 6, 1951, and November 24, 1951, there was no break in the service of the petitioner and the strike notwithstanding, the petitioner continued to be in the service of the respondent company. This view was repelled by the learned Judge of the Small Causes Court, who took the view that in view of the fact that the petitioner took part in an illegal strike, the petitioner was not in continuous service of the respondent company; and the first question, which we have to consider, is which of these two

views is right. Now, there can be, I think, no dispute about the fact that once an employee is in the service of a company, the employee would continue to be in service until he is dismissed or discharged. When a strike takes place and an employee takes part in an illegal strike, at the date when the strike takes place, the employee is in the service of the company, and unless an employee is in the service of the company, it is inconceivable that he will take part in a strike while he is not in the service of the company. Therefore, the petitioner was in service of the company between January 1945 and October, 1954, unless we agree with the view of the learned Judge of the Small Causes Court that between October 6, 1951, and November 24, 1951, the petitioner was not in service of the company, because he took part in an illegal strike. Now, the learned Judge, after quoting Section 2(eee) of the Act said in the course of his judgment:

It follows, therefore, that when a workman takes part in an illegal strike the ''continuity'' of his service comes to an end and he must be deemed to be re-employed after the period of the illegal strike for the purpose of retrenchment compensation

5. With respect, it is difficult to accept as sound this reasoning. Taking part in an illegal strike amounts to misconduct on the part of an employee and for misconduct an employee invites an order of dismissal; but unless an employee is dismissed from service, it is difficult to see how there can be no continuity of service so far as an employee is concerned. The learned Judge says that the applicant must be deemed to be re-employed. This would imply that there was an order of dismissal made by the respondent company and the petitioner was re-employed upon a fresh employment after the dismissal. In this case, there is no suggestion that the petitioner was at any time dismissed from service. Actually, the petitioner was retrenched on October 15, 1954; and in our view, the learned Judge was not right in concluding that the continuity of the service of the petitioner was broken by reason of his having taken part in an illegal strike. In this connection, Mr. Phadke, appearing for the petitioner, has referred to Sections 35, 36, 37, 38 and 40 of the Bombay Industrial Relations Act; and has also pointed out a standing order at item No. 21, which gives several categories of acts of misconduct; and has further referred to a standing order at item No. 22, which is standing order dealing1 with the question of dismissal. It is clear, therefore, and there can be no doubt that the petitioner continued in the service of the respondent company from January of 1945 to October 15, 1954. Further, the learned Judge has, in our view, wrongly relied upon the expression "continuous service" as defined in Sections 2(eee) for the purpose of holding that the petitioner was not in continuous service of the respondent company. I shall have occasion to deal with the expression "continuous service" as occurring in Section 2(eee) a little later. For the moment, it is sufficient to observe that "continuous service", referred to in Section 2(eee) is for the purpose of understanding that expression as occurring in Section 25B and Section 25F of the Act. In our view, therefore, the learned Authority was right in concluding that

notwithstanding the strike, which I shall assume to be an illegal strike, the petitioner continued to be in the service of the respondent company from January 1945 to October 15, 1954; and that the learned Judge was wrong in holding that by reason of the petitioner having taken part in an illegal strike, there was a break in the continuity of service of the petitioner.

6. The second question is as to what exactly are the rights of the petitioner as regards retrenchment compensation. In order to understand this question, it is necessary to refer to three sections of the Act. The first of these is Section 25F, which, so far as is material, provides that no workman employed in any industry, who has been in continuous service for not less than one year under an employer, shall be retrenched by that employer until: (b) the workman has been paid, at the time of retrenchment, compensation, which shall be equivalent to fifteen days'' average pay for every completed year of service or any part thereof in excess of six months. To begin with, Section 25F first mentions certain conditions, which are conditions precedent to the retrenchment of a workman; and those conditions are set out in Clause (a), Clause (b) and Clause (c) of that section. The condition, with which we are concerned in this proceeding, is the condition mentioned in Clause (b). Then, Section 25F also refers to the basis of the right on which the claim of a workman rests and the basis of the right to claim retrenchment compensation depends upon the workman proving that he was in continuous service for not less than one year. Section 25F(b) also shows as to what a workman is to get by way of retrenchment compensation. Now, the expression ''continuous service'' is denned in Section 2(eee) as meaning uninterrupted service, and includes service which may be interrupted merely on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman. It is obvious that the definition of the expression "continuous service" as occurring in Section 2(eee) consists of two parts. The first part is the meaning of the expression "continuous service" and the second part is an inclusive definition. In other words, in order that service may be continuous, it must be uninterrupted. That is the first part of the definition. The second part of the definition says that notwithstanding an interruption in the continuity of service, the service may well be uninterrupted, when, for example, the service is interrupted on account of sickness, or on account of authorized leave, or on account of au accident, or on account of a strike which is not illegal, or on account of a lock-out, or on account of a cessation of work which m not due to any fault on the part of the workman. In the second category of cases, notwithstanding the fact that the service is interrupted, it is still continuous service, because the categories, mentioned in the latter part of the definition, are categories as to which the section intends that the service should be continuous, and, therefore, should be uninterrupted.

7. Then, the other section, which remains to be noticed, is Section 25B, and, indeed, one has to read Section 25F and Section 25B together. As already mentioned, the conditions precedent to retrenchment of workmen are indicated in Section 25F, and

one of the conditions precedent to retrenchment of workmen is mentioned in Clause (b); and that condition is that the workman must be paid, at the time of retrenchment, compensation, which shall, be equivalent to 15 days'' average pay for every completed year of service or any part thereof in excess of six months. Therefore, a workman would be entitled to compensation, provided the workman has, to his credit, a completed year of service or any part thereof in excess of six months, and what the workman is entitled to get is the amount equivalent to 15 days'' average pay; so that on Section 25F, it is clear that the basis of the workman''s claim rests upon the workman being in continuous service for not less than one year. The moment a workman shows that he has been in continuous service for not less than one year, he forthwith becomes entitled to be paid the amount of retrenchment compensation on the basis indicated in Clause (b) of Section 25F. But this is not all. A workman is entitled also to some other concession and that concession is indicated in Section 25B, which provides that for the purposes of Sections 25C and 25F, a workman, who, during a period of twelve calendar months, has actually worked in an industry for not less than two hundred and forty days shall be deemed to have completed one year of continuous service in the industry. It is obvious, that Section 25B gives a sort of artificial definition of the expression "every completed year", because in Section 25F(b) it is suggested that it should be service of one completed year. It is sufficient for the purpose of Section 25F, read with Section 25B, that if a workman has worked for not less than two hundred and forty days, he would be deemed to have done every completed year of service. It is clear, therefore, that to the extent to which the law permits a workman to get retrenchment compensation upon the basis of his working for two hundred and forty days, it is really an amplification of Section 25F, Clause (b). The purpose underlying Section 25F is, in my view, clear. The principle is that there must be a continuity of service; but continuity of service does not necessarily mean that a workman must have one completed year of service in every year. It is sufficient that continuity of service exists and arises even if a workman works for two hundred and forty days in any particular year of 12 calendar months. There is evidently a reason for giving retrenchment compensation. When an employee is retrenched, he loses his employment. Though lie is willing to continue in service the employer terminates the employment of a workman for reasons of his own; but the qualification is that to claim retrenchment compensation, an employee''s service must be continuous, and the service should be continuous as indicated in Section 25B; and where a workman works for two hundred and forty days, it is still continuous service for the purpose of Section 25F. There can be no doubt that the Industrial Disputes Act is a piece of benevolent legislation. If a workman is retrenched, it is possible that he may not find immediate employment, and he would be inviting hardship without any fault of his own. In order to meet such a contingency, Section 25F has provided for payment of retrenchment compensation; and once the service of a workman is continuous, as I have already stated above, there can be no question that ho would be entitled to the payment of retrenchment compensation. In other words, if a workman establishes

that he has, to begin with, put in continuous service for not less than one year, he would forthwith be entitled to claim retrenchment compensation for every completed year of service and this would be so notwithstanding the fact that in any particular calendar year he has worked only for two hundred and forty days.

8. Now, the view, which, prevailed with the Authority under the Payment of Wages Act, was something different. The Authority considered that a workman would not be entitled to the payment of retrenchment compensation, if the workman has not done service for every completed year. In saying this, the learned Authority has ignored the effect of Section 25B, and, in our opinion, the learned Judge of the Small Causes Court was right in holding that the view of the learned Authority did not commend itself to him. But the learned Judge said that even so, the petitioner was not entitled to payment of retrenchment compensation for the period prior to the'' date when the strike took place. In other words, what he said was that although the petitioner would be entitled to retrenchment compensation as from November 24, 1951, he would not be entitled to retrenchment compensation prior to the date of the strike; and this is because of the view, which he took that, on account of the illegal strike, there was a break in the continuity of the service of the petitioner. As we have not accepted the view of the learned Judge as correct, we must hold that the petitioner is entitled to the payment of retrenchment compensation not merely from November 24, 1951, but for the entire period commencing from January 1945 to October 15, 1954. In order, however, to be entitled to payment of retrenchment compensation for that period, the workman will have to establish that he has worked for at least two hundred and forty days in a calendar year; and on this finding, it seems to us that the order of the learned Judge would have to be set aside.

9. If these were the only questions, arising in this application, there was no difficulty in making an order in favour of the petitioner. But Mr. E.J. Kolah, appearing for the respondent company, raised an important question of practice, which he took up by way of a preliminary objection, and the question, which he raised, was that as the petitioner has not come up to this Court for relief under Article 227 as expeditiously as possible, it would not be right to grant the petitioner relief under Article 227. As this was a preliminary objection, it was in the nature of things, really the first question for determination, before dealing with the merits of the applicant''s contention. But I have perhaps deliberately reversed the process of considering the objection, raised on behalf of the respondent company, because in order to consider the validity of the objection, it is perhaps necessary also to appreciate the case of the applicant on its merits; and as the claim of the petitioner on the merits succeeds, we have now to consider whether we should uphold the preliminary objection. In order to understand this objection, a few dates would be relevant. The date of the order of the learned Authority was July 11, 1955; the date of the order made on appeal was January 18, 1957, and the present petition under Article 227 was filed on June 17, 1957. Speaking broadly, the petition is, therefore, filed after

about five months from the date of the order; and Mr. Kolah''s objection is that inasmuch as the petitioner has come up for relief under art, 227 after considerable delay, he is entitled to no relief under Article 227. Now, the generally accepted principle, as regards this question, is that a party has to coma up for relief as quickly as possible. But this is too elastic to admit of any precise period within which, an applicant is required to prefer his application. If a period of five months is the period after which the applicant has come up under Article 227, it is evident that the petitioner has not come up as quickly as he should have done. But does it follow, because he'' has not come up as quickly as possible, that therefore this application under Article 227 should fail upon that ground? Just as Mr. Kolah has raised an important question of practice, Mr. Phadke, appearing for the applicant, has raised a question of principle. He says that if a person is entitled to relief either under Article 226 or Article 227, it would not only be unfair but also inequitable if his application is thrown out merely on the ground of delay. Now, it is evident that there is no rule of limitation fixed for the preferring of this application. Indeed, such a rule cannot be fixed, because this right, which is an important right, is given to a party under Article 227 of the Constitution. Article 227, in terms, does not provide for any rule of limitation. But, as I pointed out, the generally accepted rule is that a party must come to the Court as expeditiously as possible. Now, in this case, if the question has to be decided merely by the length of time, I should have no hesitation in holding that this application should be dismissed in limine on account of delay. But there are other considerations, which induce us not to adopt that course, and there are two principal reasons for not adopting that course. What happened was really this. Immediately after the order in appeal was pronounced, an application for a certified copy was put in on the same day, that is, on January 18, 1957; charges for obtaining a certified copy were paid on January 30, 1957; the certified copy was ready on February 1, 1957. This is, it is evident, with utmost expedition. But what follows is nothing but dilatory. The copy was not received until March 5, 1957. Now, if a certified copy was ready on February 1, 1957, it should, not be difficult for a party to obtain the copy within a short time and it should not take as much as a month and a little more to take charge of a certified copy. But the petitioner has explained the reasons as to why there was delay in making this application. In the first place, he points out in the affidavit made by Sowani that he was appointed as an Election Agent by one Shenoy, who had on January 29, 1957, filed a nomination paper for election to the Bombay Legislative Assembly from the Parel constituency. Accordingly, he was entrusted with the duties as an election agent, and. This is how the affidavit puts it;

> The new responsibility was so heavy that I had to request the office of my Union that I should be relieved from my routine work as the Secretary until the election was over. Accordingly I was relieved.

It is important to bear in mind that Sowani has filed this application on behalf of the workman and in his capacity as the Secretary of the Mill Mazdoor Sabha. Being busy

with the election, the affidavit goes on to say that the Secretary appointed one Shri Gupte in order to look after the obtaining of the copy from the office of the Small Causes Court. Now, Gupte has not put in an affidavit stating that he was entrusted with this work, but Sowani points out that about this time the election campaign was in full swing, and ho did not. go to the office of the Small Causes Court, and when he went to the office of the Small Causes Court on March 5, 1957, he got a certified copy of the decision given, by the Small Causes Court. According to Sowani, the elections were over on March 11, and the counting of votes took place on March 12, 1957. Now, it may be urged that as soon as the elections were over and the counting bad been done on the March 12, 1957, it should not have been difficult for Sowani to obtain legal advice and to file a petition immediately thereafter. But Sowani says, in the course of his affidavit, that as an election agent, he had to prepare certain papers, that is, bills and vouchers had to be collected and the accounts had to be submitted to the Returning Officer, and this was to be done on or about April 11, 1957. Sowani says further that he happened to meet Mr. N. v. Phadke on or about April 14, 1957, and he enquired as to what his advice would be in the case in question. He says that on April 18, he handed over the certified copy to Mr. N.V. Phadke, who, upon a perusal of the order, advised that a petition should be filed in the High Court. The Summer Vacation of the High Court commenced on April 22, 1957, and the last date on which a petition could have been accepted was April 20, 1957. There should have been no difficulty to file a petition on or before April 20, 1957; but the petition came to be filed on June 17, 1957, which was the reopening date of the High Court, after the Summer Vacation. If one has regard to the course of events, which I have described above, one cannot but feel that there was lack of diligence on the part of Sowani; and there would have been little difficulty in preferring the application which could have been as well done either in March or April, 1957. But, one has to remember the course of events in the light of what is stated in the affidavit. If I understand the affidavit correctly, it seems to me that the weight of the election campaign was so much upon Sowani that he had little or no time to look after matters, which immediately concerned him. And one has to put oneself into his position to realise that it is possible that he could not give sufficient attention to these matters which he should have ordinarily done. Now, there is a question of principle. Sowani is the Secretary of the Mill Mazdoor Union. The person affected by the order is a workman and presumably, a poor workman. The question, therefore, is whether this petition of a poor workman should be thrown out in limine on the only ground that this petition is not filed with utmost expedition. If this was a private dispute, the position would have been different. There is no excuse for a person saying that he had no time to look after his own business; and if this petition had raised a question merely of the rights of a private party, I would have at least no hesitation in throwing out this petition as not being filed with utmost expedition. But, there are other considerations; one of the considerations is that this proceeding is being fought as a test case, which suggests that cases similar to this would arise for consideration before the authorities or the Courts. Another reason is given in

para. 12 of the affidavit, which says:

Because of this decision of the Small Causes Court, an unfortunate situation has arisen with regard to the Workers'' right to receive compensation on retrenchment. There are several matters pending before the Authority under the Payment of Wages Act, awaiting the decision of this case.

As far as I have been able to gather, there is no affirmative denial of this averment; so that this proceeding is a sort of a test case, and the decision, given in this case, will govern others of a similar nature. This is a strong reason, which would induce us, not to throw out this petition on the only ground that the petitioner has not come up with utmost expedition. The question raised by this petition is one of general importance; and this again is a consideration, which should weigh with us in deciding whether to throw out this petition in limine on the ground of delay or laches. In the determination of this case also arises an important question in the administration of industrial law. Sowani, if I may put it without exaggeration, was himself engaged in public activities; and if these are considerations, we are disposed not to dismiss the petition on the ground that this petition has not been filed with utmost expedition.

10. Mr. R.j. Kolah, appearing for the respondent, has referred to a decision of this Court, and he says that in circumstances similar to those occurring in this case, an application had been dismissed on the ground of laches on the part of the petitioner. The decision is in Mill Mazdoor SdbJia v. The New-Mahalaxmi Silk Mills Ltd (1955) Special Civil Application No. 2758. and in that case it was observed as follows:

It is necessary once again to emphasize the fact that if a petitioner seeks relief either under Article 226 or Article 227 of the Constitution, he must show the utmost diligence and must approach this Court as expeditiously as possible. It is perfectly true that there is no limitation laid down by any law for the presentation of a petition under Article 226 or Article 227. It is equally true that in proper cases the Court would permit a petitioner to approach this Court after a long lapse of time. But ordinarily when there are no exceptional circumstances, any undue delay would be sufficient to disentitle a petitioner from obtaining relief under Article 226 or Article 227.

So that the filing of a petition with the utmost expedition is not an absolute rule. Exceptional circumstances may arise, where, notwithstanding the delay, it would be open to the Court to entertain a petition and deal with the matter on its merits. We think that the present is a case in which we should accept the principle that there are exceptional circumstances in the case, and we should, therefore, not throw out this petition on the only ground of delay. In the first place, as I have already said, there is no rule of limitation as such. In the second place, the question of delay may be considered in one of two ways. It may happen that notwithstanding delay, there is no alteration in the position of the opposite party. Cases may also arise wherein,

by reason of delay, the position of the opposite party may well be affected. In the latter class of eases, the Court may enforce the rule of expedition very strictly. But where there is no question of the other side being prejudiced one way or the other, it is, indeed, a salutary rule that a petition under Article 227 should not be dismissed in limine on the only ground of delay, if there are present exceptional circumstances in the case. On this ground, I think, we are not disposed to agree with the contention of Mr. B. J. Kolah that on the facts of this particular case, we should reject the application as not having been filed with the utmost expedition.

11. But Mr. Kolah has raised a further point. He contends that upon the construction of Section 25F, two views may be possible; and if two views are possible, it would not be right for this Court to interfere with the order of the Court below under Article 227 of the Constitution. In this connection, he relies upon a decision of this Court reported is Batuk K. Vyas Vs. Surat Borough Municipality and Others, . Paragraph 2 of the head-note is as follows:

The mere fact that two views are possible on a question of law does not make the decision of a Tribunal with jurisdiction bad on the ground that it has erred in law and the error is apparent on the face of the record. Only that error will be corrected by the High Court which is clearly apparent on the face of the record and which does not become apparent only by a process of examination or argument.

With respect, the principle could not have been stated with greater clarity. But this case was referred to in a decision of the Supreme Court in Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, , With regard to the writ of certiorari, their Lordships of the Supreme Court said at page 1123 of the report:

It may therefore be taken as settled that a writ of certiorari could be issued to correct an error of law. But it is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error, and become an error apparent on the face of the record Learned Counsel on either side were unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated. Mr. Pathak for the first respondent contended on the strength of certain observations of Chagla C.J. in BatuK v. Surat Municipality that no error could be said to be apparent on the face of the record if it was not self-evident, and if it required an examination or argument to establish it. This test might afford a satisfactory basis for decision in the majority of cases, But there must be cases in which even this test might break down, because judicial opinions also differ, and an error that might be considered by one Judge as self-evident might not be so considered by another. The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indeftniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case.

So that the principle as to whether an error is apparent on the face of the record is left to be determined on the facts of each case, and as we read the order made by the learned Judge of the Small Causes Court, we have no hesitation in saying that he was wrong in taking the view that a break is occasioned in the continuity of service of a workman by his taking part in an illegal strike. One has only to read his reasoning to realise that it cannot be supported. In our view, therefore, while we are in respectful agreement with the principle laid down in Batuk v. Surat Municipality, we must follow the principle laid down in a case decided by the Supreme Court, namely, Hari Kamath''s case. We are not, therefore, satisfied that this ground is valid and should prevail.

12. There will, therefore, be an order in favour of the applicant for a sum of Rs. 404-50nP. It may be pointed out that there is no dispute about the correctness of this amount, and this is an agreed amount between the parties.

13. The result is that this application will be allowed. The rule will be made absolute. The order of the learned Judge of the Small Causes Court dated January 18, 1957, will be set aside.

14. The question of costs remains and Mr. Thakore, for the respondent company, says that as the petition has been filed after some considerable delay, the petitioner will not be entitled to the costs of this application. Mr. Phadke, appearing for the petitioner, on other hand, says that as. the applicant succeeds, the usual rule must follow, namely, costs must follow the event. We, however, think that there has been delay in this case; but we have exercised our jurisdiction under Article 227 because we thought that exceptional circumstances are present in this case. We think that the fair order to make in this petition would be that there will be no order as to costs.