(1953) 07 BOM CK 0019

Bombay High Court

Case No: None

Eugene Fernandes		APPELLANT
	Vs	
The Labour Appellate Tribunal of India and Caltex (India), Ltd.		RESPONDENT

Date of Decision: July 14, 1953

Acts Referred:

- Industrial Disputes Act, 1947 - Section 23

Citation: (1953) 1 LLJ 474

Hon'ble Judges: Desai, J

Bench: Single Bench

Judgement

Desai, J.

This is a petition for a writ of certiorari against the first respondents, the Labour Appellate Tribunal of India, to quash an order made by it in an appeal against an order passed by the industrial tribunal in an application u/s 23 of the Industrial Disputes Act, 1947.

2. The facts, none of which is in dispute, are these: The petitioner is a driver in the employment of Caltex (India), Ltd., the second respondents. On the morning of 28 November 1952 he was on duty at the Santa Cruz Aerodrome in an area where smoking was prohibited. Under "Aircraft Ground Fire Precautions "smoking is prohibited within 100 feet of an aircraft that is being refuelled, A "No Smoking" sign had been placed on the site. At that time a Constellation aircraft was being refuelled and the petitioner was found smoking at a distance of 25 feet from the same. He was apprehended on the spot and an inquiry into this matter was held by the second respondents on 4 December 1952. A charge-sheet was prepared and evidence taken. The petitioner pleaded " guilty " and the second respondents decided to dismiss him from their service. As at the time certain proceedings relating to some labour disputes were pending between the workmen of the second respondents and the second respondents before the industrial tribunal the second

respondents applied to that tribunal, as they were bound to do u/s 33 of the Industrial Disputes Act, to dismiss the petitioner. The industrial tribunal heard the matter and arrived at the conclusion that the offence committed by the petitioner was a grave and serious offence. The adjudicator, who constituted the industrial tribunal, realised the gravity of the offence and observed that he would not minimise the same. He further stated in his order that ordinarily he would not like to interfere with the discretion of the management (second respondents) as to what punishment should be awarded to the petitioner. Yet, he felt that there were extenuating circumstances which made it incumbent upon him to interfere with the punishment sought to be awarded. The extenuating circumstances according to him were: that this was the first offence committed by the petitioner; that he had been in the employment of the second respondents for about seven years and had a clean record ; that he had admitted his guilt and pleaded for leniency and had given an assurance that what he had done would not be repeated: and that the union to which the petitioner belonged had also asked for mercy being shown. Another circumstance regarded as an extenuating one by the adjudicator was that in the previous year no workman had been found guilty of this offence. These circumstances which weighed with the adjudicator have been the subject-matter of severe criticism by the Solicitor-General who appeared before me on behalf of the second respondents. I shall have occasion to refer to the question later on in my judgment. The adjudicator came to the conclusion that in view of the extenuating circumstances mentioned by him dismissal of the petitioner would be excessive punishment. He asked the second respondents whether they were prepared to inflict a lesser punishment. The second respondents, however, insisted that the offence was a grave and serious one and dismissal would be the proper punishment. As the second respondents would not agree to the suggestion made by the adjudicator, he took the view that he had no alternative but to refuse the permission asked for and passed an order accordingly. An appeal was preferred by the second respondents against the order of the industrial tribunal to the Labour Appellate Tribunal (first respondents) who took a more serious view of the matter. The Appellate Tribunal regarded that act of which the petitioner had been guilty, and which he had admittedly committed, as an extremely dangerous act. In its judgment it observed:

We doubt if the adjudicator did in fact realise the seriousness of the offence. The offence amounts to a wilful breach of the rules, and considering the highly imflamable nature of aircraft petrol it was fortunate that nothing happened : for if a fire had been caused by the act of the respondent it would have spread death and destruction all over the area. The aircraft itself was a Constellation which would not coat less than a crore of rupees today, and there were members of the crew in the aircraft apart from others round about; if a fire had started it would have spread to other aircraft in the immediate vicinity and the station itself would have been in danger.

3. The basis of the judgment of the Appellate Tribunal was that the principles governing the matter were not those applied by the adjudicator but those laid down by the Appellate Tribunal in the Buckingham and Carnatic Mills Case 1951 II L.L.J. 314. As some argument was advanced before me on the question of what were the correct principles governing matters of this character I shall set out some relevant observations from the judgment in that case:

The management, with the knowledge and r experience of the problems which confront it in the day-to-day work of the concern, ordinarily ought to have the right to decide what the appropriate punishment should be, but its decision is liable to be revised if the tribunal is of the opinion that the punishment is so unjust that remedy is called for in the interest of justice.

...the decision of the management in relation to the charges against the employee will not prevail-if

(a) there is want of bona fides, or

(b) it is a case of victimisation or unfair labour practice or violation of the principles of natural justice, or

(c) there is a basic error on facts, or

(d) there has been a perverse finding on the materials.

4. The Appellate Tribunal also pointed out that in its Bombay sitting in the case of Ford Motorcar Company, Ltd. v. S.K. Naik 1952 I L.L.J. 318, the view had been taken in a case of serious dereliction of duty on the part of a workman while on duty it is not a mitigation to say that it is the first offence committed by him in the course of his service of many years. The view was also expressed that the only question which the adjudicator had to consider the circumstances of the case was whether the punishment sought to be imposed was unduly harsh. It characterised what the adjudicator had done as a perverse exercise of jurisdiction and set aside the order under appeal and granted permission to the second respondents to dismiss the petitioner. It is against this order of the Appellate Tribunal that this petition has been preferred.

5. The order made in appeal is impugned by the petitioner on the ground that the Appellate Tribunal had no jurisdiction to decide the appeal. The contention raised in the petition is that no substantial question of law was involved in the matter under appeal and the Appellate Tribunal had clutched at jurisdiction and was not entitled to arrogate to itself any jurisdiction in the matter.

6. The jurisdiction of the Appellate Tribunal is conferred on it by Section 7 of the Industrial Disputes (Appellate Tribunal) Act, 1950; that section provides that:

An appeal shall lie to the tribunal, if-

(a) the appeal involves any substantial question of law, or

(b) the award or decision is in respect of any of the following matters.

A list of matters is enumerated and the question of punishment or quantum or nature of punishment is not one of those matters. So that the appeal which was filed by the second respondents could lie to the Appellate Tribunal and the matter could be within its jurisdiction only if it gave rise to or involved any substantial question of law.

7. In order to determine whether the Appellate Tribunal usurped jurisdiction it did not possess, it is necessary to consider, first, what were the questions that really arose for its determination in the appeal preferred to it, and secondly, whether any question involved in the appeal was a substantial question of law.

8. It was strenuously urged by Mr. Rajni Patel, the learned Counsel for the petitioner, that the only question that was really involved in the appeal related to quantum of punishment and was really a question of fact. It was also urged that even if this contention be not accepted the question involved in the appeal was, whether well-established principles relating to punishment incase of serious dereliction of duty by a workman while on duty had been properly applied by the adjudicator to the facts of the case before him. The argument proceeded that error of application of those principles may at the highest be regarded as an error of law and the question that would arise in appeal, even if one of law, could not amount to a substantial question of law. Learned Counsel very strongly relied on a decision of this High Court and another decision of the Madras High Court. Before I proceed to deal with these arguments in any detail it would be convenient to ascertain the meaning of the expression " substantial question of law."

9. What exactly is a "substantial question of law" is an interesting question of wide import. It is not difficult to ascertain whether a particular question which comes up for the decision of the Court is a question of law or not. But it is not quite easy to say what is the exact meaning of the expression " substantial question of law." This is so, because from its very nature a substantial question of law must involve some subjective determination and cannot obviously be merely an objective fact capable of determination or determination as such. A number of decisions were cited at the Bar on this point which all go to confirm the view that the expression is very difficult to define. I have myself gone through a number of decisions on the point and in view of the authorities all that can be said is that the adjectival qualification imported by the word "substantial" renders the expression "substantial question of law" indefinable but that it is an expression of definite import which may better be described than denned. In a decision by a Division Bench of this Court in Kaikhushroo Pirojsha Ghiara Vs. C.P. Syndicate, Ltd., , the learned Chief Justice after observing that it is not at all easy to determine what a substantial question of law is, stated:

...One can define it negatively. For instance, if there is well-established principle of law and that principle of law is applied to a given set of facts, that would certainly not be a substantial question of law. Where the question of law is not well-settled or where there is some doubt as to the principle of law involved, it certainly would raise a substantial question of law which would require a final adjudication by the higher courts.

These observations were made in deciding an application for leave to appeal to the Privy Council in considering whether such leave should be granted on the ground that the appeal involved a substantial question of law.

10. A similar statement of principles is to be found in a decision of the Madras High Court in Subba Row v. Veeraji (1951) 2 M.L.J. 222 where at p. 227 of the report the learned Chief Justice of the Madras High Court observed:

When a question of law is fairly arguable, when there is room for difference of opinion on it, then such a question would be a substantial question of law. If this Court thought it necessary to deal with a question of law at some length, and discuss alternative views which can be taken on the point, then, I think, such a question would be a substantial question. When a point of law is practically covered by a decision of the highest court, say like the Privy Council or the Supreme Court, then, it would not be a substantial question. If the general principles to be applied in determining a question are well-settled, a mere application of such principles would not involve a substantial question of law. I am inclined to hold that when a particular set of facts can lead to alternative findings in law, then a substantial question of law would be involved. If the principle to be applied or the point of law arising in the case is not well-established then certainly that would be a substantial question of law. With great respect to the learned Judges who appear to hold to the contrary, I am of opinion that if there is a conflict of judicial opinion among the High Courts and there is no direct decision of the highest court on any question of law, then that would be a substantial question of law, though the decisions of that particular High Court of which leave is sought might be uniform on this question.

11. The general principles enunciated in these two decisions throw considerable light on the question and should, I think, govern the present decision.

12. Considerable reliance was placed by learned Counsel for the petitioner on a decision of my brother Shah in the case of Ranganathan v. thie Labour Appellate Tribunal and the Madras Electric Tramways, Ltd., reported in 1951 II L.L.J. 592. That was a case in which the question arose whether reinstatement of a discharged employee ordered by the industrial tribunal could be the subject-matter of an appeal to the Labour Appellate Tribunal. An examination of that case shows that Shah, J., did not accept the contention that was raised before him and which may be briefly stated to be this : The industrial tribunal can set aside a dismissal by the employer and direct reinstatement of a discharged employee only in certain

specified circumstances such as victimisation, unfair labour practice on the part of the management of violation of a principle of natural justice in the conduct of an inquiry, or where there have been mala fides and unfairness. The proposition that discretion in the matter being primarily vested in the management there should be such delimitation on the power of the adjudicator was not approved of my brother Shah. The ratio decidendi of that judgment was that the industrial tribunal was not merely in the position of an appellate authority but was really in the position of an arbitrator. The principal question that was involved in the appeal before the Appellate Tribunal in that case was whether on the evidence before the industrial Court the order of dismissal was a proper order. Now that undoubtedly was a question of fact and the way I read that judgment is that Shah, J., ultimately took the view that the question involved in the appeal was not a question of law much less a substantial question of law, and was really a question of fact.

13. The other decision relied on by learned Counsel for the petitioner was M.K. Ranganathan and Others Vs. The Madras Electric Tramways (1904) Ltd. and Another, . This decision was in the same labour dispute as had come up before my brother Shah, There was an appeal against the judgment of Shah, J., and the appeal was allowed on the ground that the High Court of Bombay had no jurisdiction to entertain the petition and issue any writ as the parties to the industrial dispute the decision in which was sought to be quashed were residing outside the jurisdiction of the Bombay High Court. The ratio decidendi of the decision of " the Madras High Court appears to be that no substantial question of law can be said to be involved in an appeal where the Appellate Tribunal does not differ on the question of law with the industrial tribunal but goes into facts and interferes with the discretion of the industrial tribunal. In such a case if the Appellate Tribunal were to interfere, it would be indirectly clutching at jurisdiction which the statute had not conferred on it.

14. Relying particularly on these two decisions Mr. Rajni Patel contended that the question before me related to dismissal of an employee and was substantially similar to the question that had arisen in the matter of the employees of the Madras Electric Tramways Ltd. Learned Counsel strongly relied on certain observations in the judgment of my brother Shah made while dealing with the question of the nature of the findings involved in the appeal before the Labour Appellate Tribunal. It is difficult for me to see how those observations made in the context of the facts of that particular case can be regarded as applicable to totally different facts which exist in the present case, and which came up for consideration before the industrial tribunal and the Labour Appellate Tribunal. In both the judgments relied on by learned Counsel for the petitioner care was taken to emphasise that the Appellate Tribunal had in reality gone into facts and interfered with the decision of the industrial tribunal on facts, and as pointed out by Mr. Justice Subba Rao in the Madras decision the adjudicator had not contravened the principles laid down by the Appellate Tribunal in the case of the Buckingham and Car-natic Mills, Ltd., and to which I have already made reference. The questions which were involved before the

Appellate Tribunal in the case of the employees of the Madras Electric Tramways, Ltd., were different from the questions which arose for the determination of the Appellate Tribunal in the present case.

15. It is beyond all things important for me to determine what were the questions that were involved in the appeal before the Labour Appellate Tribunal in the present case. There is no dispute that the findings of fact relating to the commission of the offence and the gravity of the offence were against the petitioner and were not challenged and could not be challenged. The contention raised on behalf of the employers who were the appellants before the Appellate Tribunal was that in an application u/s 33 of the Industrial Disputes Act it was not open to the adjudicator to consider the appropriateness of the punishment proposed to be awarded by the employer in a case where there had been a serious dereliction of duty on the part of the employee while on duty. Another contention raised on their behalf before the Labour Appellate Tribunal was that the adjudicator should not have interfered with the punishment sought to be awarded by the management, unless it was a case of want of bona fides, victimisation, unfair labour practice, violation of principles of natural justice, basic error on facts or perversity. Now, of course, merely raising contentions of this nature in the memorandum of appeal does not mean that the questions were really involved in that appeal. I have to decide for myself whether in fact these questions did arise for the determination of the Labour Appellate Tribunal. In this connection it is important to note that one of the submissions urged on behalf of the petitioner before the Labour Appellate Tribunal as appears from the petition before me, was that u/s 33 of the Industrial Disputes Act the discretion vested in the industrial tribunal was unfettered and unrestricted. In the present petition also the petitioner has urged [ground (h)] that "the first respondents erred in law in holding that the discretion vested in the industrial tribunal u/s 33 of the Industrial Disputes Act is fettered and restricted." The ambit of an inquiry u/s 33 was, therefore, admittedly one of the questions to be decided by the Labour Appellate Tribunal. The question certainly arose before the Appellate Tribunal as to whether in deciding the application u/s 33 of the Industrial Disputes Act the adjudicator had only to see whether the offence committed was such a serious one as would merit dismissal or had further a discretion in the matter which went beyond that. The question also arose that if he had that discretion was it unfettered and unrestricted as contended on behalf of the employee or was the decision circumscribed by general principles governing such matters. A further question also arose whether he consciously or unconsciously ignored or departed from any well-established principles which he was bound to follow. Or, to put the whole matter very briefly, was it a case of arbitrary and unwarranted exercise of discretion by the adjudicator in exercise of the power conferred on him by Section 33 of the Industrial Disputes Act. In my opinion all these questions did arise and were involved in the appeal preferred to the Appellate Tribunal and it is impossible for me to hold that these questions were merely questions of fact. But even if I were to

accept the argument of the learned Counsel for the petitioner that the only question involved in the appeal was as to the quantum or nature of punishment to be inflicted on the petitioner, that also, in my opinion, cannot be regarded as a question of fact. Now this was a case in which the second respondents in the first instance were bound to hold a proper inquiry and deal with the matter in accordance with principles of natural justice. If they found the petitioner guilty of any serious offence they could dismiss him and whether there should be dismissal or any lesser punishment inflicted was primarily a matter within their own discretion. The exercise of this, is a matter of prudence and subject to being reviewed by the adjudicator. At the same time it has always been regarded as a sound rule that the reviewing authority, be he an adjudicator or any other authority, where not expressly vested with the power, will not generally interfere unless the punishment is one not warranted in law or unless there has been some error in principle. The matter was not one merely of taking into consideration evidence placed before the industrial tribunal but required proper application of the general principles governing such matters. This was certainly a question of law. But as I have already observed the questions stated above were all questions of law and did arise for the determination of the Labour Appellate Tribunal.

16. It is now possible to deal with the second of the questions formulated above, viz., whether these questions or any of them could be regarded as "substantial." In this connection it was urged before me by learned Counsel for the petitioner, that the only question that can be said to be really involved in the appeal was whether well-established principles relating to punishment in such cases of serious dereliction of duty by an employee while on duty had, in any view of the matter, been properly applied by the industrial tribunal to the facts of this case. The argument proceeded that error in application of those principles may at the highest be regarded as an error of law and the question that arose in appeal, though one of law; did not amount to a substantial question of law. The essence of the argument on this aspect of the case was that by reason of the decision of my brother Tendolkar in the case of P. Section Pandit v. the Labour Appellate Tribunal and Hume Pipe Mfg. Co. 1952 II L.L.J. 579, the question under consideration must be regarded as an ordinary question of law and not a substantial question of law. On a careful examination of the judgment relied upon I am of the opinion that the case before me is not ruled by that authority, The ratio decidendi of the judgment in that case, and with which I am in respectful agreement, was that where a principle of law is well established the application of the principle to given sets of facts does not raise any substantial question of law so as to confer jurisdiction on the Appellate Tribunal to entertain an appeal. In stating this principle my learned brother quoted the observations of my Lord and Chief Justice in K.P. Ghiara v. C.P. Syndicate (ante) which I have already set oat in the earlier part of my judgment. If the question for my determination was that the principles applicable to the case were well-settled and the inquiry before the adjudicator merely related to the application of those

principles of facts proved or admitted I would be wholly inclined to entertain this petition as in such a case the decision of the Appellate Tribunal would at the highest be one based merely on erroneous application of well-established principles.

17. Now it is true that the decision of the Labour Appellate Tribunal proceeds on the footing that the principles relating to punishment in matters of serious dereliction of duty by employees while on duty were laid down by the Appellate Tribunal itself in the decisions referred to by it. But it must be noted that these principles were question.., ed and in effect disapproved of in the judgments of the Bombay High Court and the Madras High -Court already mentioned by me. The learned Solicitor-General relied on a decision of a Division Bench of the Allahabad High Court in Kanpur Kanpur Mazdur Congress Vs. J.K. Spinning and Weaving Mills Co. Ltd., Kanpur and Another, where a different view was taken by that court. I must state that Mr. Rajni Patel himself, whilst relying on the Madras decision in the case of the employees of the Madras Electric Tramways, Ltd., very fairly drew my attention to the Allahabad decision. The question involved in that case was in substance the same as arose for determination in the case of the employees of the Madras Electric Tramways, Ltd. The Madras decision was considered by the Division Bench of the Allahabad High Court and distinguished on the ground that in the Madras case the same principles which were enunciated by the Labour Appellate Tribunal in a number of decisions given by it were in fact taken into consideration by the industrial tribunal as well as the Labour Appellate Tribunal but the two tribunals had differed as to the conclusion on the question of fact viz., whether applying those principles the order of dismissal passed against the workmen should or should not be maintained. The ratio decidendi of the decision of the Allahabad High Court was that the question of law involved before the Labour Appellate Tribunal was whether the industrial tribunal was entitled to interfere with the punishment inflicted by the management in accordance with the standing orders when a charge of misconduct against the employee was established. That was held to be clearly a question of law. At page 496 of the report the learned Chief Justice of the Allahabad High Court after stating the question involved observed:

This clearly is a question of law. The jurisdiction of the industrial court to interfere with the sentence passed by the management, which had been approved by the regional conciliation board, cannot be deemed to be a question, of fact. The question is of great importance. We fail to see how it can be argued that it is not a substantial question of law either.

In considering the decision of the Madras High Court in the ease of the employees of the Madras Electric Tramways, Ltd., the learned Chief Justice observed that it was not for the Allahabad High Courc to say how far the learned Judge''s view was right. There is thus disclosed a decided divergence of judicial opinion. It would appear that here are the same or almost similar sets of facts which have led to different and alternative findings in law. In the oft-quoted passage from the judgment of my Lord

the Chief Justice in K.P. Ghiara''s case it was particularly pointed out that when there is some doubt on the principle of law involved, it certainly would raise a substantial question of law which would require a final adjudication by a higher court.

18. Since this is the position on the authorities I am unable to accept the argument advanced on behalf of the petitioner that the only question that can be said to have arisen before the Labour Appellate Tribunal was one merely of an erroneous application of well-established principles. Existence of the principle itself being in dubio the question that had really arisen was in my opinion not one merely of an erroneous decision on the merits of the case or one depending simply on facts.

19. It was argued by the learned Solicitor-General that there are now conflicting decisions affecting the question which had arisen for the determination of the Labour Appellate Tribunal and reliance was placed upon the decision in the Allahabad case already considered by me. Another argument pressed before me by the learned Solicitor-General was that even in a case where the principles applicable were well-established but it appeared that the judgment of the adjudicator was perverse the Labour Appellate Tribunal would have jurisdiction to interfere because the perverse nature of the decision would itself raise a substantial question of law. It was stated that a decision of the adjudicator would be regarded as perverse if he consciously or unconsciously ignored well-established principles applicable to the matter under consideration, or if he imported into his consideration factors which were wholly irrelevant. It was urged in support of the latter ground that the case before the adjudicator was one of such gross negligence that the punishment to be inflicted would have to be dismissal and no lesser punishment would do. In such a case an attempt to find out extenuating circumstances, so it was argued, would be to import erroneous factors in the matter. Strong criticism was levelled against what were considered by the adjudicator as extenuating circumstances. It was suggested that in a case of serious offence of this nature the fact that it was the first serious offence committed by an employee who had been in service for a number of years could not be taken into consideration. It was also suggested that the other factors taken into account by the adjudicator did not really arise for consideration and were factors which were wholly irrelevant in a matter of this nature. The argument at one time seemed to touch on the degree of culpability attaching to the rash and negligent act of which the petitioner was guilty, but in reality it was directed rather to legal considerations. There is in my opinion some scope N for this argument. I have carefully read and reread the decision given by the adjudicator and have felt driven to the conclusion that he permitted himself to be swayed by sentiments of leniency and mercy, no doubt laudable when permissible and warranted in a proper case, but which, in the matter before him, were not strictly relevant. Even so, I am not prepared to go to the length of holding that the adjudicator acted perversely by importing in his decision wholly irrelevant factors. But I am satisfied that the adjudicator although he has referred in his order to some principles of law applicable to the matter under consideration by him, he virtually altogether ignored

the principles which should have governed his decision. He failed to apply and departed from established principles of law which he himself in his judgment said would be applicable to the case before him. It also appears from his order that though he purported to enunciate principles which were laid down by the Labour Appellate Tribunal he did not do so correctly. The principles which the Labour Appellate Tribunal regarded as well-established principles were in my opinion not appreciated, by the adjudicator. Therefore, so far as the Labour Appellate Tribunal was concerned it was in my opinion justified in taking the view that there has been a "perverse exercise of jurisdiction by the adjudicator." By this expression, I think, the Labour Appellate Tribunal meant that the adjudicator had ignored and departed from well-established principles governing the matter. The second of the questions formulated above must be answered in favour of the second respondents as I have reached the conclusion that the questions involved in the appeal were questions of law which were substantial. The result of this is that the petition must fail.

20. There remains for consideration what is really another fact of the argument which I have already dealt with. The learned Solicitor-General by a kind of addition or postscript to his argument directed my attention to the following observations of my Lord the Chief Justice from the judgment of the Appeal Court in the Hume Pipe Co. v. P.S. Pundit and Anr. appeal No. 132 of 1952:

...What is substantial and what is not substantial is a matter of quality affecting the object, and quality may differ in degrees. One tribunal may take the view that a particular question of law is substantial, another tribunal may think that the question is not substantial, and we think on the whole Mr. Palkhiwala is right that if the Appellate Tribunal were to take the view that a particular question of law which comes up before it is a substantial question of law, the High Court should be reluctant to take a different view on that question. It is not as if the High Court has no jurisdiction to interfere with the decision of the Appellate Tribunal that a particular question is a substantial question of law, but unless the decision of the Appellate Tribunal is arbitrary or capricious or unreasonable or one which no tribunal can possibly take, the High Court undoubtedly possessing the jurisdiction would be reluctant to exercise that jurisdiction and come to a contrary decision to the one arrived at by the Appellate Tribunal, But the position would be different if the High Court was satisfied that no question of law was involved in a matter which the Appellate Tribunal dealt with&#65533;.

It is true that these observations find place in a judgment in a case in which it was ultimately held that the Labour Appellate Tribunal had no jurisdiction as the question involved was, in the opinion of the Division Bench, not at all a question of law, but was a question of fact. Even so the Appeal Court was called upon to decide the question as to when the High Court would interfere in a matter " of this character and the observations obviously enunciate a guiding principle. I understand these observations, read in their entire context, as laying down the

principle that where the question to be decided by the Appellate Tribunal is a question of law, which cannot be said to have been finally decided by the higher courts, and is one on which there is a reasonable possibility of alternative views being taken or is a question of law as to which it can be said that the matter is in dubio the High Court will be slow in taking the view that the question was not a substantial question of law, if the Appellate Tribunal has, after considering the question, decided in favour of jurisdiction.

21. Upon the whole matter, therefore, and considered in the light of these observations also, the petition must fail and will be dismissed. The rule will be discharged. Learned Counsel for the second respondents states that he does not press for an order of costs against the petitioner. There will, therefore, be no order for costs.