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NOTES OF RECENT CASES.

[SUPREME COURT.]

M. Hidayatullah and
C. A. Vaidialingam, JJ.
27th April, 1967.

Kamla Prasad Singh *v.*
Hari Nath Singh.
Crl.As. Nos. 244 to 246 of 1964.

Penal Code (*XLV of* 1860), *section* 218 *and sections* 191 *to* 193—*Criminal Procedure Code* (*V of* 1898), *sections* 195, 561-*A*—*Distinction between sections* 192, 193 *and* 218, *Penal Code.*

The alleged offence against the Lekhpals and their abettor Hari Nath Singh in the other two cases is of a different order. The offence of section 218, Indian Penal Code, is not a minor offence included within section 192. It is a distinct offence which can be proceeded against without the bar of section 195 of the Code of Criminal Procedure. There is some resemblance between section 192 and section 218, Indian Penal Code, because both deal with the preparation of a false record. There the resemblance ceases. Whereas in section 192, the record is prepared for use in a judicial proceeding with the intention that an erroneous opinion be formed regarding a material point, the offence in section 218 is the preparation of a false record by a public servant with the intention of saving or injuring any person or property. The intention here was to save the property from the vendees namely Kamla Prasad Singh and others. The offence was complete the moment the false record was made with the said intention and it was not necessary for the completion of this offence that the record should be used in a judicial proceeding so as to cause an erroneous opinion to be formed touching on a point material to the result of such proceeding. In the Ahlmad's case this latter condition was the most important ingredient. In the case of the Lekhpals, it was immaterial whether the record would be produced in a judicial proceedings or not so as to cause an erroneous opinion to be formed. The intention was to save the property from the effects of the sale and the preparation of the false record was therefore sufficient from this point of view. In other words, the offence of the Lekhpals (if any be proved against them) would fall within section 218 and not section 192/193 of the Penal Code. It may fall in the latter sections if the entry can be said to be in or in relation to a Court. This cannot be said of the entries in the Khasra. As section 218 is not named in section 195 of the Code of Criminal Procedure, the private complaint of Kamla Prasad Singh could be entertained by the Court and there was no bar.

To hold that a record such as is contemplated in section 218, Penal Code is always one intended for use in a Court would put section 218, Indian Penal Code, in section 195 of the Code of Criminal Procedure which the Code of Criminal Procedure has not thought of. Therefore section 218, Penal Code must be treated as an independent and distinct offence. There could be a private complaint in respect of an offence under section 218, Penal Code.

The result is that the case against Hari Nath Singh of abetment of the act of the Ahlmad could not begin except on a complaint in writing of the Court concerned. There was no bar to the commencement of the case against Hari Nath Singh and the two Lekhpals on the private complaint of Kamla Prasad Singh. Accordingly Criminal Appeal No. 244 of 1964 shall be dismissed. Criminal Appeals Nos. 245-246 of 1964 shall be allowed and the concerned cases will be remitted to the Court of first instance for trial according to law.

W. S. Barlingay, Senior Advocate (*J. C. Tulwar* and *R. L. Kholi*, Advocates with him), for Appellant (In all the Appeals).

J. P. Goyal and *R. B. Pathak*, Advocates, for Respondent No. 1. (In all the Appeals).

G.R. ——— *Crl. Appeal No.* 244 *dismissed; Rest allowed.*

[SUPREME COURT.]

R. S. Bachawat,
J. M. Shelat and
V. Bhargava, JJ.
3rd May, 1967.

Hulas Rai Baij Nath *v.*
Firm K. B. Bass.
C.A. No. 897 of 1964.

Civil Procedure Code (*V of* 1908), *Order* 23, *rule* 1—*Withdrawal of Suit—No order as to costs.*

It is unnecessary for us to express any opinion as to whether a Court is bound to allow withdrawal of a suit to a plaintiff after some vested right may have accrued in the suit in favour of the defendant. On the facts of this case, it is clear that the right of the plaintiff to withdraw the suit was not at all affected by any vested right existing in favour of the appellant and, consequently, the order passed by the trial Court was perfectly justified.

Distinguishing the Madras Judgment in *Seethai Achi* v. *Meyappa*, **66 M L J. 617 : A.I.R. 1934 Mad. 337,** the Supreme Court observed, in the context in which that Court expressed its opinion about suits for accounts, it clearly intended to lay down that the dismissal of the suit on plaintiff's withdrawal is not to be necessarily permitted, if the defendant has become entitled to a relief in his favour. But such a right, if at all, can in no circumstances be held to accrue before a preliminary decree for rendition of accounts is passed. In fact, in mentioning suits for partition and suits for accounts, the Court was keeping in view the circumstance mentioned in the earlier sentence which envisaged that a preliminary decree had already been passed defining rights of parties. In any case, we do not think that any defendant in a suit for rendition of accounts can insist that the plaintiff must be compelled to proceed with the suit at such a stage as the one at which the respondent in the present case applied for withdrawal of the suit.

Bishan Narain, Senior Advocate (*M. I. Khowaja*, Advocate, with him), for Appellant.

Niren De, Additional Solicitor General of India (*M. V. Goswami* and *Yogeshwar Prasad*, Advocates, with him), for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

M. Hidayatullah and
C. A. Vaidialingam, JJ.
3rd May, 1967.

The Secretary Home (Endowments) Department, Government of A.P. *v.*
D. Rajendra Ram Dasjee.
C. A. No. 2586 of 1966.

Madras Hindu Religious and Charitable Endowments Act (*XIX of* 1951), *section* 53 *as applied to Andhra Pradesh.*

The short question, that arises, for consideration, is as to whether the Assistant Commissioner, H.R. & C.E. had jurisdiction to assume management of the math

in question, under section 53 of the Act. That will depend on the further question as to whether the State Government had jurisdiction to place the respondent, under suspension, as they have purported to do, by their order, dated 9th September, 1965. The answer to the above question is to be decided, by reference to section 53 of the Act.

Section 53 (1) contemplates four contingencies, under which the Assistant Commissioner may take steps for the temporary custody and protection of the math. We are concerned, in this case, only with the first contingency, referred to in that sub-section. Before that provision can be invoked, two conditions are necessary, viz., (*a*) a vacancy must have occurred, in the office of the trustee of a math; and (*b*) there must be a dispute, respecting the right of succession to such office. In this case, it is possible to say, in view of the claim made by Devendra Dass, and the litigations referred to above, that there was a dispute respecting the right of succession to the office of the Mahant. But, in order to give jurisdiction to the appellant to take action, under the first contingency, referred to in sub-section (1) of section 53 the two conditions adverted to above, will have to exist. In this case, it is the claim of the appellant that there was a vacancy, in the office of the trustee of the Math on 18th March, 1962, when Chetam Dass died. On the other hand, according to the respondent, there was no vacancy in the office of the Mahant, at that time because, on the death of Chetam Dass, the respondent succeeded to the office of the Mahant. Therefore, the point to be considered is, as to whether a vacancy has occurred, in the office of the trustee of the Math, on 18th March, 1962. That there must be an actual vacancy, unfilled, is clear, from the wording of section 53 (1), when it deals with two different contingencies, providing for the assumption of management. Under the first contingency, a vacancy should have occurred in the office of a trustee of a math, and there is a dispute in respect of the succession to such office. That is, the office has not been filled in, by anybody having a *prima facie* legal right to assume management. Similarly, the second contingency contemplated under section 53 (1) when assumption of management can be made by the Department, is when a vacancy occurs in the office of a trustee of a Math and when such vacancy cannot be filled up immediately. This clearly shows that there must be a vacancy, as a fact, in the sense that nobody with any legal right has assumed office of the trustee of the Math.

No doubt, normally, if it is established that the respondent's only right to function as Manager of this institution, is exclusively on the basis of the Government Order, dated 5th June, 1962 there will be considerable force in the contention of the learned Counsel for the appellant that the State Government has got jurisdiction to take disciplinary action, against the respondent. But the facts in this case show that the position is entirely different. If the respondent, as held by the High Court with which view we are in agreement has succeeded to the office of the trustee of the math, on the death of Chetam Dass, on 18th March, 1962, in his own right, the mere circumstance that the Government also passes an order appointing him as interim Mahant, or Manager, later, will not take away the right of the respondent to function as trustee, on the basis of his original right. Once it is held that respondent is not holding the office of the Mahant, exclusively on the basis of the order of the Government dated 5th June, 1962, it follows that the appellant has no jurisdiction to pass an order, placing the respondent under suspension, as that virtually amounts to a removal of the trustee of a Math. The removal of a trustee of a Math can be done only in the manner, and in the circumstances, mentioned in section 52 of the Act. Therefore, the view of the High Court that the order of the Government placing the respondent under suspension, is not valid, is correct.

P. Rama Reddy, Senior Advocate (*A. V. V. Nair*, Advocate, with him), for Appellants.

V. Rangacharya, B. Parthasarthy and *P. C. Bhartari*, Advocates for *M/s. J. B. Dadachanji & Co.*, for Respondent.

G. R. *Appeal dismissed.*

[SUPREME COURT.]

R. S. Bachawat, J. M. Shelat and *V. Bhargava, JJ.*
4th May, 1967.

Vishnu Pratap Sugar Works *v.* Chief Inspector of Stamps.
C.A. No. 1668 of 1966.

U.P. Sugar Cane (Regulation of Supply and Purchase) Act (XXIV of 1953)—*The Sugar Cane Cess Act (XXII of* 1956) *read with the U.P. Sugar Cane Cess (Validation) Act (IV of* 1961)—*U.P. Sugar Cane Purchase Tax Act (IX of* 1961)—*Court-fees Act (VII of* 1870), *section 7—Definition of Instruments—General Clauses Act (X of* 1897)—*Conveyancing Act*, 1881.

The High Court held that an instrument, generally speaking, means a writing usually importing a document of a formal legal kind, but it does not include Acts of Parliament unless there is a statutory definition to that effect in any Act. There is thus ample authority to hold that ordinarily a statute is not an instrument unless as in the case of Conveyancing Act of 1881, the definition includes it or as in the case of section 205 (1) (*viii*) of the Law of Property Act, 1925, the statute creates a settlement and such statute is for that reason treated as an instrument. It would not therefore be correct to say that the Acts alleged in the plaint to be void are instruments within the meaning of sub-section (iv-A) of section 7. In this view, it does not become necessary to decide whether the Acts are instruments securing money or other property having such value. Sub-section (iv-A) of section 7 would not, therefore, apply and the High Court was not right in calling upon the appellant-company to additional Court-fees under that sub-section.

For the reason aforesaid, we are of the view that neither clause (*a*) of sub-section (iv-A) of section 7 nor sub-section (iv-A) of section 7 would apply and the Court-fees payable on the plaint were under clause (*b*) of sub-section (iv-B) of section 7. The appeal therefore, has to be allowed. The order of the High Court is set aside and the order of the trial Court is restored. The respondent will pay the appellant-company the costs of this appeal.

Cases considered : (1964) 3 S.C.R. 442 : A.I.R. 1964 S.C. 173 ; A.I.R. 1944 Bom. 259 ; (1965) 1 S.C.R. 712 : A.I.R. 1965 S.C. 669.

G. N. Dixit, for Appellant.

Bishan Narain, Senior Advocate (*O. P. Rana*, Advocate, with him), for Respondent.

G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

M. Hidayatullah and *C. A. Vaidialingam, J.*
5th May, 1967.

Jai Charan Lal Anal *v.* State of U.P.
C.A.No. 199 of 1967.

U.P. Municipalities Act (II of 1916), *section 87-A—Meaning of 'not earlier than 30 days' and 'not less than 30 days'—High Court's powers under Article* 226.

In the sub-section we are dealing with the number of days should not exceed thirty-five days. On a parity of reasoning not earlier than thirty days would include the 30th day but only the 30th day, could be meant. This proves that the fixing of the date of the meeting was therefore in accordance with law and we respectfully disapprove of the view taken in the Andhra Pradesh case.

In our opinion it is not necessary that the judicial officer should be present at the meeting and then adjourn it for purposes of sub-section (5). He can take action in advance. This will be convenient all round because it will save members from attendance on that day. This was done in this case and in our opinion the action was correct. We do not read the word 'adjourn' as being in any way different from the word 'postpone' which is some times used. The word 'adjourn' means that the officer can postpone the meeting to a subsequent date.

The High Court did not exercise its powers under Article 226 of the Constitution and we must not be intended to have meant that where the High Court has

refused to exercise its discretion this Court would always interfere. This case was admitted in this Court merely to clear a dispute about the law which seems to have evoked diff rent interpretations in the High Courts.

On a consideration of the whole matter we are of opinion that the petition was devoid of merit and although it was dismissed because the High Court did not choose to exercise its discretionary powers the result would have been the same if the High Court had gone into the matter elaborately and correctly. The appeal must therefore be dismissed. We order accordingly.

A. K. Sen, Senior Advocate (*L. N. Mathur* and *B. Dutta*, Advocates and *O. C. Mathur*, Advocate of *M/s. J. B. Dadachanji & Co.*, with him), for Appellant.

C. B. Agarwala, Senior Advocate (*O. P. Rana*, Advocate, with him), for Respondents Nos. 1 to 3.

S. P. Sinha, Senior Advocate (*M. I. Khowaja*, Advocate, with him), for Respondents Nos. 5 to 13.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

J.C. Shah, S.M. Sikri, and *V. Ramaswami, JJ.*
18*th July*, 1967.

Zila Parishad Moradabad *v.* Kundan Sugar Mills.
C.A. No. 596 of 1966.

U. P. District Boards Act (*X of* 1922)—*Power to impose tax—Article* 265 *of the Constitution.*

The respondent is being charged tax now. He is entitled not to be taxed except under the authority of law *vide* Article 265 of the Constitution. There is no question of challenging any pre-Constitution matter. The respondent is challenging a post-Constitution action on the ground that there is no authority of law for the action.

Regarding the second point, the High Court held that an appeal to the District Magistrate under section 128 was not likely to be of much assistance to the petitioner and rejected the contention. It is well-settled that a provision like section 128 does not oust the jurisdiction of the High Court to entertain a petition under Article 226 and it is for the High Court to exercise its discretion whether to entertain the petition or not. The learned Counsel has not pointed out anything to us to show that the discretion has not been properly exercised.

S. T. Desai, Senior Advocate (*C. P. Lal*, Advocate, with him), for Appellant.

G. B. Agarwala, Senior Advocate (*J. P. Agarwal*, Advocate, with him), for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

R.S. Bachawat, J.M. Shelat and *V. Bhargava, JJ.*
18*th July*, 1967.

B.M. Lall *v.* Dunlop Rubber Co. (India) Ltd.
C.As. Nos. 2253 and 2254 of 1966.

West Bengal Premises Tenancy Act (*XII of* 1956), *section* 13 (1) (f)—*Distinction between lease and a license—Can a Limited Company be a Landlord within the meaning of section* 13 (1) (f) *and can it reasonably require the premises for its own occupation.*

The question is whether the occupier under this agreement is a tenant or a licensee. The distinction between a lease and a license is well known. Section 105 of the Transfer of Property Act defines a lease. Section 52 of the Indian Easements Act defines a license. A lease is the transfer of a right to enjoy the premises; whereas a license is a privilege to do something on the premises which otherwise would be unlawful. If the agreement is in writing, it is a question of construction of the agreement having regard to its terms and where its language is ambiguous, having regard to its object, and the circumstances under which it was executed whether the rights of the occupier are those of a lessee or a licensee. The transaction is a lease, if it grants an interest in the land; it is a license if it gives a personal privilege with no interest

in the land. The question is not of words but of substance and the label which the parties choose to put upon the transaction, though relevant, is not decisive. The test of exclusive, possession is not conclusive, (see L.R. (1952) 1 K.B. 290, 298; (1960) S.C.J. 453 : (1960) 1 S.C.R. 368, 381-5,), though it is a very important indication in favour of tenancy, *See* (1958) 1 Q.B. 513, 525). A servant in occupation of premises belonging to his master may be a tenant or a licensee, *see* Halsbury's Laws of England, Third Edition, Volume 23, Article 990, Page 411. A service occupation is a particular kind of license whereby a servant is required to live in the premises for the better performance of his duties. Formerly, the occupation of the servant was regarded as a tenancy unless it was a service occupation, (*See* A.I.R. 1922 Bom. 70). Now it is settled law that a servant may be a licensee though he may not be in service occupation.

The High Court rightly held that the respondents reasonably require the flats for respondent Nos. 2's own occupation through officers holding the flats on its behalf as licensee. If so, it is conceded that it is not necessary for the respondents to establish the reasonable requirement by respondent No. 1 also for its own occupation. The High Court decided this issue also in favour of the respondents. As the decision on this issue is not necessary for the disposal of this appeal, we express now opinion on it. The High Court rightly decreed the suits.

Sarjoo Prasad, Senior Advocate (*R. Ganapathy Iyer*, Advocate with him), for Appellant (In C.A. No. 2253 of 1966).

Devaprasad Chaudhury and *Sukumar Ghose*, Advocates, for Appellant (In C.A. No. 2254 of 1966).

A. K. Sen, Senior Advocate (*S. K. Gambhir* and *D. N. Gupta*, Advocates, with him), for Respondents (In both appeals).

G.R. ——— *Appeals dismissed.*

[Supreme Court.]

R.S. Bachawat, J.M. Shelat and *V. Bhargava, JJ.*

19*th July*, 1967.

D. Nagaratnamba *v.* K. Ramayya.

C.As. Nos. 83 to 85 of 1965.

Hindu Law—Coparcenary properties—Gift of divided interest—Transfer of Property Act (*IV of* 1882), *section* 6 (*h*).

Venkatacharyulu and the appellant were parties to an illicit intercourse. The two agreed to cohabit. Pursuant to the agreement each rendered services to the other. Her services were given in exchange for his promise under which she obtained similar services. In lieu of her services, he promised to give his services only and not his properties. Having once operated as the consideration for his earlier promise her past services could not be treated under this section 2 (*d*) of the Contract Act as a subsisting consideration of for his subsequent promise to transfer the properties to her. The past cohabitation was the motive and not the consideration for the transfers under Exhibits A-1 and A-2. The transfers were without consideration and were by way of gifts. The gifts were not hit by section 6 (*h*) of the Transfer of Property Act, by reason of the fact that they were motivated by a desire to compensate the concubine for her past services.

The invalid gifts were not validated by the disruption of the joint family in 1947. After the disruption of the joint family, Venkatacharyulu was free to make a gift of his divided interest in the coparcenary properties to the appellant, but he did not make any such gift. The transfers under Exhibits A-1 and A-2 were and are invalid. We find no ground for interfering with the decrees passed by the High Court.

P. Ram Reddy, Senior Advocate (*A. V. V. Nair* and *B. Parthasarthy*, Advocates and *O. C. Mathur*, Advocate of *M/s. J. B. Dadachanji & Co.*, with him), for Appellant (In all the Appeals).

C. R. Pattabhiraman and *R. Ganapathy Iyer*, Advocates, for Respondents (In C.As. Nos. 83 and 84 of 1965) and Respondents Nos. 1 to 5 in C.A. No. 85 of 1965.

G. R. ——— *Appeal dismissed.*

[SUPREME COURT.]

K. N. Wanchoo, C.J. and *G.K. Mitter, J.*

25*th July*, 1967.

National Engineering Industries Ltd. *v.* Hanuman.

C.A.No. 549 of 1967.

Industrial Disputes Act (*XIV of* 1947), *section* 33-*A—Standing Orders of the employer—Was there a contravention of section* 33*—Interfering with findings of fact of a quasi judicial Tribunal.*

The doctor who actually gave the certificates was never examined and no reason was given why he could not be examined. It is also remarkable that the fitness certificate which, according to Hanuman, was taken by him when he appeared on 20th April, 1965, to join his duty has not been produced. It is not Hanuman's case that he had given that fitness certificate to the appellant and the appellant had suppressed that also. In the circumstances, it seems to us that the finding of the Labour Court that Hanuman continued ill from 10th to 19th April, 1965, is perverse, for both the witnesses produced by Hanuman in support of his case had not corroborated his statement. There is nothing on the record besides the mere statement of Hanuman to prove that he continued ill from 10th to 19th April, 1965. Even the fitness certificate was never produced before the Labour Court and it seems that the record of the dispensary was also never produced before the Labour Court; further Dr. Girraj Prasad though he stated that he was giving evidence on the basis of the record, did not refer either to the original certificates or the copies thereof before giving his evidence. In these circumstances we cannot accept the finding of the Labour Court to the effect that Hanuman continued ill from 10th to 19th April, 1965, in the face of the appellant's denial that no certificate was sent to the appellant on 10th April, 1965.

We do not understand how a workman who has lost his lien on his appointment can continue in service thereafter. Where therefore a standing order provides that a workman would lose his lien on his appointment, if he does not join his duty within certain time after his leave expires, it can only mean that his service stands automatically terminated when the contingency happens.

Where therefore a workman's service terminates automatically under the standing order section 33 would not apply and so an application under section 33-A would not be maintainable, as there is no question in such a case of the contravention of section 33 of the Act.

But as we have already held there is no difference between saying that the workman's lien would stand terminated as in the present case and that " the workman would lose his appointment " as in that case.

We therefore allow the appeal and set aside the order of the Labour Court reinstating Hanuman. The automatic termination of his service under the relevant standing order would thus stand. In view of the order of this Court dated 20th March, 1967, made at the time of granting Special Leave, we order the appellant to pay the costs of the respondent. Further this Court had ordered then that stay would be granted on condition that the appellant would pay full wages to the respondents pending disposal of the appeal. We therefore order that whatever wages have been paid to the respondent upto now shall not be recovered by the appellant.

Niren De, Additional Solicitor-General of India (*B. P. Maheshwari*, Advocate, with him), for Appellant.

M. K. Ramamurthi, *Mrs. Shyamala Pappu*, *R. Nagaratnam* and *Vineet Kumar*, Advocates, for Respondent.

G.R.

Appeal allowed.

[SUPREME COURT.]

J. M. Shelat, V. Bhargava and *C. A. Vaidialingam, JJ.*
26*th July*, 1967.

Dabur (Dr. S. K. Burman) *v.* The Workmen.
C.A. No. 2568 of 1966.

Industrial Disputes Act (*XIV of* 1947)—*Reference to a different Labour Court.*

Industrial Disputes Act (*XIV of* 1947), *section* 10 (1)—*Error apparent on the face of the Record—Plea of* mala fide.

We cannot see how any objection can be taken to the competence of the State Government to make a correction of a mere clerical error. The finding that it was a clerical error means that the Government in fact intended to make the reference to the Labour Court, Ranchi ; but, while actually scribing the order of reference, a a mistake was committed by the writer of putting down Patna instead of Ranchi. Such a clerical error can always be corrected. and such a correction does not amount either to the withdrawal of the reference from, or cancellation of the reference to, the Labour Court, Patna. The High Court was therefore right in rejecting this contention on behalf of the appellant.

What was urged before the High Court was that even on the *ex parte* evidence on record, the Labour Court ought to have held that the workmen were mere casual labourers. The High Court was right in holding that this point urged on behalf of the appellant essentially raised a question of fact only and that Court, in its jurisdiction under Article 226 of the Constitution, could not interfere on such a question of fact. Since no submission was made before the High Court that the finding of the Labour Court that the workmen are not casual labourers suffers from any manifest error of law apparent on the face of the record, the appellant is not entitled to raise this point in this special appeal before us. On the finding actually recorded by the Labour Court and upheld by the High Court, the order of the Labour Court directing reinstatement of these workmen is fully justified, so that the order made by the Labour Court, in so far as it is against the interests of the appellant, is correct and must be upheld. In view of this position, it is unnecessary to go into the question whether the Labour Court was or was not right in recording the finding as to *mala fides*.

On merits, Mr. Gokhale wanted to urge only two points before us. One was that the Labour Court committed a manifest error of law apparent on the face of the record in holding that the workmen concerned were not casual workers. The judgment of the High Court, however, shows that before that Court it was nowhere urged or urged that any such error of law apparent on the face of the record had been committed by the Labour Court. What was urged before the High Court, was that even on the *ex parte* evidence on record, the Labour Court ought to have held that the workmen were mere casual labourers. The High Court was right in holding that this point urged on behalf of the appellant essentially raised a question of fact only and that Court, in its jurisdiction under Article 226 of the Constitution, could not interfere on such a question of fact. Since no submission was made before the High Court that the finding of the Labour Court that the workmen are not casual labourers suffers from any manifest error of law apparent on the face of the record, the appellant is not entitled to raise this point in this special appeal before us. On the finding actually recorded by the Labour Court and upheld by the High Court, the order of the Labour Court directing reinstatement of these workmen is fully justified, so that the order made by the Labour Court, in so far as it is against the interests of the appellant, is correct and must be upheld. In view of this position, it is unnecessary to go into the question whether the Labour Court was or was not right in recording the finding as to *mala fides*.

The only other point urged was that the Labour Court should not have proceeded *ex parte* when material was placed before that Court on behalf of the appellant to show that its local manager, Sri Basant Jha, was in fact lying ill. The question whether an adjournment should or should not have been granted

on this ground was in the discretion of the Labour Court. Even the order by which the Labour Court rejected that application for adjournment is not before us and, consequently, it cannot be held that the Labour Court committed any such error in rejecting the application for adjournment and proceeding *ex parte* as would justify interference by this Court.

H. R. Gokhale, Senior Advocate (*Sukumar Ghose*, Advocate, with him), for Appellant.

M. K. Ramamurthi, *Mrs. Shyamala Pappu* and *Vineet Kumar*, Advocates, for Respondents.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

J.C. Shah and *S.M. Sikri*, *JJ.*
27*th July*, 1967.

Collector of Customs and Excise *v.* M/s. A.S. Bava.
C.A. Nos. 2007 and 2008 of 1966.

Excise and Salt Act (*I of* 1944), *sections* 12 *and* 35—*Customs Act* (*LII of* 1962), *section* 129—*Procedure regarding appeals.*

In *Hoosein Kasam Dada* (*India*), *Ltd.* v. *The State of Madhya Pradesh*, (1953) S.C.J. 276: (1953) 4 S.T.C. 114: A.I.R. 1953 S.C. 221, the Court observed: S.R. Das, J., as he then was, repelled the argument of the learned Advocate that 'the requirement as to the deposit of the amount of the assessed tax does not affect the right of appeal itself, which still remains intact, but only introduces a new matter of procedure'. The observations in (1953) 4 S.T.C. 114: (1953) S.C.J. 276: A.I.R. 1953 S.C. 221 ; are fully applicable in the present case. Section 35 of the Excise Act gave a right of appeal, but section 129 of the Customs Act whittles down the substantive right of appeal and accordingly it cannot be regarded as 'procedure relating to appeals' within section 12 of the Excise Act.

D. R. Prem, Senior Advocate (*R. N. Sachthey* and *S. P. Nayar*, Advocates, with him), for Appellants (In both the appeals).

S. T. Desai, Senior Advocate (*R. Gopalakrishnan*, Advocate, with him), for Respondent (In both the appeals).

G.R. *Appeals dismissed.*

[SUPREME COURT.]

J.C. Shah and *S.M. Sikri*, *JJ.*
1*st August*, 1967.

The Municipal Council, Raichur *v.* Bohar Amarchand Prasanna.
C.As. Nos. 2382 to 2384 of 1966.

Mysore Municipalities Act (*XXII of* 1964), *section* 97—*Imposition of Octroi Duty on goods specified in schedule* 2—*Rules under the Act and Bye-laws—Meaning of expression "imposed in accordance with the provisions of this Act."*

Section 97 (2) makes the publication of the notice under section 97 (1) conclusive evidence that the tax has been imposed in accordance with the provisions of the Act and the rules made thereunder. The expression "imposed in accordance with the provisions of this Act", in our judgment, means "imposed in accordance

with the procedure provided under the Act". All enquiry into the regularity of the procedure followed by the Municipal Council prior to the publication of the notice is excluded by section 97 (2). This is not a case in which the Municipal Council had not selected a tax for imposition by a resolution; nor is it a case in which the Municipal Council was seeking to levy tax not authorised by law.

It is clear that under section 325 (3) modifications to the model bye-laws alone require compliance with sub-sections (4) and (5) of section 324. It may be assumed that fixing a tariff for storage fee under bye-law 16 which is not prescribed under the model bye-laws amounts to modification of the bye-laws, but even on that assumption only bye-law 16 may be deemed to be invalid, and the power to collect the storage fee may not be lawfully exercised by the Municipal Council; that does not affect the validity of the other bye-laws. If without a particular bye-law, the scheme of the rest of the bye-laws may be unworkable, it may follow by necessary implication that the other bye-laws have also become ineffective. But that cannot be said of the defect in adopting the table of fees for the purpose of bye-law 16. The Municipal Council may not be entitled to levy any charge for storage under bye-law 16, but that is the only effect of non-compliance with the terms of sub-sections (4) and (5) of section 324. The other bye-laws remain valid and operative, for they are plainly severable.

Bye-law 32 provides that no person shall sell articles mentioned therein without obtaining a licence granted in that behalf. The model bye-law is silent as to the articles which may not be sold without obtaining a licence. Bye-laws 33 to 56 depend for their operation upon the list of articles being effectively incorporated in bye-law 32. Failure to incorporate the list of articles would result in the Municipal Council being unable to enforce compliance with the requirements of taking out a licence. But we are unable to hold that because of the failure to fix the time under bye-laws 23 (*e*), 27, 28, or for failure to incorporate the list of articles in bye-law 32, the rest of the bye-laws became ineffective. We are of the view that even without these bye-laws and bye-law 16, octroi duty may be levied by the Municipal Council. In our view, the High Court was in error in holding that the model bye-laws which were adopted by the Municipal Council were unenforceable.

S. T. Desai, Senior Advocate (*S.C. Javali* and *Vineet Kumar*, Advocates, with him), for Appellant (In all the appeals).

M. K. Ramamurthi and *Mrs. Shyamala Pappu*, Advocates, for Respondent No. 1 (In all the appeals) and Respondent No. 2 (In C.A. No. 2382 of 1966).

G.R. *Appeals allowed.*

[SUPREME COURT.]

J. M. Shelat and *V. Bhargava, JJ.*
3rd August, 1967.

Treogi Nath *v.* The Indian Iron & Steel Co., Ltd.
C.A. No. 370 of 1966.

Industrial Disputes Act (*XIV of* 1947) *section* 33-C (2) *and section* 7 (1)—*Bengal, Agra and Assam Civil Courts Act* (*XII of* 1887)—*Civil Procedure Code* (*V of* 1908).

Section 33-C (2) in the matter of applications made by individual workmen, is, therefore, not comparable with section 13 (2) of the Bengal, Agra and Assam Civil Courts Act, but, in fact lays down the requirement which must be satisfied before the Labour Court can take cognizance of the matter raised before it by the applications of the workmen. Section 33-C (2) would, thus, serve the purpose in the case of Labour Courts what is served by the provisions of the Code of Civil Procedure relating to cognizance in respect of Civil Courts. Section 33-C (2), by its language, makes it clear that the jurisdiction under that provision is to be exercised only by those particular Courts which are specified in that behalf by the State Government, and, in fact confers jurisdiction on only those Courts and not on all Labour Courts, which may have been constituted under section 7 (1) of the Act.

It appears that, in some States, the appropriate Government has, by general orders, specified Labour Courts for the purpose of exercising jurisdiction under section 33-C (2). So far as the Government of West Bengal is concerned, it did not issue any similar general order, and the intention of Rule 74 was that any workman wishing to obtain relief under section 33-C (2) should apply to the State Government when the Government would specify the Labour Court for the purpose of dealing with that application. This position has been further clarified by a subsequent amendment of Rule 74 under which it is clearly provided that where any workman is entitled to receive from the employer any benefit which is capable of being computed in terms of money, the workman concerned may apply to the State Government in the prescribed form for the specification of a Labour Court for determining the amount of his dues. It is true that this Rule 74 did not in this form exist at the relevant time with which we are concerned in the present case, but we agree with the Bench of the Calcutta High Court that Rule 74, as it stood at that time, was also intended to lay down that a workman claiming Relief under section 33-C (2) must present his application to the State Government, whereupon the State Government would specify the Labour Court which was to deal with it under section 33-C (2) of the Act.

E. Udayaratnam and *A. P. Chatterjee*, Advocates, for Appellants.

H. R. Gokhale, Senior Advocate, (*D. N. Mukherjee*, Advocate, with him), for Respondents Nos. 1 to 3.

G. R. ——— *Appeal dismissed.*

[SUPREME COURT.]

K.N. Wanchoo, C.J.,
R.S. Bachawat,
V. Ramaswami,
G. K. Mitter and
K.S. Hegde, JJ.
7th August, 1967.

Sant Ram Sharma *v.*
State of Rajasthan.
W.P. No. 182 of 1966.

Indian Police Service (Regulation of Seniority) Rules (1954), *Rule* 6—*Gradation list*—*All India Services Act* (*LXI of* 1951)—*Constitution of India* (1950), *Articles* 14, 16 *and* 309.

The decision of this Court in *P. C. Wadhwa* v. *Union of India*, (1964) 4 S.C.R. 598 : A.I.R. 1964 S.C. 423 is of no assistance to the petitioner and for the reasons we have already given, we are of the opinion that the posts of Inspector-General of Police and Additional Inspector-General of Police in Rajasthan State are selection posts and outside the junior or senior time-scales of pay. If these posts are selection posts it is manifest that the State of Rajasthan is not bound to promote the petitioner merely because he stood first in the Gradation list. The circumstance that these posts are classed as ' Selection Grade Posts ' itself suggests that promotion to these posts is not automatic being made only on the basis of ranking in the Gradation list but the question of merit enters in promotion to selection posts. In our opinion, the respondents are right in their contention that the ranking or position in the Gradation list does not confer any right on the petitioner to be promoted to selection posts and that it is a well-established rule that promotion to selection grades or selection posts is to be based primarily on merit and not on seniority alone. The principle is that when the claims of officers to selection posts is under consideration, seniority should not be regarded except where the merit of the officers is judged to be equal and no other criterion is therefore available. The administrative practice with regard to selection posts is laid down in a letter of the Government of India, dated 31st July, 3rd August, 1954.

It is true that there is no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection grade posts. But that does not mean that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts. It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps

and supplement the rules and issue instructions not inconsistent with the rules already framed.

As a matter of long administrative practice promotion to selection grade posts in the Indian Police Service has been based on merit and seniority has been taken into consideration only when merit of the candidates is otherwise equal and we are unable to accept the argument of Mr. N. C. Chatterjee that this procedure violates in any way, the guarantee under Articles 14 and 16 of the Constitution.

N. C. Chatterjee, Senior Advocate (*K. B. Rohtagi, L. M. Singhvi* and *S. Balakrishnan*, Advocates, with him), for Petitioner.

C. B. Agarwala, Senior Advocate and *G. C. Kasliwal*, Advocate-General, for State of Rajasthan (*Moss Indu Soni* and *K. Baldev Mehta*, Advocates, with them), for Respondent No. 1.

N. S. Bindra, Senior Advocate (*A. S. Nambiar* and *R. N. Sachthey*, Advocates, with him), for Respondent No. 2.

K. Baldev Mehta and *Miss Indu Soni*, Advocates, for Respondents Nos. 3 and 4.

G. R. ——— *Petition dismissed.*

[SUPREME COURT.]

R. S. Bachawat, *J. M. Shelat* and *V. Bhargava*, *JJ.*
7th August, 1967.

Nagendra Prasad *v.* Kempananjamma.
C.A. No. 2399 of 1966.

Hindu Law Women's Rights Act (*Mysore Act X of* 1933).

By Majority :—As held by him (*Shelat, J.*) it is correct that until the Hindu Law Women's Rights Act, 1933 (Mysore Act X of 1933) (hereinafter referred to as "the Act") was passed, no female in Mysore had a right to share in joint Hindu family property under the Mitakshara Law as applied in that area. The right of Hindu woman in a joint Hindu family was confined to maintenance, residence and marriage expenses. The Act for the first time enlarged her rights. The Mysore High Court in *Venkatachaliah* v. *Ramalingaiah*, (1944) 49 Mys. H.C.R. 456, stated this principle and, in our opinion, correctly; it was also correctly held by that Court that the object of section 8 of the Act is to confer larger rights on females by giving them a share in the joint family property.

In *Venkatagowda* v. *Sivanna*, (1960) Mys.L.J. 83, the facts were that *R* had a son *K* by the widow *G*. *K* died leaving his widow *L* and his son *M*. Thereafter, *R* died leaving *M* as the sole surviving coparcener. Clearly, *G* as the widow of *R* was entitled to a one-fourth share. The Mysore High Court also came to that conclusion, though we must say that we do not agree with all the observations made in the judgment. The Court in that case was in error in postulating a partition taking place between *M* and *R* treating the latter as alive.

Sarjoo Prasad, Senior Advocate (*O.P. Malhotra*, Advocate and *O. C. Mathur*, Advocate of *M/s. J. B. Dadachanji & Co.*, with him), for Appellants.

A. K. Sen, Senior Advocate (*B. P. Singh* and *R. B. Datar*, Advocates, with him), for Respondents.

G. R. ——— *Appeal dismissed.*

[SUPREME COURT.]

J. M. Shelat, *V. Bhargava* and *C.A. Vaidialingam*, *JJ.*
8th August, 1967.

East India Coal Co., Ltd. *v.* Rameshwar.
C.As. Nos. 256 to 267 of 1966.

Coal Mines Provident Fund and Bonus Schemes Act (*XLVI of* 1948)—*Industrial Disputes Act* (*XIV of* 1947), *section* 33-C (2)—*Amendment of Industrial Dispute by Act* (*XXXVI of* 1964)—*Jurisdiction of Labour Court.*

The benefit provided in the bonus scheme made under the Coal Mines Provident Fund and Bonus Schemes Act, 1948 which remains to be computed

must fall under sub-section (2) and the Labour Court therefore had jurisdiction to entertain and try such a claim, it being a claim in respect of an existing right arising from the relationship of an industrial workman and his employer. The contention that the Labour Court had no jurisdiction because the claim arose under the said scheme or because the benefit was monetary or because it involved any substantial question between the Company and the workmen must fail.

In view of the admitted position that the respondents-workmen were employees of the Company the burden of proof that they fell within the exception is clearly on the Company. In its written statement the Company no doubt averred that these workmen were employed as domestic servants and carried out domestic and personal duties and were therefore not eligible for the bonus. But it is clear from the evidence of the two witnesses examined by the Company that the Company failed to establish either that the respondents were employed as domestic servants or that they were exclusively engaged on domestic or personal work. On the other hand, from the evidence of Sibu, one of the respondent workmen, it appears that the respondents were employed in the colliery, that they were not assigned the exclusive duty of supplying water at the residence of the junior officers but that they supplied water at certain pit heads. On this evidence the Labour Court has given a finding that they were engaged in supplying water at certain points in the colliery. In these circumstances the Labour Court was justified in coming to the conclusion that the exception did not apply.

The last contention which remains to be considered was that the Labour Court was not right in awarding the claim of the workmen in full, both as regards bonus and railway fares and leave wages. According to the Company, none of these workmen was in its employment in 1948, that they were appointed at different dates and that they would at best be entitled to bonus for the period during which they were so employed. This contention has, however, no force in view of the Company not having disputed the quantum of relief claimed by the workmen both as regards bonus as also the railway fares and leave wages.

H. R. Gokhale, Senior Advocate (*D. N. Gupta*, Advocate, with him), for Appellant (In all the Appeals).

Janaradan Sharma, Advocate, for Respondents (In all the Appeals).

G. R. *Appeals dismissed.*

[Supreme Court.]

K. N. Wanchoo, C.J.,
G. K. Mitter, J.
11th August, 1967.

Remington Rand of India, Ltd. *v.* The Workmen.
C.A. No. 548 of 1967.

Industrial Disputes Act (*XIV of* 1947), *sections* 17(1), (2), 17-*A and* 19—*Non-publication of the Award within the period of* 30 *days and its consequences.*

The limit of time has been fixed as showing that the publication of the award ought not to be held up. But the fixation of the period of 30 days mentioned therein does not mean that the publication beyond that time will render the award invalid. It is not difficult to think of circumstances when the publication of the award within thirty days may not be possible. For instance, there may be a strike in the press or there may be any other good and sufficient cause by reason of which the publication could not be made within thirty days. If we were to hold the award would therefore be rendered invalid, it would be attaching undue importance to a provision not in the mind of the Legislature. It is well known that it very often takes a long period of time for the reference to be concluded and the award to be made. If the award becomes invalid merely on the ground of publication after thirty days, it might entail a fresh reference with needless hariassment to the parties. The non-publication of the award within the period of thirty days does not entail any penalty and this is another consideration which has to be kept in mind. What was said in the earlier passage from the judgment in *The Sirsilk Ltd.* v. *Government of*

Andhra Pradesh, (1964) 2 S.C.R. 448 at 452 : A.I.R. 1964 S.C. 160 merely shows that it was not open to Government to withhold publication but this Court never meant to lay down that the period of time fixed for publication was mandatory.

In the result, the Tribunal directed that the workmen of Ernakulam branch should get dearness allowance " at the rate at which and in the manner in which " the pay and dearness allowance was being paid to the employees of Madras Regional Office. In our view, dearness allowance should be the same as decided in the case of the workers of the Bangalore branch.

The scheme for gratuity is the same as in the case of the Bangalore branch with the only difference that the maximum fixed was 20 months' wages after 20 years' service. In our view, there is no reason why the scheme for gratuity should not be the same in the Ernakulam branch as in the Bangalore branch in case of termination of service for misconduct and the qualifying period should be 15 years' service.

Again, on principles already formulated, we hold that leave facilities at Ernakulam should be the same as those prevailing at Madras.

In the result, the matter will go back to the Tribunal for disposal of the issue as to the revision of wage scales and adjustment of the workers in the revised scales. The scheme for gratuity will stand modified as indicated in our judgment in Civil Appeal No. 2105 of 1966 delivered today. The rest of the award will stand. The appellant will pay the respondent the costs of this appeal.

H. R. Gokhale, Senior Advocate (*D. N. Gupta*, Advocate, with him), for Appellant.

M. K. Ramamurthi, *Mrs. Shyamala Pappu*, *Vineet Kumar* and *R. Nagarinam*, Advocates, for Respondents.

G. R. ——— *Matter remanded.*

[SUPREME COURT.]

K. N. Wanchoo, C. J.
R. S. Bachawat,
V. Ramaswami,
G. K. Mitter and
K. S. Hegde, JJ.
14th August, 1967.

Roshan Lal Tandon *v.*
Union of India
W.P. Nos. 154 and 203 of 1966.

Constitution of India (1950), *Articles* 14 *and* 16—Vires *of Notification dated* 27*th October*, 1965 *of the Railway Board.*

In our opinion, the constitutional objection taken by the petitioner to this part of the notification is well-founded and must be accepted as correct. At the time when the petitioner and the direct recruits were appointed to Grade 'D', there was one class in Grade 'D' formed of direct recruits and the promotees from the grade of artisans. The recruits from both the sources to Grade 'D' were integrated into one class and no discrimination could thereafter be made in favour of recruits from one source as against the recruits from the other source in the matter of promotion to Grade 'C'. To put it differently, once the direct recruits and promotees are absorbed in one cadre, they form one class and they cannot be discriminated for the purpose of further promotion to the higher Grade 'C'. In the present case, it is not disputed on behalf of the first respondent that before the impugned notification was issued there was only one rule of promotion for both the departmental promotees and the direct recruits and that rule was seniority-*cum*-suitability, and there was no rule of promotion separately made for application to the direct recruits. As a consequence of the impugned notification a discriminatory treatment is made in favour of the existing Apprentice Train Examiners who have already been absorbed in Grade 'D' by 31st March, 1966, because the notification provides that this group of Apprentice Train Examiners should first be accommodated *en block* in Grade 'C' upto 80 per cent. of vacancies reserved for them without undergoing

any selection. As regards the 20 per cent. of the vacancies made available for the category of Train Examiners to which the petitioner belongs the basis of recruitment was selection on merit and the previous test of seniority-*cum*-suitability was abandoned. In our opinion, the present case falls within the principle of the recent decision of this Court in *Mervyn* v. *Collector*, (1966) 3 S.C.R. 600: (1967) 1 S.C.J. 574 : A.I.R. 1967 S.C. 52.

We are therefore of the opinion that the petitioner has no vested contractual right in regard to the terms of his service and that Counsel for the petitioner has been unable to make good his submission on this aspect of the case.

But for the reasons already expressed we hold that the impugned part of the notification violates the guarantee under Articles 14 and 16 of the Constitution and a writ in the nature of *mandamus* should be issued commanding the first respondent not to give effect to the impugned part of the notification.

S. K. Mehta and *K. L. Mehta*, Advocates, for Petitioners (In both the Petitions).

N. S. Bandra, Senior Advocate (*A. Sreedharan Nambiar*, Advocates and *R. H. Dhebar*, Advocate for *R. N. Sachthey*, Advocate, with him), for Respondent No. 1 (In W.P. No. 154 of 1966).

I. M. Lall and *F. C. Agarwala*, Advocates, for Respondent No. 2 (In W.P. No. 154 of 1966).

R. H. Dhebar, Advocate for *R. N. Sachthey*, Advocate, for Respondents Nos. 1 and 2 (In W.P. No. 203 of 1966)

H. R. Gokhale, Senior Advocate (*F. C. Agrawala*, Advocate, with him), for Respondent No. 6 (In W.P. No. 203 of 1966).

Respondent No. 10 in person (In W.P. No. 203 of 1966).

G R. ——— *Petition allowed.*

[SUPREME COURT.]

K. N. Wanchoo, C.J.,
R. S. Bachawat,
V. Ramaswami,
G. K. Mitter and
K. L. Hegde, JJ.
16*th August*, 1967.

A. C. Aggarwal, Sub-Divisional Magistrate *v.* Mst. Ram Kali.
C.As. Nos. 76-82 of 1965.

Suppression of Immoral Traffic in Women and Girls Act (*CIV of* 1956), *sections* 18 *and* 3—Ultra vires *of Article* 14 *of the Constitution—Constitution of India* (1950), *Article* 19 (*d*) (*e*) *and* (*f*).

Sections 3 and 7 provide for the punishment of persons guilty of the offences mentioned therein. Any contravention of the provisions mentioned therein amounts to a cognizable offence in view of section 14, whereas a proceeding under section 18 is in no sense a prosecution. It is a preventive measure. It is intended to minimise the chance of a brothel being run for prostitution being carried on in premises near about public places. Naturally, in the case of prosecutions, a regular trial with a right of appeal is provided for. The enquiry contemplated by section 18 is summary in character.

From the copies of the reports made in these cases to the Magistrate by the police, made available to us at the hearing of these appeals, it is clear that they disclose offences under section 3 against the respondents. Therefore, the question is whether the Magistrate can choose to ignore the cognizable offence complained of and merely have recourse to section 18 and thus deprive the parties proceeded against of the benefit of a regular trial as well as the right of appeal in the event of their conviction. Bearing in mind the purpose of these provisions as well as the scheme of the Act and on a harmonious construction of the various provisions in the Act, we are of the opinion that in cases like those before us the Magistrate

who is also a Court as provided in section 22 must at the first instance proceed against the persons complained against under the penal provisions in sections 3 or 7 as the case may be, and only after the disposal of those cases take action under section 18 if there is occasion for it. Under section 190 (1) (*b*) of the Code of Criminal Procedure, the Magistrate is bound to take cognizance of any cognizable offence brought to his notice. The words "may take cognizance" in the context means "must take cognizance." He has no discretion in the matter, otherwise that section will be violative of Article 14s But as laid down in *Delhi Administration* v. *Ram Singh*, (1962) 2 S.C.R. 694: A.I.R. 1962 S.C. 63, only an officer mentioned in section 13 can validly investigate an offence under the Act. Hence if the cases before us had been investigated by such an officer, there is no difficulty for the Magistrate to take cognizance of those cases. Otherwise it is open to him to direct fresh investigations by competent police officers before deciding whether the fact placed before him disclose any cognizable offence.

In the result, we hold, for the reasons mentioned above, that the proceedings taken by the learned Magistrate against the respondents are not in accordance with law as he has proceeded against them under section 18 without first taking action under section 3. For that reason we uphold the conclusions reached by the learned Judges of the Punjab High Court but on grounds other than those relied on by them. But this conclusion of ours does not debar the learned Magistrate from taking fresh proceedings against the respondents in accordance with law as explained by us earlier.

B. R. L. Iyengar, Senior Advocate (*R. N. Sachthey*, Advocate, with him), for Appellants (In all the appeals).

G. S. Bawa and *Harbax Singh*, Advocates, for Respondents (In C. As. Nos. 76 to 81 of 1965).

G.R. *Appeals dismissed.*

Ramaprasada Rao, J.
20th January, 1967.

Muthiah Nattar *v.*
Ibrahim Rowther.
C.R.P. No. 563 of 1965.

Madras Cultivating Tenants' Protection Act (*XXV of* 1955) *and Madras Cultivating Tenants Protection Rules* (1955), *rule* 8 (ii) (e)—*Application for restoration of possession filed by tenant—Case of sale to third party and his possession alleged by landlord—Application to implead third party filed after two months of dispossession of tenant—Limitation—Dismissal against third party* in limine—*Improper—Applicability of provisions of Civil Procedure Code—Extent of—* "*As far as possible*" — *Meaning.*

The tenant applied under section 4 (5) of the Act for restoration of possession of the lands. The application was filed on 17th July, 1962, on the ground that he was wrongly dispossessed on 14th July, 1962. The counter-affidavit filed by the landlord on 19th September, alleged the sale of the lands to the third party who was said to be in possession. Then the tenant applied under rule 8 (ii) (*e*) of the Rules to add the third party as a party to the proceedings. On the question whether Order 1, rule 10 read with sections 22 and 29 of the Limitation Act, 1908 should be strictly made applicable.

Held, the provisions of the Code of Civil Procedure are made applicable to the proceedings before the Rent Court only " as far as possible." Due effect should be given to this parenthesis " as far as possible."

Such addition of parties beyond time, even if it is prescribed by a special enact ment, would not be barred by the rule of limitation as such and such proceedings ought not to be dismissed in limine as against the party so impleaded or added. Courts are not helpless to pass the appropriate relief to the party affected, namely, the petitioner in the proceedings concerned.

M. R. Narayanaswami, for Petitioner.

K. Raman, for Respondent No. 1.

G. Jagadisa Iyer, for Respondent No. 2.

V.S. *Petition dismissed.*

Venkataraman, J.
30th July, 1967.

Sivaraj *v.*
Sadasiva.
A.A.O. No. 139 of 1967.

Madras Civil Courts Act (*III of* 1873) *as amended by Madras Act* (*XVII of* 1959), *section* 30—*Subordinate Judge—Pending suit—Summer vacation intervening—Order in an Interlocutory application in a pending suit pronounced in the vacation—No objection raised by parties—Judgment not void—Practice.*

The provision vesting jurisdiction in the vacation civil Judge is not intended to to take away the jurisdiction which the Subordinate Judge had to dispose of a matter which was properly pending before him if he was inclined to work during the vacation and if the parties raised no objection thereto. Judgments pronounced in holidays are not void.

R. Gopalaswami Iyengar and *K. N. Balasubramaniam*, for Appellants.

V. Vedantachari, for Respondent.

V.S. *Orders accordingly.*

Kailasam, J.
18*th September*, 1967.

M/s. Kalyani Transports (P.) Ltd. *v.*
Regional Transport Authority.
W.P. Nos. 2303 and 2304 of 1966.

Motor Vehicles Act (*IV of* 1939), *section* 57—Suo motu *applications for permits—Return of application with a direction to apply after applications are called for—Applications called for and dates fixed—Application by petitioner after time—Return of application, not in accordance with law—Applications to be considered along with applications filed by others in response to the notification.*

The petitioner *suo motu* applied for permits for certain routes by his applications dated 29th November, 1965. The Regional Transport Authority returned the petitioner's applications with the endorsement dated 15th December, 1965 that he may apply as and when applications are invited under section 57 (2) of the Act. Subsequently the Regional Transport Authority invited applications for grants of permits on the above routes under section 57 (2) and fixed the last date for receipt of applications as 16th June, 1966. The petitioner applied only on 17th June, 1966. The applications were declined to be entertained.

Held, when a *suo motu* application or an application in response to the notification of the Regional Transport Authority, is made, than the procedure under section 57 (3) of the Act will have to be followed. The return made by the Regional Transport Authority of the *suo motu* applications is not according to law. The applications filed by the petitioner must also be considered along with other applications received in response to the Notification.

G. Ramaswami, for Petitioner.

T. Selvaraj, for the Government on behalf of the State.

V. Krishna Menon, for 3rd Respondent.

V.S.

Petitions allowed.

Ramakrishnan, J.
28*th September*, 1967.

Ramaswamy *v.*
Municipality of Coimbatore.
W.P. No. 891 of 1965.

Madras District Municipalities Act (*V of* 1920), *sections* 321 (11), 250—*Application for permission to instal machinery—No communication by the Municipality within thirty days of the receipt of application—Application deemed to have been allowed—Interim order within time prohibiting installation made by the Executive Officer of Municipality—Not a valid compliance—Order to be made by the Municipality.*

If no orders are communicated to an applicant on his application under section 250 of the Act seeking permission of the Municipality to instal a machinery for a Flour Mill, within thirty days of the receipt of such application, such application would be deemed to have been allowed under section 321 (11) of the Act. There may be an interim order prohibiting such installation of machinery, pending final decision but it must be an order made by the Municipality and not by the Executive Officer thereof.

K. Ramachandran, for Petitioner.

K. Gopalaswami, for Respondent.

V.S.

Petition allowed.

[SUPREME COURT].

K. N. Wanchoo, C.J. R. S. Bachawat, V. Ramaswami, G. K. Mitter and *K. S. Hegde, JJ.*
4th August, 1967.

Ravindra Nath *v.* Raghbir Singh.
C.A. No. 520 of 1967.

Representation of the People Act (*XLIII of* 1951), *section* 97 (1)—*Sections* 117 119-A *and* 118 *of the Representation of the People Act.*

The High Court thought that the decision in *Kumaranand* v. *Brij Mohan* (1965) 1 S.C.R. 116, lends support to its conclusion that the Tribunal could not refuse to admit the evidence under section 97 if the security under section 117 is given before the date fixed for recording the evidence. That decision turned on the construction of section 119-A and is not relevant on the questions under consideration in this appeal. As section 119-A did not expressly provide the penalty for failure to furnish the security for costs of an appeal at the time of filing the memorandum of appeal, the failure to furnish the security did not automatically result in dismissal of the appeal, and it was for the High Court to decide having regard to the circumstances of each case whether it should decline to proceed with the hearing of the appeal. But the proviso to section 97 (1) expressly provides that the recriminator shall not be entitled to give evidence unless *inter alia* he gives the security referred to in section 117.

The Tribunal rightly held that the respondent No. 1 was required to produce with the notice under the proviso to section 97 (1) a Government treasury receipt showing a deposit of Rs. 2,000 as security for costs of the recrimination. The High Court was in error in quashing this order.

Rajinder Sachhar and *Mahinderjit Singh Sethi*, Advocates, and *Ravinder Narain*, Advocate of *M/s. J. B. Dadachanji & Co.*, for Appellant.

R. M. Hazarnavis, Senior Advocate, (*Rameshwar Nath* and *Mahinder Narain*, Advocates of *M/s. Rajinder Narain & Co.*, with him), for Respondent 1.

G.R. *Appeal allowed.*

[SUPREME COURT].

K. N. Wanchoo, C. J., R. S. Bachawat, V. Ramaswami, G. K. Mitter and *K. S. Hegde, JJ.*
14th August, 1967.

Jagdev Singh and Sardar Singh *v.* The State of J. & K.
W.P. Nos. 69 and 71 of 1967.

Defence of India Rules (1962), *rule* 30 (1) (b).

There is no doubt that if the Government resorts to the device of a series of fresh orders after every six months and thus continues the detention of a detenu, circumventing the provisions of rule 30-A for review, which, as interpreted by this Court in *Lakhanpal* v. *The Union of India*, A.I.R. 1967 S.C. 1507, gives some protection to the citizens of this country, it would certainly be acting *mala fide*. Such a fresh order would be liable to be struck down, not on the ground that the Government has no power to pass it but on the ground that it is *mala fide* exercise of the power. But if the Government has power to pass a fresh order of detention on the same facts in case where the earlier order or its continuance fails for any defect we cannot see why the Government cannot pass such fresh order curing that defect. In such a case it cannot be said that the fresh order is a *mala fide* order passed to circumvent rule 30-A. Take the present case itself. The Government passed the original order of detention in March, 1965. That order was good for six months and thereafter it could only continue under rule 30-A on orders passed under rule 30-A (9). The Government did pass orders under rule 30-A (9) and we cannot say in view of the judgment in *Sadhu Singh* v. *Delhi Administration*, (1966) 1 S.C.J. 215 : (1966) M.L.J. (Crl.) 153 : (1966) 1 S.C.R. 243, that the Government went wrong in the procedure for review. It was only after the judgment of this Court in *Lakhanpal's case*, A.I.R. 1967 S.C. 1507, that the manner of review became open to

objection, with the result that the continuance of the order in these two cases failed and the detention became illegal. If in these circumstances the Government passes a fresh order under rule 30, it cannot be said that it is doing so *mala fide* in order to circumvent rule 30-A (9). In actual fact the Government had complied with the provisions of rule 30-A (9) and what it did was in accordance with the judgment of this Court in *Sadhu Singh's case*, (1966) 1 S.C.J. 215 : (1966) M.L.J. (Crl.) 153 : (1966) 1 S.C.R. 243. It is true that after *Lakhanpal's case*, A.I.R. 1967 S.C. 1507, the manner in which the review was made became defective and therefore the continuation of detention became illegal. Even so, if the Government decides to pass a fresh order in order to cure the defect which has now appeared in view of the judgment of this Court in *Lakhanpal's case*, A.I.R. 1967 S.C. 1507, it would in our view be not right to say that the Government cannot do so because that would be circumventing rule 30-A. We do not think that we should deprive the Government of this power of correcting a defect particularly in the context of emergency legislation like the Act and the Rules. The Courts have always the power to strike down an order passed in *mala fide* exercise of power, and we agree with Bhargava, J., to this extent that if the Government, instead of following the procedure under rule 30-A as now laid down in *Lakhanpal's case*, A.I.R. 1967 S.C. 1507, wants to circumvent that provision by passing fresh orders of detention on the same facts every six months it will be acting *mala fide* and the Court will have the power to strike down such *mala fide* exercise of power. But in cases, like the present, where the continuance became defective after the judgment of this Court in *Lakhanpal's case*, A.I.R. 1967 S.C. 1507, we can see no reason to deny power to Government to rectify the defect by passing a fresh order of detention. Such an order in such circumstances cannot be called *mala fide*, and if the Government has the power to pass it which it undoubtedly has, for there is no bar to a fresh order under the Act or the Rules—there is no reason why such a power should be denied to Government so that it can never correct a mistake or defect in the order once passed or in the continuation of order once made. We are therefore of opinion that the view taken in *Avtar Singh* v. *State of J. & K.*, A.I.R. 1967 S.C.1797, in so far as it says that no fresh order can be passed even to correct any defect in an order continuing detention under rule 30-A (9) is not correct.

But in the insrant cases, where the State Government ordered the Continuance of the detension orders passed in March 1965 on review in April 1967 in accordance with the procedure indicated in *Lakshanpal's case*, A.I.R. 1967 S.C. 1507, there were no orders to be continued because the in-between reviews were not proper on the detention had become illegal. The petitioners would be entitled to release onthat ground.

R. V. S. Mani, Advocate, *amicus curiae*, for Petitioners (In both the Petitions).

R. H. Dhebar, *R. Gopalakrishnan* and *S. P. Nayar*, Advocates, for Respondent (In both the Petitions).

G.R. ——— *Petitions allowed.*

[SUPREME COURT].

K. N. Wanchoo, C.J.
R. S. Bachawat,
V. Ramaswami,
G. K. Mitter and
K. S. Hegde, JJ.
17*th August*, 1967.

Jagdish Pandey *v.*
The Chancellor, University of Bihar.
C.A. No. 29 of 1966.

Bihar State Universities (*University of Bihar, Bhagalpur and Ranchi*) (*Amendment*) *Act* (*XIII of* 1962) (*hereinafter referred to as the Act*)—*Magadh University Act*, 1961 (*Bihar Act IV of* 1962)—*Section* 4 *of the Act* ultra vires *of Article* 14 *of the Constitution.*

It is urged that section 4 does not provide for approval by the University of the Chancellor's order, while section 48-A (6) does; and it is therefore discriminatory. We are of opinion that section 4 was enacted to meet a particular situation

and in that situation the approval by the University of the Chancellor's order would be quite out of place. Section 4 cannot be struck down as discriminatory on this ground.

We therefore read section 4 in the manner indicated above both as to the limit of the Chancellor's power while passing an order thereunder and as to the necessity of the Commission giving a hearing to the teacher concerned before making the recommendation, and so read we are of opinion that section 4 cannot be held to be discriminatory and as such liable to be struck down under Article 14 of the Constitution.

Another curious result would follow if the interpretation accepted by the High Court is correct. The High Court as we have pointed out above has held that sub-rule (6) give equivalence only for the particular post held by a teacher appointed and confirmed before 1st July, 1952. Suppose that a lecturer in one college who holds a third class Master's degree and is entitled to remain as lecturer in that college, for some reason is appointed to another college after the Statutes came into force. This would be a new appointment and such a lecturer could not be appointed in a new college because he would not have a second class Master's degree for the new appointment. It seems to us therefore that the intention of sub-rule (6) must be read as a protection to the teachers who were appointed and confirmed before 1st July, 1952, and by fiction it gave the minimum qualification even though they may not actually have it. That minimum qualification must therefore remain with them always for the future, for nothing has been brought to our notice which takes away that minimum qualification deemed to be conferred on the teachers by sub-rule (6). We are therefore of opinion that the order dated 18th February, 1963, passed by the Chancellor requiring the governing body of the Pandual College to give the appellant a year or two to appear at an examination to enable him to obtain a second class Master's degree, otherwise his services might be terminated, is not valid, for the appellant must be deemed to have the minimum qualification of a second class Master's degree by virtue of sub-rule (6) of the Statutes and as such he was qualified for appointment as Principal of Pandual College.

B. C. Ghosh, Senior Advocate, (*K. K. Sinha*, Advocate, with him), for Appellant.

S. Mustafi and *A. K. Nag*, Advocates, for Respondent No. 3.

P. K. Chatterjee, Advocate, for Respondent No. 4.

G.R. *Appeal allowed.*

[Supreme Court].

J. C. Shah,
S. M. Sikri and
J. M. Shelat, *JJ.*
17*th August*, 1967.

Village Panchayat of Kanhan Pipri *v.*
Standing Committee Zilla Parishad, Nagpur.
C.A. No. 1375 of 1966.

C. P. and Berar Panchayat Act, 1946 (*I of* 1947)—*Bombay Village Panchayat Act* 1958 (*Bombay Act III of* 1959), (*hereinafter referred to as the Act*)—*Definition of octri duty under section* 3 (13) *of the Bombay Act*—*Rules under the Act.*

The High Court held that "rule 3 (*b*) must be interpreted as requiring the Panchayat to notify to the public not only the proposal about the tax selected by it for levy, but also the rules relating to that tax which must mean the action taken under the Act and the rules." On the language of rule 3 (*b*) we are unable to appreciate how action taken under the Act and the rules is required to be notified to the public. There is nothing in the language to warrant such a construction.

In conclusion we hold that the octroi duty was validly levied and that it could be imposed and collected with effect from 14th January, 1964.

Coming to the question of the vires of rule 5, it seems to us that the High Court has placed a wrong interpretation on rule 5. The High Court has held that as

rule 5 applies to all appeals under section 124 (5) of the Panchayat Act, the fixing of the commencement of the period of limitation as the date of publication of the notice under rule 4 for all appeals is arbitrary and destructive of the right of appeal. But this interpretation, with respect is not correct, if rule 5 is read in the setting in which it occurs. Rule 5 follows immediately after rules 3 and 4 and is headed "Appeal against levy of any tax or fee" and the period of sixty days of limitation commences from the date of the publication of the notice under rule 4, *i.e.*, the notice following the decision of a Panchayat to levy any tax or fee. This date shows that rule 5 is dealing only with appeals against levy of any tax and not with the assessment or imposition of a tax or any further appeals to the Panchayat Samiti under section 124 (5). It is true that the opening sentence makes a reference to an appeal under sub-section (5) of section 124 but in the context and setting the heading of rule 5 brings out the scope of the rules. Accordingly, the appeal of the Company to the Samiti was wrongly dismissed as time barred. It follows from this that the Standing Committee was entitled to deal with the appeal on merits.

In the result the appeal is allowed, and it is declared that the Panchayat could validly impose octroi duty from 14th January, 1964, in accordance with the resolutions dated 25th February, 1963, and 17th March, 1963. The case is remanded to the High Court to deal with the question whether the Company imported tea for the purpose of consumption, use or sale within the octroi limits of the Panchayat. The High Court may either remand the case to the Panchayat Samiti or deal with it as it may consider best in accordance with law. Under the circumstances there will be no order as to costs in this appeal.

M. N. Phadke and *Naunit Lal*, Advocates, for Appellant.

B. R. Agarwala, Advocate of *M/s. Gagrat & Co.*, and *S. B. Nerkar*, Advocate, for Respondent 1.

A. K. Sen, Senior Advocate, (*A. S. Bobde* and *G. L. Sanghi*, Advocates, and *O. C. Mathur*, Advocate of *M/s. J. B. Dadachanji & Co.*, with him), for Respondent 2.

M. S. K. Sastri and *R. N. Sachthey*, Advocates and *S. P. Nayar*, Advocate, for *R. H. Dhebar*, for Respondent 3.

G.R. *Appeal allowed; case remanded.*

[SUPREME COURT].

K. N. Wanchoo, C.J. and *G. K. Mitter, J.*

18th August, 1967.

The Pabbojan Tea Company Ltd. *v.* The Deputy Commissioner, Lakhimpur.

C.As. Nos. 288-291 of 1966.

Minimum Wages Act (*XI of* 1948); *section* 20 (3)—*Whether civil Court had jurisdiction to entertain the suit and grant the relief claimed—Civil Procedure Code* (*V of* 1908), *section* 9.

There is no provision for appeal or revision against the direction of the Authority although he may levy a penalty to the extent of ten times the amount by which the minimum wages overtop the payment actually made. Whatever he says is the final word on the subject. All this can but lead to the conclusion that section 20 was not aimed at putting a seal on the adjudication, if any, under it. It was to be of a nature which suited the discretion of the officer concerned although he was given the powers of a civil Court in certain respects. In such a situation, it is impossible to hold that the Legislature meant to exclude the jurisdiction of civil Courts to go into the question of non-payment of minimum wages claimed as final. In our opinion, sub-section (6) of section 20 merely shows that the discretion of the Authority could not be questioned under any provision of the Act. It does not exclude the jurisdiction of the civil Court when the challenge is as to the applicability of the Act to a certain class of workers.

We therefore hold that the orders of the defendant 1 dated 2nd June, 1954, were not binding on the plaintiffs-appellants. We declare that the sub-normal

workers of the tea estates (commonly known as let tera challans) were not entitled to full minimum wages without performance of a normal day's task or without working the prescribed number of hours. We also direct a perpetual injunction to issue against the defendant 1 restraining him from enforcing the orders dated 2nd June, 1954. The appeals are therefore allowed and the decrees passed by the Subordinate Judge and the High Court of Assam are set aside. There will be no order as to costs.

P. K. Goswami, Senior Advocate, (*R. Gopalakrishnan*, Advocate, with him), for Appellants (In all the Appeals).

H. R. Gokhale, Advocate, (*Naunit Lal* and *B. P. Singh*, Advocates, with him), for Respondent 1 (In all the Appeals).

G.R. *Appeal allowed.*

[SUPREME COURT].

M. Hidayatullah and *C.A. Vaidialingam, JJ.*
18*th August*, 1967.

The Central Bank of India Ltd. *v.* Karunamoy Banerjee.
C.A. No. 440 of 1966.

Industrial Disputes Act (*XIV of* 1947), *section* 33 (2) (*b*) (*hereinafter called the Act*):

When once the workman himself has, in answer to the charge levelled against him, admitted his guilt, in our opinion, there will be nothing more for the management to enquire into. That was the position in the case before us. Therefore, we are not inclined to agree with the reasoning of the Labour Court that when there has been an admission of guilt, by the respondent himself, it can still be stated that there is a violation of the principles of natural justice merely because of the fact that the workman was examined, in the first instance. Nor are we impressed with the further view expressed by the Labour Court, that the way in which answers were elicited from the workman, showed that there has been a cross-examination by the management, to obtain points in substantiation of the charges. We have gone through the entire examination of the respondent at the domestic enquiry, and we are satisfied that there is no such infirmity. In fact, the question of the management trying to obtain answers to support the charges, does not arise at all, in this case, because the respondent has consistently admitted his guilt, at all stages. On the other hand, the nature of the questions put to the respondent clearly indicate that the management, when once the workman had admitted his guilt, was only giving him an opportunity to explain his conduct or to refer to circumstances, if any, which could be taken into account in extenuation of his conduct. The management had also permitted the respondent to put questions to the other two witnesses, examined during the enquiry, *viz.*, Mr. Bhatena and Mr. Savkar.

Having considered the enquiry proceedings, in its entirety in this case, we are satisfied that there has been no violation of the rules of natural justice. Therefore, it follows that the order of the Labour Court, refusing to grant approval, as asked for by the management, is erroneous and, as such, it is set aside. In the result, the appeal is allowed; but parties will bear their costs, in this appeal.

H. R. Gokhale, Senior Advocate, (*C. L. Chopra* and *P. C. Bhartari*, Advocates, and *O. C. Mathur*, Advocate of *M/s. J. B. Dadachanji & Co.*, with him), for Appellant.

Janardan Sharma, Advocate, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT].

M. Hidayatullah, and
C. A. Vaidialingam, JJ.
22nd August, 1967.

Syndicate Bank Ltd. *v.*
K. Ramanath V. Bhat.
C.A. No. 503 of 1966.

Industrial Disputes Act (*XIV of* 1947), *sections* 33-A, 33 (2) (b)—*National Industrial Tribunal* (*Bank Disputes*) *Award*, 1962 (*known as the Desai Award*).

In an enquiry, under section 33-A, the first question that the Tribunal will have to consider, is regarding the contravention, by the employer, of the provisions of section 33 of the Act. If this issue is answered against the employee, nothing further can be done, under section 33-A of the Act. This position has been settled, by the decisions of this Court in *Equitable Coal Ltd.* v. *Algu Singh*, (1958) 1 L.L.J. 793 and *The Punjab National Bank Ltd.* v. *Its Workmen*, (1960) S.C.J. 999 : (1960) 1 S.C.R. 806. After hearing arguments, on this aspect, we are inclined, in the instant case, to accept the contention of the appellant, in this regard, and hence, no other questions arise, in the application filed by the respondent under section 33-A of the Act.

It has been laid down by this Court, in *Straw Board. Manufacturing Co.* v. *Gobind*, (1962) 3 S.C.R. (Supp.) 618, 630, in construing the proviso to section 33 (2) (*b*) of the Act, that the three things contemplated, *viz.*, dismissal or discharge, payment of the wages and making of the application, should be part of the same transaction. Therefore, in our view, there must be a fixed and certain point of time which will be applicable to all managements and workmen, when construing the provisions of section 33 of the Act. The management must definitely know, as to when they have to take the necessary action, under the proviso to section 33 (2) (*b*), and the workman also should, likewise, know the definite time when the management should have complied with the requirements of the proviso to section 33 (2) (*b*), so that he could approach the Industrial Tribunal, by way of a complaint, under section 33-A of the Act. A reading of the material provisions of section 33 shows that the expressions used are discharge or punish, whether by dismissal or otherwise, and they clearly indicate, in our opinion, the point of time, when the order of discharge or dismissal is passed, by the authority concerned. An order of discharge or dismissal in our opinion, can be passed only once ; and, in this case, the order of dismissal is the one passed, by the Managing Director, on 12th November. 1963. No doubt, either by virtue of the Standing Orders, or by virtue of a contract of service, a right of appeal may be given to a workman concerned to challenge an order of dismissal. But the appellate authority only considers whether the order of dismissal has to be sustained, or whether it requires modification . Therefore, there is no question of the appellate authority passing, again, an order of dismissal. We are not concerned, in construing the provisions of section 33, as to the finality of the orders passed, by the authority concerned, in the first instance, in passing orders of dismissal or discharge. Further, the proviso to section 33 (2) (*b*), when it refers to payment of wages for one month, also indicates that it relates to an order of discharge or dismissal, which comes into effect immediately, which, in this case, is the order passed, on 12th November, 1963. The payment of one month's salary to wages, is to soften the rigour of unemployment that will face the workman, against whom an order of discharge or dismissal, has been passed. If the management has to wait for the minimum period prescribed for filing an appeal, and also await the termination of the appeal when one is filed, considerable time would have lapsed from the date of the original order, during which period the workman would not have received any salary. It will be anomalous to hold that even after the lapse of such a long time, the payment of one month's salary would satisfy the requirements of the section.

H. R. Gokhale, Senior Advocate (*B. K. Seshu, P. Parameshwara Rao, Mrs. Jyotana R. Melhote* and *R. V. Pillai*, Advocates, with him), for Appellant.

M. K. Ramamurthi, Mrs. Shyamala Pappu and *Vineet Kumar*, Advocates for *M/s. Ramamurthi & Co.*, for Respondent.

G.R. *Appeal allowed*

[SUPREME COURT.]
K.N. Wanchoo, C.J., R.S. Bachawat, V. Ramaswami, G. K. Mitter and *K.S. Hegde, JJ.*
23*rd. August*, 1967.

The State of Mysore *v.* S. R. Jayaram.
C.A.No. 283 of 1966.

Mysore Recruitment of Gazetted Probationers' Rules, (1959) *rule* 9 (2)—*Its validity Constitution. of India* (1950)—*Articles* 14 *and* 16 (1).

The principle of recruitment by open competition aims at ensuring equality of opportunity in the matter of employment and obtaining the services of the most meritorious candidates. Rules 1 to 8, 9 (1) and the first part of rule 9 (2) seek to achieve this aim. The last part of rule 9 (2) subverts and destroys the basic objectives of the preceding rules. It vests in the Government an arbitrary power of patronage. Though rule 9 (1) requires the appointment of successful candidates to Class I posts in the order of merit, rule 9 (1) is subject to rule 9 (2), and under the cover of rule 9 (2) the Government can even arrogate to itself the power of assigning a Class I post to a less meritorious and a Class II post to a more meritorious candidate. We hold that the last part of rule 9 (2) gives the Government an arbitrary power of ignoring the just claims of successful candidates for recruitment to offices under the State. It is violative of Articles 14 and 16 (1) of the Constitution and must be struck down.

Having regard to his rank in order of merit, the respondent had the right to be appointed to the post of Assistant Commissioner. As the offending part of rule 9 (2) is invalid, the State Government had no power to withhold the post from him. The High Court should, therefore, have directed the Government to appoint him to that post.

In the result, we strike down the following part of rule 9 (2) of the Mysore Recruitment of Gazetted Probationers' Rules, 1959 : "The Government however, reserves the right of appointing to any particular cadre, any candidate who it considers to be more suitable for such cadre". The order passed by the High Court directing the Government to decide to which post or cadre the respondent should be appointed under rule 9 (2) is set aside. We direct the State of Mysore to appoint the respondent to the post of Assistant Commissioner in the Mysore Administrative Service. For the purpose of seniority, the respondent will be treated as appointed on 20th October, 1962, according to his rank in the order of merit. Subject to the directions aforesaid, the appeal is dismissed with costs.

B. R. L. Iyengar, Senior Advocate, (*R. N. Sachthey*, Advocate for *R. H. Dhebar*, Advocate, with him), for Appellant.

Respondent in person.

G. R. *Appeal dismissed.*

[SUPREME COURT.]
J.C. Shah, S.M. Sikri and *J.M. Shelat, JJ.*
24*th August*, 1967.

M. Gopalakrishna Naidu *v.* The State of Madhya Pradesh.
C.A.No. 2376 of 1966.

Constitution of India (1950), *Article* 311—*Fundamental Rules, rule* 54 (5).

It is true as Mr. Sen pointed out that Fundamental Rules 54 does not in express terms lay down that the authority shall give to the employee concerned the opportunity to show cause before he passes the order. Even so, the question is whether the rule casts such a duty on the authority by implication. The order as to whether a given case falls under clause 2 or clause 5 of the Fundamental Rule must depend on the examination by the authority of all the facts and circumstances of the case and

his forming the opinion therefrom the two factual findings; whether the employee was fully exonerarated and in case of suspension whether it was wholly unjustified. Besides, an order passed under this rule would obviously affect the Government servant adversely if it is one made under clauses 3 and 5. Consideration under this rule depending as it does on facts and circumstances in their entirety, passing an order on the basis of factual finding arrived at from such facts and circumstances and such an order resulting in pecuniary loss to the Government servant must be held to be an objective rather than a subjective function. The very nature of the function implies the duty to act judicially. In such a case if an opportunity to show cause against the action, proposed is not afforded, as admittedly it was not done in the present case, the order is liable to be struck down as invalid on the ground that it is one in breach of the principles of natural justice.

In our view, Fundamental Rule 54 contemplates a duty to act in accordance with the basic concept of justice and fairplay. The authority therefore had to afford a reasonable opportunity to the appellant to show cause why clauses 3 and 5 should not be applied and that having not been done the order must be held to be invalid.

The appeal is allowed and the High Court's order is set aside. The competent authority is directed to consider the question *de novo* after giving to the appellant a reasonable opportunity to show cause against the action proposed against him. The respondent will pay to the appellant costs of this appeal as also the costs of the petition in the High Court.

R. V. S. Mani, E. C. Agarwala and *P. C. Agarwala*, Advocates, for Appellant.

B. Sen, Senior Advocate, (*M. N. Shroff*, Advocate for *I. N. Shroff*, Advocate, with him), for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

M. Hidayatullah and *C.A. Vaidialingam, JJ.*
22nd August, 1967.

The Employers of Firestone Tyre and Rubber Co. (P.) Ltd. *v.* The Workmen.
C.A.No. 515 of 1966.

Reference—Industrial Dispute—Domestic Enquiry—Constitution of India (1950), *Article* 311.

In these circumstances, the enquiry cannot be said to have offended any principle of natural justice at all. The Tribunal mechanically applied that dicta of this Court without noticing that the facts here were entirely different from those in the cited cases and the observations covered those cases where all or most of the facts were contested and could not be made applicable to cases where a greater part of the evidence was a matter of written record and the difference was narrow. The enquiry was properly conducted.

All that the Tribunal could do was to see that the enquiry was properly conducted. As in our opinion the enquiry was so conducted the decision of the Tribunal cannot be supported.

S. V. Gupte, Solicitor-General of India (*Rameshwar Nath*, *Mohinder Narain* and *P. L. Vohra*, Advocates of *M/s. Rajinder Narain & Co.* with him), for Appellant.

B. R. Dolia, E. C. Agarwala and *P. C. Agarwala*, Advocates, for Respondents.

G.R. *Appeal allowed.*

Kailasam, J.
25*th August*, 1967.

G.Ramanujam *v.* Zonal Manager, L.I.C., Madras.
W.P.No. 348 of 1966.

Domestic Enquiry—Life Insurance Corporation of India—Action against employee—Principles of natural justice—Opportunity to cross-examine witnesses and to examine on witnesses and to explain case against employee—Essential—Writ—May issue against acts of Life Insurance Corporation.

In the case of domestic enquiry by an institution like the Life Insurance Corporation of India, the principles of natural justice would require that the delinquent officer be given an opportunity of cross-examining the witnesses examined by the opposite side and an opportunity to examine his own witnesses and to explain the case against him.

A writ is available against the acts of the Life Insurance Corporation of India in the matter of dismissal of its employees.

S. Mohankumaramangalam for *G. Dasappan* and *R. Ganesan*, for Petitioner.

V. K. Thiruvenkatachari for *K. C. Jacob, S. K. L. Rattan* and *R. Vedantam*, for Respondents.

V.S. *Petition allowed.*

Veeraswami and
Ramaprasada Rao, JJ.
18th October, 1967.

Bata Shoe Company Private Ltd. *v.*
Joint Commrl. Tax Officer,
Madras.
W.P. No. 589 of 1967.

Madras General Sales Tax Act (*I of* 1959)—*Return filed belatedly—Best Judgment assessment ignoring the return—Assessment invalid—Writ.*

For the assessment year 1965-66, the return due to be filed on or before 1st May, 1965, was filed only on 31st December, 1966. The Officer, without considering the return filed by the assessee, made an assessment on best judgment basis.

Held, The order of assessment by best judgment is vitiated on account of the fact that it ignored the return filed (though belatedly) before the assessment order was made.

W.P. No. 674 of 1962 (*M/s. Deekar Trading Co.* v. *Joint Commercial Tax Officer and another*) disagreed with.

V. K. Thiruvenkatachari for *M/s. King & Patridge*, for Petitioner.

Special Government Pleader on behalf of Respondents.

V.S.

Petition allowed.

Venkatadri, J.
30*th October*, 1967.

M. Anandan *v.*
M. M. Palaniswami Nadar & Sons.
W.P. No. 1946 of 1967.

Motor Vehicles Act (*IV of* 1939)—*Application for extension of route—Application for additional trips in the route—Principle of 'mutually exclusive'—Not applicable—Need not be heard and disposed of together—Writ.*

Under the principle of 'mutually exclusive,' where there is a common question of fact and law, all the applications should be consolidated and jointly heard and disposed of. But the principle would not apply to applications for extension of route and application for additional trips on a route pending before the Regional Transport Authority. An application for grant of additional trips is neither interconnected nor inter-twined nor inter-laced with an application for extension for route. It cannot be insisted upon that the Regional Transport Authority should take up both the applications together for consideration and disposal.

V. C. Palaniswami, for Petitioner.

V. K. Thiruvenkatachari for *C. S. Prakasa Rao*, for Respondent No. 1.

V.S.

Petition dismissed.

[SUPREME COURT.]

K.N. Wanchoo, C.J., R.S. Bachawat, V. Ramaswami, G.K. Mitter and *K.S. Hegde, JJ.*
29*th August*, 1967.

The Collector, Varanasi *v.* Gauri Shankar Misra.
C.A.No. 1040 of 1965.

Defence of India Act (*LI of* 1962) *and Rules—Land Acquisition Proceedings under clause* (b) *of sub-section* (1) *of section* 19 *of the Act—Sections* 109 *and* 110, *Civil Procedure Code* (*V of* 1908)—*Articles* 133, 136 *of the Constitution—High Court whether 'A Court'.*

Prima facie it appears incongruous to hold that the High Court is not a 'Court'. The High Court of a State is at the apex of the State's judicial system. It is a Court of record. It is difficult to think of a High Court as anything other than a 'Court'. We are unaware of any judicial power having been entrusted to the High Court except as a 'Court'. Whenever it decides or determines any dispute that comes before it, it invariably does so as a 'Court'. That apart, when section 19 (1) (*f*) specifically says that an appeal against the order of an arbitrator lies to the High Court, we see no justification to think that the legislature said something which it did not mean.

We have already come to the conclusion that the decision rendered by the High Court under section 19 (1) (*f*) is a 'determination'. Hence, it was within the competence of this Court to grant Special Leave under Article 136. But then it was urged on behalf of the respondents that in view of Rule 2, order 13 of the Rules of this Court, as it stood at the relevant point of time, this Court could not have granted Special Leave as the appellant had not applied for necessary certificate under Article 133 of the Constitution. In support of this contention, reliance was placed on the decision of this Court in *Management of the Hindusthan Commercial Bank Ltd., Kanpur* v. *Bhagwan Dass*, (1965) 2 S.C.R. 265 : A.I.R. 1965 S.C. 1142. Under Article 133, a certificate can be asked for filing an appeal against the judgment, decree or final order of a High Court. As seen earlier, this Court ruled in *Hanskumar Kishanchand* v. *Union of India*, (1959) S.C.R. 1177 : (1959) S.C.J. 603, that the decision rendered by the High Court under section 19 (1) (*f*) is not a decree, judgment or final order. Hence, the provisions of Article 133 are not attracted to the present case. Consequently, this case is taken outside the scope of the aforesaid rule 2 of Order 13. As a measure of abundant caution, the appellant has filed C.M.P. No. 2325 of 1967, praying that this Court may be pleased to excuse him from compliance with the requirements of Order 13, rule 2. In view of the decision of this Court in *Hanskumar Kishanchand* v. *Union of India*, (1959) S.C.R. 1177 : (1959) S.C.J. 603, no useful purpose would have been served by the appellant's applying for a certificate under Article 133. Hence, even if we had come to the conclusion that the case falls within the scope of Order 13, rule 2 we would not have had any hesitation in exempting the appellant from compliance with the requirements of that rule.

This appeal is allowed and the decision of the High Court set aside and the case is remitted back to that Court for disposal according to law. Before deciding the case afresh the High Court will permit the parties, to adduce additional evidence on the question of compensation; in particular, they will be allowed to produce and prove contemporaneous sale deeds and the revenue records relating to fasli 1354. Costs of this Appeal shall be costs in the cause.

C. B. Agarwala, Senior Advocate (*O. P. Rana*, Advocate, with him), for Appellant.

J. P. Goyal and *Raghunath Singh*, Advocates, for Respondents.

G.R.

Appeal allowed.

[SUPREME COURT.]

M. Hidayatullah, V. Bhargava and *C.A. Vaidialingam, JJ.*
30*th August*, 1967.

Electrical Manufacturing Company Ltd. *v.* D. D. Bhargava.
Cr.A.No. 41 of 1967.

Imports and Exports (Control) Act (*XVIII of* 1947), *sections* 5 *and* 6—*Indian Penal Code* (*XLV of* 1860), *section* 120-*B read with section* 420—*Code of Criminal Procedure* (*V of* 1898), *section* 196 (a) *sub-section* (2), 195, 197 *and* 198.

We are not inclined to accept the contentions of Mr. Sen that the principles laid down in (1960) S.C.J. 248 : (1960) M.L.J. (Crl.) 194 : (1960) 2 S.C.R. 319, 330 : A.I.R. 1960 S.C. 363 ; L.R. (1948) 75 I.A. 305 ; (1949) 1 M.L.J. 128 : A.I.R. 1949 P.C. 3 ; (1958) S.C.R. 762, 765 ; (1958) M.L.J. (Crl.) 316 : (1958) S.C.J. 355 : A.I.R. 1958 S.C. 124 ; A.I.R. 1954 S.C. 637, 641 ; which relate to the question of sanction, have any application to the filing of complaints, under section 6 of the Imports and Exports (Control) Act. Section 6 only insists that the complaint is to be in writing and that it must be made by an officer, authorised in that behalf. The complaint, in this case, has been made by the respondent in writing, and that he is an authorised officer, in this behalf, has not been challenged. The limitation, contained in section 6, is only regarding the particular officer who could file a complaint and, when once he satisfies those requirements the bar is removed to the taking of cognizance by a Court, on a complaint, made in accordance with section 6. In this connection, it is desirable to bear in mind the observations of this Court, made in *S. A. Venkataraman* v. *The State*, (1958) M.L.J. (Crl.) 473 : (1958) S.C.R. 1037, 1041 : (1958) 2 An.W.R. (S.C.) 45 : (1958) 2 M.L.J. (S.C.) 45 : (1958) S.C.J. 594 : A.I.R. 1958 S.C. 107. Concluding the Court held regarding the sanction that "No such question arises, with regard to the matter before us". The section, with which we are concerned, does not contain any such restriction, regarding the obtaining of sanction, on the basis of which alone a complaint can be filed, to enable a Court to take cognizance of an offence.

The result is the view of the High Court, that the complaint, filed by the respondent, on 31st December, 1962, satisfies the requirements of section 6 of the Imports and Exports (Control) Act, is perfectly correct. The appeal therefore fails, and is dismissed.

A. K. Sen and *Veda Vyasa*, Senior Advocates (*K. B. Mehta* and *H. L. Anand*, Advocates of *Anand, Das Gupta* and *Sagar*, with them), for Appellant.

H. R. Khanna and *R. N. Sachthey*, Advocates, for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

J.C. Shah, S.M. Sikri and *J. M. Shelat, JJ.*
30*th August*, 1967.

The Collector, Akola *v.* Ramachandra.
C.A.No. 1012 of 1964.

Bombay Land Requisition Act (*XXIII of* 1948) *as extended to Vidarbha Area by Bombay Land Requisition* (*Extension and Amendment*) *Act* (*XXXIII of* 1959)—*Article* 19 (1) (f) *and* (g) *of the Constitution—Scope of the power under section* 5 (1)—*Land Acquisition Act* (*I of* 1894), *Part VI.*

On a plain reading of section 5 (1) of the Bombay Land Requisition Act, 1948, as amended by Bombay Act XXXIII of 1959, it is clear, that the only limitation to the power which it confers is the temporary life of the Act. But the words "any land for any public purpose" are sufficiently wide enough to include any public purpose whether temporary or otherwise. To read into the section a limitation that the purpose contemplated by it is only temporary is to confound the temporary life of the statute with the character of the purpose for which the power

thereunder can be exercised. Sub-section (1) speaks of no restriction except, as aforesaid, that the purpose must be a public purpose. Section 9 no doubt provides that when the land in question is derequisitioned and that would happen when the statute comes to an end or the land is otherwise released, it has to be restored to the owner as far as possible in the same condition in which it was when it was put into possession of the authority. That is so because the Government acquires only the right of possession and user of the land and not any proprietory right therein and since the ownership is still retained in the owner the land must revert to him as soon as it is released either by the lapse of power of when the purpose of requisitioning is over, whatever use to which such land has been put to during the period of such requisitioning. Section 9 therefore has nothing to do with the nature or character of the purpose for which an order under section 5 (1) is passed. The life of the power and the purpose for which it is exercised are two distinct ingredients of section 5 (1) and ought not to be confused. The words "for any public purpose" in the sub-section are wide enough to include any purpose of whatsoever nature and do not contain any restriction regarding the nature of that purpose. It places no limitation on the competent authority as to what kind of public purpose it should be for the valid exercise of its power nor does it confine the exercise of that power to a purpose which is temporary only. Except for the limitation that the purpose must be a public purpose the sub-section also imposes no restriction as to the manner in which the land which is requisitioned is to be used. It may be used for a temporary purpose or for a purpose which is not temporary in nature. It is for the requisitioning authority to judge and not for a Court of law to decide how best the land is to be used. If the requisitioning authority uses the land for a purpose which is not temporary such as settling a new village site and for construction of houses it is for the Government and those who put up such structures to contemplate the possibility of having to return in future the land to the owner in its original state. But that does not mean that the power is restricted to a temporary purpose only.

We do not also see any antithesis between the power to requisition and the power of compulsory acquisition under the Land Acquisition Act. Neither of the two Acts contains any provision under which it can be said that if one is acted upon, the other cannot.

The High Court was in error in holding that the power to requisition under the Act cannot be exercised where the public purpose is not temporary or that the exercise of that power for the purposes of rehabilitation of flood sufferers was either in abuse of or unjustified under the Act.

Since the High Court decided the petition only on the question of the validity of the exercise of power and did not decide the other questions raised in the petition, the matter is remanded to the High Court to decide those questions in accordance with law. In the circumstances of the case, no order as to costs was made.

R. M. Hazarnavis, Senior Advocate (*K.L. Hathi* and *S. P. Nayar*, Advocates, with him), for Appellant.

S. G. Patwardhan, Senior Advocate (*A. G. Ratnaparkhi* Advocate, with him), for Respondents Nos. 1 to 10 and 12.

G.R. *Appeal allowed.*

[SUPREME COURT.]

K.N. Wanchoo, C.J., R.S. Bachawat, V. Ramaswami, G.K. Mitter and *K.S. Hegde, JJ.*
31*st August*, 1967.

State of Mysore *v.* P. Narasinga Rao.
C.A.No. 1238 of 1966.

States Reorganisation Act (*XXXVII of* 1956), *Constitution of India* (1950), *Articles* 16 *and* 14—*Whether the creation of two pay scales of tracers in the new Mysore State who were doing the same kind of work amounted to a discrimination which violated the provisions of Articles* 14 *and* 16 *of the Constitution.*

The provisions of Article 14 or 16 do not exclude the laying down of selective tests, nor do they preclude the Government from laying down qualifications for the post in question. Such qualifications need not be only technical but they can also be general qualifications relating to the suitability of the candidate for public service as such. It is therefore not right to say that in the appointment to the post of tracers the Government ought to have taken into account only the technical proficiency of the candidates in the particular craft. It is open to the Government to consider also the general educational attainments of the candidates and to give preference to candidate who have a better educational qualifications besides technical proficiency of a tracer. The relevance of general education even to technical branches of public service was emphasised long ago by Macaulay.

Therefore, higher educational qualifications such as success in the S.S.L.C. Examination are relevant considerations for fixing a higher pay scale for tracers who have passed the S.S.L.C. Examination and the classification of two grades of tracers in the new Mysore State, one for matriculate tracers with a higher pay scale and the other for non-matriculate tracers with a lower pay scale is not violative of Article 14 or 16 of the Constitution.

The basis of promotion to the higher grade was the inter-State seniority list prepared under the provisions of the States Reorganisation Act. It was stated that the seniority of the respondent was not affected and he had not been deprived of any accrued benefits. The basis of promotion to the higher grades was selection based on merit-cum-seniority. In other words, both matriculates and non-matriculate tracers were eligible for promotion on the basis of the inter-State seniority list prepared for this Department. In our opinion, Counsel on behalf of the respondent is unable to make good his submission on this aspect of the case.

R. Gopalakrishnan and *S. P. Nayar*, Advocates, for Appellants.

S. C. Mazumdar, M. M. Kshatriya and *G. S. Chatterjee*, Advocates, for Respondent.

G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

J.C. Shah, S.M. Sikri and *J. M. Shelat, JJ.*
31*st August*, 1967.

Anandram Jivraj Gogle *v.* Premraj Mukandas.
C.A.No. 8 of 1965.

Transfer of Property Act (*IV of* 1882), *section* 76 (*h*), (*c*) (*d*) *section* 63-*A*, 72—*Fixing of priorities.*

It seems clear that the object of section 76 (*d*) is not to fix any priorities but to make it obligatory on the mortgagee, in the absence of a contract to the contrary, to carry out necessary repairs to the property but the amount he can spend is limited to the difference between rents and profits and payments mentioned in clause (*c*) and the interest on the principal money. When we come to clause (*h*) it directs the mortgagee to apply the receipts from the mortgaged property in a certain manner. The order of application is (1) the expenses properly incurred for the management of the property and the collection of rents and profits and the other expenses mentioned in clause (*c*) and (*d*), (2) interest thereon, (3) the surplus, if any

has to be utilised towards reduction of interest on principal money, and (4) the principal money itself. In our view, there is no contradiction between section 76 (*d*) and section 76 (*h*). It is true, as stated in proposition No. 2 of the learned Counsel that the liability for repairs is limited in its scope and arises only if there is a surplus left after deducting from the rents and profits of the property the expenses mentioned in clause (*c*) and the interest on the principal money, but the fact that the liability is limited in scope does not bear on the question whether it lays down any order of priorities inconsistent with the priorities mentioned in clause (*h*). This is so because, as we have stated above, section 76 (*d*) is not concerned with the question of priorities but with limiting the amount which can be spent by the mortgagee in possession for carrying out necessary repairs.

S.T.Desai, Senior Advocate (*J.P. Aggarwal*, Advocate, with him), for Appellant.

O.P. Malhotra, Advocate and *P. C. Bhartari*, Advocate for *Messrs. J. B. Dadachanji & Co.*, for Respondents.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

J.C. Shah, S.M. Sikri and *J.M. Shelat, JJ.*
4th September, 1967.

Dr. Bool Chand *v.* The Chancellor, Kurukshetra University.
C.A. No. 246 of 1967.

Kurukshetra University Act (1956), *sub-clause* (*vi*) *of clause* 4 *of Schedule I read with Punjab General Clauses Act* (*I of* 1898), *section* 14—*Definition of* '*Punjab Act*' *in section* 2 (46) *of the Punjab General Clauses Act—Indian Council's Acts*, 1861 *to* 1909 *—Government of India Act*, 1950 *and* 1935—*Relationship of Master and Servant.*

It was also urged that whereas provision was made by clause 6 of the Annexure to Ordinance XI that the services of the teachers may be summarily determined on the ground of misconduct, there was no such provision for determination of the employment of the Vice-Chancellor and that also indicated an intention to the contrary within the meaning of section 14, of the Punjab General Clauses Act. It is not possible to agree with that contention. It is true, the office of the Vice-Chancellor of a University is one of great responsibility and carriers with it considerable prestige and authority. But it cannot be held that a person appointed a Vice-Chancellor is entitled to continue in office for the full period of his appointment even if it turns out that he is physically decrepit, mentally infirm or grossly immoral. Absence of a provision setting up procedure for determining the employment of the Vice-Chancellor in the Act or the Statutes or Ordinances does not, lead to the inference that the tenure of office of Vice-Chancellor is not liable to be determined. The first contention raised by Counsel for the appellant must therefore fail.

The University Act, the Statutes and the Ordinances do not lay down the conditions in which the appointment of the Vice-Chancellor may be determined ; nor does the Act prescribe any limitations upon the exercise of the power of the Chancellor to determine the employment. But once the appointment is made in pursuance of a Statute, though the appointing authority is not precluded from determining the employment, the decision of the appointing authority to terminate the appointment may be based only upon the result of an enquiry held in a manner consistent with the basic concept of justice and fair play.

The power to appoint a Vice-Chancellor has its source in the University Act ; investment of that power carries with it the power to determine the employment but the Power is coupled with duty. The power may not be exercised arbitrarily, it can be only exercised for good cause, *i.e.*, in the interests of the University and only when it is found after due enquiry held in manner consistent with the rules of natural justice, that the holder of the office is unfit to continue as Vice-Chancellor. Vide *State of Orissa* v. *Dr.* (*Miss.*) *Binapani* (1967) 2 S.C.J. 339.

The High Court rightly concluded that the appellant had the fullest opportunity of making his representation and that the enquiry held by the Chancellor was not vitiated because of violation of the rules of natural justice.

In the very scheme of our educational set-up at the University level, the post of Vice-Chancellor is of very great importance, and if the Chancellor was of the view, after making due enquiry, that a person of the antecedents of the appellant was unfit to continue as Vice-Chancellor, it would be impossible, unless the plea that the Chancellor acted maliciously or for a collateral purpose is made out, for the High Court to declare that order ineffective. (The plea that the Chancellor acted *mala fide* was raised, but was not pressed before the High Court.)

N. C. Chatterjee, Senior Advocate (*S. C. Agarwala* and *R. K. Garg*, Advocates, of *Messrs. Ramamurthi & Co.*, and *K. M. K. Nair* and *Dr. L. M. Singhvi*, Advocates, with him), for Appellant.

Niren De, Additional Solicitor-General of India and *R. Chetan Das Dewan*, Deputy Advocate-General for the State of Haryana, (*N. H. Hingorani*, Advocate, with them), for Respondent.

G R. ——— *Appeal dismissed.*

[SUPREME COURT.]

J.C. Shah, S.M. Sikri and *J. M. Shelat, JJ.*
5*th September*, 1967.

Tribhovandas Purshottamdas Thakkar *v.* Ratilal Motilal Patel.
C.A.No. 500 of 1965.

Civil Procedure Code (*V of* 1908), *Order* 21, *rule* 89 *and section* 115—*Bombay Public Trust Act* (*XXIX of* 1950), *sections* 36 *and* 56-*B*—*Setting aside a sale in execution of mortgaged decree—Evidence Act* (*I of* 1872), *section* 165.

Several decisions were cited in which it was held, that if the judgment-debtor instead of depositing in Court the amount specified in the proclamation of sale for recovery of which the property is sold, satisfies the claim of the decree-holder under the decree, the requirements of Order 21, rule 89 are complied with. *Subhayya* v. *Venkata Subba Qaddi*, A.I.R. 1935 Mad. 1050 ; *Mukhuvenkatapathy Reddy* v. *Kuppu Reddi and others*, A.I.R. 1940 Mad. 427 : I.L.R. (1940) Mad. 699 ; (1940) 1 M.L.J. 629 ; *Laxmansing Baliramsing* v. *Laxminarayan Deosthan*, I.L.R. (1947) Nag. 802 ; *Rabindra Nath* v. *Harendra Kumar*, A.I.R. 1956 Cal. 462 ; *M. H. Shivaji Rao* v. *Niranjanaiah and another*, A.I.R. 1962 Mys. 36 ; These cases proceed upon an interpretation of the expression "less any amount which may since the date of such proclamation of sale, have been received" occurring in clause (*b*) of rule 89. It is unnecessary to venture an opinion whether these cases were correctly decided. It is sufficient to observe that an order setting aside a Court sale in execution of a mortgage decree cannot be obtained, under Order 21, rule 89 of the Code of Civil Procedure by merely depositing 5 per cent. of the purchase-money for payment to the auction purchaser and pursuading the decree-holder to abandon the execution proceeding.

In considering whether a precedent of a Court of co-ordinate authority is binding, reference to section 165 of the Evidence Act is irrelevant. Undoubtedly, every judgment must be based upon facts declared by the Evidence Act to be relevant and duly proved. But when a Judge in deciding a case follows a precedent, he only regards himself bound by the principle underlying the judgment and not by the facts of that case.

It is true that every Judge of a High Court before he enters upon his office takes an oath of office that he will bear true faith and allegiance to the Constitution of India as by law established and that he will duly and faithfully and to the best of his ability, knowledge and judgment perform the duties of office without fear or favour, affection or ill will and that he will uphold the Constitution and the laws; but there is nothing in the oath of office which warrants a Judge in ignoring the rule relating to the binding nature of the precedents which is uniformly followed.

Raj Bahadur, Advocate and *B. R. Agarwala*, Advocate of *Messrs. Gagrat & Co.*, for Appellant.

M. V. Goswami, Advocate, for Respondents Nos. 1 to 3.

M. S. K. Sastri, Advocate and *S. P. Nayar*, Advocate for *R. H. Dhebar*, Advocate, for Respondent No. 7.

G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

J. C. Shah, S. M. Sikri and *J. M. Shelat, JJ.*
5th September, 1967.

Union of India *v.* Jubbi.
C.A.No. 957 of 1964.

Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 (*XV of* 1954), *section* 11—*Whether the Act Bound the Union of India or the State Governments and that the Respondents' application under section* 11 *could not lie against the Union of India in respect of lands owned by it—Sections* 48 *and* 54 (1) (g).

It is conceded that neither section 11 nor any other provision in the Act contains any express exemption. Broadly stated, if the legislature intended to exclude the applicability of the Act to the State it could have easily stated in section 11 itself or by a separate provision that the Act is not to be applied to the Union or to lands held by it. In the absence of such a provision, in a constitutional set up as the one we have in this country, and of which the overriding basis is the broad concept of equality, free from any arbitrary discrimination, the presumption would be that a law of which the avowed object is to free the tenant of landlordism and to ensure to him security of tenure would bind all landlords irrespective of whether such a landlord is an ordinary individual or the Union.

The contention, however, was that these three ways of abolishing the landowners' interest and transfering in two out of these three methods of the proprietory rights to the tenants suggest that the Act was not intended to affect the land owned or held by the Union or the State Government. This contention cannot be accepted, for, there is nothing in these provisions suggestive of their being not applicable to the State or of any distinction between the lands owned and held by citizens and lands owned and held by the State. There can therefore be no room for any assumption that the legislature had in mind any such discrimination between the State and the citizens.

Sections 48 and 54 (1) (*g*) also seem not to be relevant for finding out whether the State is by implication exempted from the operation of the Act.

It is clear that the object of the Act was to abolish big landed estates and alleviate the conditions of occupancy tenants by abolishing the proprietory rights of the landowners in them and vesting such rights in the tenants. That being the paramount object of the legislature it is hardly likely that it would make any discrimination between the State and the citizen in the matter of the application of the Act. This is especially so because if such a discrimination were to be brought about through a construction suggested by the State it would result in an anomaly in the sense that whereas occupancy tenants of lands owned by citizens would have the benefit of such a beneficient legislation occupancy tenants of lands owned and held by the State would not get such benefit. An intention to bring about such a discrimination against the latter class of tenants cannot be attributed to the legislature whose avowed object was to do away in the interest of social and economic justice landlordism in the State. In view of the decision in *Superintendent and Legal Remembrancer* v. *State of West Bengal*, (1967) 2 S.C.R. 170; the State cannot also claim exemption on the ground only that the Act does not expressly or by necessary implication make it binding on the State.

R. Ganapathy Iyer, *R. N. Sachthey* and *S. P. Nayar*, Advocates, for Appellant.

D. R. Prem, Senior Advocate, (*Amicus curiae*) (*R. Thiagarajan*, Advocate, *amicus curiae*, with him), for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

K.N. Wanchoo, C.J., R.S. Bachawat, V. Ramaswami, G.K. Mitter and *K. S. Hegde, JJ.*
7th September, 1967.

Union of India *v.* Kamalabai Harjivandas Parekh.
C.A.No. 1564 of 1966.

Requisitioning and Acquisition of Immovable Property Act (*XXX of* 1952), *section* 8, *sub-section* 3, *clause* (b) *and the words "whichever is less" are* ultra vires of *Article* 31 (2) *of the Constitution—Compensation.*

In assessing the just equivalent of the value of the property at twice the price which the requisitioned property would have fetched in the open market if it had been sold on the date of requisition, the arbitrator would be acting arbitrarily inasmuch as he would be proceeding on a formula for which there is no rational basis.

Clause (*b*) of sub-section (3) of section 8 leaves the arbitrator no choice of assessing the value in terms of clause (*a*) even if he was of opinion that the mode fixed thereunder afforded a just equivalent of the property to its owner. He had to make his assessment in terms of clause (*b*). The expression "have regard to" in sub-clause (*e*) of sub-section (1) of section 8 therefore does not give the arbitrator any freedom of considering the two modes laid down in sub-section (3) and accepting the one which he thought fair.

The first point about the opening portion of clause (*e*) being mandatory and the later portion being directory cannot therefore be accepted. So far as sub-section (3) is concerned, it is couched in terms which are mandatory.

The argument on behalf of the appellant that the basis did not provide for the payment of just equivalent could not be accepted by this Court because of the fact that the appellant had produced no material on which its plea could be sustained. In this case, however, there is no such difficulty. Clause (*a*) of section 8 (3) lays down a principle aimed at giving the owner of the land something which approximates its just equivalent on the date of acquisition. Clause (*b*) however directs the arbitrator to measure the price arrived at in terms of clause (*a*) with twice the amount of money which the requisitioned property would have fetched if it had been sold on the date of requisition and to ignore the excess of the price computed in terms of clause (*a*) over that it terms of clause (*b*). The position bears a close similarity with the facts in *The State of West Bengal* v. *M/s. Bela Banerjee and others*, (1954) S.C.R. 558 : (1954) 1 M.L.J. 162 : (1954) S.C.J. 95 : A.I.R. 1954 S.C. 170 ; where the legislature directed that the excess of the value of the land arrived at in terms of the Land Acquisition Act over the value as on the 31st December, 1946, was to be ignored. The basis provided by clause (*b*) has nothing to do with the just equivalent of the land on the date of acquisition nor is there any principle for such a basis. The proposition that the impugned clause satisfies the requirements of Article 31 (2) of the Constitution cannot be accepted.

G. N. Dikshit, Advocate and *S. P. Nayar*, Advocate for *R. H. Dhebar*, Advocate, for Appellant.

S. Sorabji, A. J. Rana and *P. C. Bhartari*, Advocates and *J. B. Dadachanji*, Advocate of *Messrs. J. B. Dadachanji & Co.*, for Respondent No. 1.

I. N. Shroff, Advocate, for Intervener No. 1.

J.B. Dadachanji, Advocate of *Messrs. J. B. Dadachanji & Co.*, for Intervener No. 2.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

K.N. Wanchoo, C.J., R.S. Bachawat, V. Ramaswami, G.K. Mitter and *K. S. Hegde, JJ.*
12*th September*, 1967.

N.S. Gujral *v.* Custodian of Evacuee Property.
C.A.No. 642 of 1966.

Administration of Evacuee Property Act (*XXXI of* 1950), *section* 10—*Displaced Persons* (*Compensation and Rehabilitation*) *Act* (*XLIV of* 1954), *section* 12—*Constitution of India* (1950) *Article* 19 (1) (f).

By taking away the property of the judgment-debtors, after they had become evacuees and by vesting that property free from all encumbrances in the Central Government under section 12 of the 1954 Act, it was contended that the appellant's right to proceed against that property had disappeared and therefore section 12 of the 1954 Act was violative of Article 19 (1) (*f*), as the appellant's holding of the decree had been rendered illusory. Reliance in this connection is placed on four decisions of the Supreme Court of the United States of America, namely, (i) *Von Hoffman* v. *The City of Quincy*, 18 Law Ed. Wallace 403, (ii) *Ranger* v. *City of New Orleans*, 26 U.S.S.C.R. 132 (iii) *Peirce Coombes* v. *Milton F.* Getz 76 Law Edn. 866, and (iv) *W. B. Worthen Co.* v. *Mrs. W. D. Thomas*, 78 Law Edn. 1344.

The four cases on which reliance has been placed on behalf of the appellant are entirely beside the point and of no assistance. These cases were based on a provision in Article 1, section 10 of the American Constitution which *inter alia* lays down that "no State shall.....pass any law impairing the obligation of contracts.....". There is no such provision in our constitution and therefore the appellant cannot be heard to say that as section 12 of the 1954 Act impairs the obligation of the contract between him and the two evacuees, the section is bad.

But section 12 does not in our opinion interfere with the appellant's right to acquire, hold and dispose of his property, namely, the decrees against Mohd. Sabar and Noor Mohammed Butt. As the appellant had no interest in the property in suit, the fact that it was acquired by the Central Government by a notification under section 12 of the 1954 Act did not in any way affect the appellant's right to acquire, hold and dispose of his property. In the circumstances, the appellant cannot claim protection under Article 19 (1) (*f*) with respect to the property in suit and it is not necessary to consider whether section 12 could be saved under Article 19 (5). The appellant cannot claim that section 12 is *ultra vires* Article 19 (1) (*f*) and therefore the notification made thereunder affects his fundamental right to acquire, hold and dispose of property.

N. S. Bindra Senior Advocate (*D. D. Sharma*, Advocate with him), for Appellant.

G. R. Rajagopaul, Senior Advocate, (*S. P. Nayyar*, Advocate for *R. H. Dhebar*, Advocate with him), for Respondents.

G. R. ——— *Appeal dismissed.*

[SUPREME COURT.]

J.C. Shah, V. Ramaswami and *V. Bhargava, JJ.*
31*st January*, 1968.

Thakore Sobhag Singh *v.* Thakur Jai Singh.
C.A. No. 568 of 1965.

Jaipur Matmi Rules, (1945), *Rule* 14—*Succession to Thikana with the previous sanction of the Ruler*—*Rajasthan Land Reforms and Resumption of Jagirs Act*, (*VI of* 1952)—*Rajasthan Jagir Decisions and Proceedings* (*Validation*) *Act*, (*XVIII of* 1955)—*Jaipur Matmi Rules* (*Validation*) *Act*, (*XXI of* 1961) *Jaipur General Clauses Act*, 1944—'*Existing Jagir Law*'—*Rajasthan Jagirs, Decisions and Proceedings* (*Validation*) (*XVIII, of* 1955)—Res judicata—*Constitution of India* (1950), *Art.* 14.

The Board of Revenue in the judgment under appeal has carefully analysed the evidence, and there is no reason to enter upon a reappraisal of the evidence in this appeal with Special Leave. The view recorded by the Board of Revenue on appreciation of evidence that Jai Singh was adopted as a son by Sabhal Singh must be accepted.

The High Court did in making the final order direct the Tribunal to decide the case in accordance with the law and in the light of the observations made in the judgment, but the direction was, in our judgment, a surplusage. The High Court issued a writ in the nature of *certiorari* quashing the order of the Tribunal. It was unnecessary thereafter to direct or advise the Board of Revenue to perform its statutory duty to decide the dispute according to law. The Board of Revenue had to decide the dispute in a accordance with the law declared by the High Court. All questions which had been expressly decided by the High Court on contest between the parties and other questions which must be deemed by necessary implication to have been decided were *res judicata* and could not be re-opened before the Board of Revenue. In this appeal it is therefore not open to the appellant to contend that the decision of the High Court on the questions decided in the writ petition was erroneous.

It is unfortunate that the application for certificate to appeal to this Court filed by Sobhag Singh was erroneously rejected by the High Court. But that does not affect the binding character of the Judgment of the High Court between the parties. Unless the decision of the High Court on those questions was set aside by appropriate proceeding in this Court, the judgment must be held binding between the parties. It is, therefore, not open to the appellant to contend, that the right of Jai Singh as the adopted son to the *Jagir* had to be decided otherwise than in accordance with the personal law of Sabhal Singh. It is undisputed that according to the personal law applicable to Sabhal Singh, Jai Singh could have been adopted by him.

M. M. Tewari, Senior Advocate (*D. D. Verma and Ganpat Rai*, Advocates with him), for Appellant.

A. K. Sen, Senior Advocate (*S. M. Jain*, and *B. P. Maheshwari*, Advocates with him), for Respondent No. 1.

K. B. Mehta, Advocate, for Respondent No. 2, The State of Rajasthan.

G. R. ——— *Appeal dismissed.*

T. Venkatadri, J. K.M. Rajaram *v.* Chinnadurai.

27*th April*, 1967. W.P.No. 3765 of 1965.

Madras Panchayats Act (*XXXV of* 1958), *section* 25 (2) (c)—*Disqualification of candidates—Interested in a subsisting contract with the Panchayat —Lease of a thope belonging to panchayat—Lease executed—If a disqualification.*

Once the petitioner has taken out a lease of the Thope belonging to the Panchayat and once the lease has been executed there remains nothing to be done by the petitioner to the Panchayat and he is only required to enjoy the usufruct of the lease-hold property during the period of the lease. The petitioner is not supplying any goods to the Panchayat. Therefore the petitioner cannot be disqualified for election as a member of Panchayat on the ground that he was a lessee of a cocoanut thope belonging to the Panchayat on the date of the nomination and thus interested in a subsisting contract made with the Panchayat.

P. R. Gokulakrishnan, for Petitioner.

G. Ramaswami, for first Respondent.

V.S. ——— *Petition allowed.*

T. Ramaprasada Rao, J. N. Arunachalam *v.*Lt. Col. V. Srinisvasan.

23*rd June*, 1967. C.R.P. No. 1905 of 1966.

Madras Buildings (*Lease and Rent Control*) *Act* (*XVIII of* 1960), *section* 25 *and rule* 18 (3) *and Civil Procedure Code* (*V of* 1908) *section* 15—*Petition by landlord dismissed for default—Order of Rent Controller setting aside dismissed—Revision against order under section* 115, *maintainable—Order setting aside dismissal for default—Non-speaking order—Liable to be interfered with—Application to set aside ex-parte order—Affidavit in support filed by Counsel for the applicant—Propriety—Practice.*

A revision petition can be entertained by the High Court under section 115 of the Civil Procedure Code against the order of the Rent Controller passed under section 18 (3) of the Rules setting aside an order dismissing the petition for default.

Where an order of the Rent Controller is non-speaking, and it does not state whether sufficient cause has been shown by the landlord for his absence and the whether the Controller was satisfied with the cause shown the orders of the Rent Controller setting aside the dismissal is liable to be interfered with under section 115 of the Code.

An application to set aside an order of dismissal for default can be supported by an affidavit filed by the Counsel for the aggrieved party.

G. N. Chari for Petitioner.

R. C. Rajappa for Respondent.

V.S. ——— *Petition allowed.*

P. Ramakrishnan, J.
27th July, 1967.

The Associated Equipment Services by partner, K. P. Subramaniam *v.* State of Madras. W.P.Nos. 1734, 1770 & 1771 of 1964.

Land Acquisition Act (I of 1894), sections 4, 6 and 5-A—Notification—Declaration for the future needs of Education Department of Government—Validity—Individual notices for section 5-A enquiry—No obligation cast—Public purpose—Facts and circumstances—It should be confined to the recitals in the Notification.

There is no warrant for the view that at any given time the land acquired under the Land Acquisition Act, both as regards the identity as well as the extent, should correspond to a need which can be proved to be immediate. It will be open to the Government to visualize the growing need which exists at the time of the acquisition and to provide for the acquisition of lands of adequate area for the purpose of meeting such a growing need. Therefore, the notifications under the Act, stating that the lands are required for the future needs of the Technical Education Department of the Government would be valid.

The question whether there is a public purpose or not does not fall to be considered merely upon the recitals of the particular notification impugned, but, must be gathered from the facts and circumstances before the Court.

The statute does not prescribe as an obligatory direction that notice should be given for the section 5 (A) enquiry to particular persons individually.

S. V. Jayaraman, for Petitioner.

Assistant Government Pleader for the Government Pleader on behalf of Respondent.

V.S. ——— *Petition dismissed.*

P. Ramakrishnan, J.
21st December, 1967.

Sadasiva Nainar *v.* The Special Tahsiladar for Land Acquisition W.P.No. 2314 of 1965.

Land Acquisition Act (I of 1894), sections 5-A, 17 (4)—Urgency provisions—Notification dispensing with—Acquisition for providing house sites for Harijans—Initiation of proceedings five years prior to section 4 (1) Notification—Health of Harijans affected by congestion—Not put forward in the first instance but belatedly—Invoking urgency provisions—Not justified—Writ.

The proceedings for acquisition were initiated about five years prior to the section 4 (1) notification and at the time of the commencement of the proceedings, the Special Tashildar had made a report that in the existing Harijan colony a number of families had no proper houses and that additional house sites were required to relieve the congestion. The record clearly showed that a reference to the health of the Harijans being affected by the congestion was made at a late stage when at all the anterior periods for nearly five years it was not considered that the matter was of such an urgency as would not brook the delay of a few months for the enquiry

under section 5-A. The resort to urgency provision was wholly unjustified and was based upon no valid reasons whatsoever. Hence the proceedings are liable to be quashed.

N. Arunachalam, for Petitioner.

S. T. Ramalingam for the Government Pleader, for Respondent.

V.S. ——— *Petition allowed.*

P. S. Kailasam, J.
8th January, 1968.

T. Rama Rao *v.* Divisional Superintendent, Divisional Office, Personnel Branch, Southern Railway
W.P.No. 3686 of 1967.

Indian Railway Establishment Code, rule 2046 (*h*)—*Retirement of a railway servant on attaining fifty years—In the public interest—Subjective satisfaction of authority—Order containing no express words from which a stigma can be infirred—Constitution, of India* (1950), *Article* 311—*Applicablity.*

Under rule 2046 (*h*), of the Indian Railway Establishment Code a Railway servant can be retired, if, in the opinion of the authority, it is in the public interest to do so, by giving him not less than three months' notice. The satisfaction of the authority as to whether a person should be retired in the public interest or not is subjective and the decision of the authority cannot be questioned.

The order of retirement of an employee can be sustained if *prima facie* the order does not contain express words from which a stigma can be inferred. If there are words which throw any stigma then the order of retirement would amount to removal within the meaning of Article 311 of the Constitution. In the instant case, the order did not disclose any reason at all. The validity of the order cannot be questioned.

G. K. Dhamodhara Rao and *K. A. Thanickachalam,* for Petitioner.

B. T. Seshadri for Respondent.

V.S. ——— *Petition dismissed.*

P. Ramakrishnan, J.
6th March, 1968.

P. N. Rangaswamy *v.* Commissioner, Coimbatore Municiaplity.
W.P.Nos. 1331 and 1990 of 1964.

District Municipalities Act (*V of* 1920) *and Personal Conduct of Officers and Servants of Municipal Councils Rules, rule* 14—*Officer or servant of Municipal Council—Taking part in politics—Disciplinary action—Rule not violative of Article* 19 *of the Constitution—Rule designed in the interests of an efficient public service.*

Rule 14 of the Personal Conduct of Officers and Servants of Municipal Councils Rules, is designed in the interests of discipline and good Government, on the assumption that active participation of municipal servants in politics in any of the specific ways mentioned therein, will not be conducive to discipline or to the efficient conduct of the administration, and the rule cannot be struck down as unconstitutional, as infringing any of the freedoms guaranteed in Article 19 of the Constitution. Taking active part in politics as specified in rule 14, like taking part in, subscribing in aid of or assisting in any way, any political movement in India, must be viewed as an objectionable conduct on the part of a municipal servant harmful to good discipline and efficiency of service, and should not be confused with the several freedoms mentioned in Article 19 of the Constitution.

K. V. Sankaran, for Petitioner.

Government Pleader and *K. Alagiriswami* on behalf of Respondents.

V.S. ——•—— *Petition dismissed.*

[SUPREME COURT].

M. Hidayatullah,
V. Bhargava and
G. A. Vaidialingam, JJ.
3rd October, 1967.

Secretary Madras Gymkhana Employees Union *v.* Management of the Gymkhana Club.
C.A. No. 572 of 1966.

Industrial Disputes Act (XIV of 1947)—*Whether a club is an Industry—Industrial Dispute and Trade Dispute.*

Where an activity is to be considered as an industry, it must not be casual but must be distinctly systematic. The work for which labour of workmen is required, must be productive and the workmen must be following an employment, calling of industrial avocation. The salient fact in this context is that the workmen are not their own masters but render service at the behest of masters. This follows from the second part of the definition of industry. Then again when private individuals are the employers, the industry is run with capital and with aview to profits. These two circumstances may not exist when Government or a local authority enter upon business, trade manufacture or an undertaking analogous to trade.

The labour force includes not only manual or technical workmen but also those whose services are necessary or considered ancillary to the productive labour of others but does not include any one who, in an industrial sense, will be regarded, by reason of his employment or duties, as ranged on the side of the employers. Such are persons working in a managerial capacity or highly paid supervisors.

The whole parapharnalia of settlement, conciliation, arbitration (voluntary as well as compulsory) agreements, awards etc. shows that human labour has value beyond what the wages represent and therefore is entitled to corresponding rights in an industry and employers must give them their due. Industry is the nexus between employers and employees and it is this nexus which brings two distinct bodies together to produce a result. We do not think that the test that the workmen must not share in the product of their labours adopted in one case can be regarded as universal. There may be occasions when the workmen may receive a share of the produce either as part of their wages or as bonus or as a benefit.

It is said that the case of the club is indistinguishable from the Hospital case. Thut case is one which may be said to be on the verge. There are reasons to think that it took the extreme view of an industry. We need not pause to consider the Hospital case because the case of a member's club is beyond even the confines established by that case. In our judgment the Madras Gymkhana Club being a members' club is not an industry and the Tribunal was right in so declaring.

B. R. Dolia, F. C. Agrawala, Champat Rai, Kartar Singh Suri, Ambrish Kumar. and *P. C. Agrawala,* for Appellant.

H.R. Gokhale, Senior Advocate, (*M.R. Narayanaswamy Iyer* and *R. Ganapathy Iyer,* Advocates, with him), for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT].

J. C. Shah and
J. M. Shelat, JJ.
4th October, 1967.

Shrimant Sardar Chandrojirao Angre *v.* State of Madhya Pradesh.
C.A. No. 98 of 1965.

Madhya Bharath Abolition of Jagirs Act (XXVIII of 1951)—*Meaning of 'Grove' under section* 5 (*b*) (iv)—*Agra Tenancy Act (III of* 1926)—*U. P. Tenancy Act (XVII of* 1939).

It would seem that the word "grove" conveys compactness or at any rate substantial compactness to be recognised as a unit by itself which must consist of a group of trees in sufficient number to preclude the land on which they stand from being primarily used for a purpose, such as cultivation, other than as a grove land. The language of section 5 (*b*) (*iv*) does not require however that the

trees need be fruit bearing trees nor does it require that they should have been planted by human labour or agency. But they must be sufficient in number and so standing in a group as to give them the character of a grove and to retain that character the trees would or when fully grown preclude the land on which they stand from being primarily used for a purpose other than that of a grove land. Cultivation of a patch here and a patch there would have no significance to deprive it of its character as a grove. Therefore, trees standing in a file on the road side intended to furnish shade to the road would not fulfil the requirement of a grove even as understood in ordinary parlance.

Counsel, however, contended that although the trees in question are situate on the road sides along the said road there may at some places be a group or groups of trees sufficiently large in number and closely standing together to preclude that particular area from being used for cultivation or for any other purpose. In that case, he argued, there was nothing in sub-clause (*iv*) to prevent such a cluster of trees from being regarded as a grove. We think there is some force in this argument which requires consideration. Neither the revenue authorities nor the High Court approached the question from this point of view and no inquiry at any stage seems to have been made whether there are at any place or places such group or groups of trees to constitute a grove or groves. All of them appear to have dismissed the appellants claim only because of the fact that the trees stand along the two sides of the road. It is possible that the road might have been constructed in this particular area because of a number of trees standing on both sides of it which would provide shade over it and form an avenue. In fairness to the appellant, we think it necessary that he should have an opportunity to establish that at some place or places along the said road there are trees sufficient in number and proximity to constitute a grove or groves.

The appeal is allowed, the judgment and order of the High Court are set aside and the case is returned to the High Court to decide the writ petition in the light of the observations herein above made after calling for a finding from the Board of Revenue on the question whether there are trees at any place or places along the said road sufficient in number and proximity to constitute a grove or groves. The Board will give an opportunity to the parties to adduce on the aforesaid question such further evidence as they may think necessary. In the circumstances, there will be no order as to costs.

A. K. Sen, Senior Advocate, (*B. D. Gupta*, Advocate and *Rameshwar Nath* and *Mahinder Narain*, Advocates of *M/s. Rajinder Narain & Co.* with him), for Appellant.

I. N. Shroff, Advocate, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT].

K. N. Wanchoo C. J.
R. S. Bachawat,
V. Ramaswami,
G. K. Mitter and
K. S. Hegde, JJ.
6th October, 1967.

The Mysore S. R. T. Corpn. *v.* Gopinath Gundachar.
C. A. No. 1229 of 1967.

Road Transport Corporation Act (*LXIV of* 1950), *sections* 14; 19 (1) (a), 19 (1) (b), 19 (1) (c), 34, 35 (1) *and* 45 (2) (c)—*Regulations under section* 45 (2) (c).

There is necessarily a time-lag between the formation of the Corporation and the framing of regulations under section 45 (2) (*c*) . During the intervening period, the Corporation must carry on the administration of its affairs with the help of officers and servants. In the absence of clear words, it is difficult to impute to the legislature the intention in that the Corporation would have no power to appoint officers and servants and fix the conditions of service unless the regulations under section 45 (2) (*c*) are framed.

There is no merit in the further contention that the General Manager had no power to issue the notice dated 21st July, 1964, in the absence of any resolution by the Corporation under section 12 (*c*) expressly authorising him to issue it. In the exercise of his general powers of management the General Manager had clearly the power to issue a notice inviting applications from intending candidates. It is not alleged that he made any appointment pursuant to the notice. The respondent also contended that he had the right to be promoted to a class II junior post. But there is nothing on the record to show that he has any vested right of promotion to the post. Civil Miscellaneous Petition No. 3032 of 1967 filed by the Respondent asking for liberty to adduce additional evidence and to raise new contentions is dismissed.

In the order dated 17th August, 1967, granting Special Leave to the appellant, the Court directed that the appellant must pay the cost of the respondent in any event. In the result, the appeal is allowed, the order of the High Court is set side and the writ petition is dismissed. The appellant shall pay the costs of the appeal to the respondent pursuant to the order dated 17th August, 1967.

Mrs. Shyamala Pappu and *Vineet Kumar*, Advocates, for Appellant.

R. B. Datar and *S. N. Prasad*, Advocates, for Respondent.

G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

J.M. Shelat and *V. Bhargava, JJ.*
6th October, 1967.

National Engineering Industries Ltd. *v.* Its Workmen.
C.As. Nos. 356 and 357 of 1966.

Industrial Disputes Act (*XIV of* 1947) *under section* 10 (1) (d)—*Distribution of Bonus—Full Bench Formula.*

It is true that the Full Bench formula provided for payment of net interest at 6 per cent. per annum on paid up capital, but as pointed out in the *Associated Cement Co.'s case*, (1959) S.C.R. 925 : A.I.R. 1959 S.C. 967, and subsequent decisions of the Tribunals, the rate of 6 per cent. interest is not to be regarded as something inflexible. In awarding interest on paid up capital and also on working capital the proper approach is that the industry is entitled to a reasonable return on investments made in establishing and running concerns at its risk. At the same time the claim for bonus is no longer treated as an *ex gratia* payment. It is recognised on the consideration that labour is entitled to claim a share in the trading profits of the industry as it partially contributes to the same. Since the industry and labour both contribute to the ultimate trading profits both are entitled to a reasonable share. While awarding interest if the Tribunal were to find that if it were to grant 6 per cent. interest on paid up capital, nothing or no appreciable amount would be left for bonus, it can adjust the rate of interest so as to accommodate reasonably the claim for bonus and thus meet the demands of both as reasonably as possible. If the Tribunal were to award interest at a rate lower than 6 per cent. after considering all the relevant facts we do not think that the employer can legitimately claim that it has erred in doing so. If the Tribunal has exercised its discretion after consideration of all the relevant facts this Court would not ordinarily interfere with such exercise of its discretion.

These were all the contentions raised by Counsel for the Company in the Company's appeal. To the extent that we accept as hereinabove the Company's contentions, Annexure. A to the award will have to be modified. These modifications are shown in the charts hereto annexed and collectively marked 'A'.

The claim for bonus was raised for the first time by the Union's resolution of 24th July, 1959, that is, more than 18 months after closure of accounts. The claim for 1956-57 was thus clearly belated and the Tribunal was right in refusing to compel the Company to reopen its accounts and to readjust appropriations made long before the demand was raised. It has to be remembered that a claim for bonus

is not one for deferred wages. Its recognition in industrial adjudication is based on the desirability of a balance of adjustments of the different interests concerned in the industrial structure of a country in order to promote harmony amongst them on an ethical and economic foundation. Industrial adjudication therefore is bound to take into consideration delay and laches before it calls upon the other side to reopen its accounts closed long ago. We do not think that the Tribunal was in any error in rejecting the claim on the ground of laches. The principle that laches are fatal to such a claim has long been accepted in a series of decisions both by the Tribunals and by this Court.

The Charts showing calculations of available surplus for the three bonus years show that in all these years no surplus remains available for distribution of bonus after making provision for rehabilitation. As a result, the appeal by the Company must be allowed and the direction made by the Tribunal for payment of bonus for these three years has to be set aside. In the circumstances of this case, the parties will bear their own costs. The appeal by the Union is dismissed. There will be no order as to costs.

Niren De, Additional Solicitor General of India (*Sobhag Mal Jain* and *B. P. Maheshwari*, Advocates, with him), for Appellant (In C.A. No. 356 of 1966 and Respondents in C. A. No. 357 of 1960.)

M. K. Ramamurthi, *Mrs. Shyamala Pappu* and *Vineet Kumar*, Advocates, for Appellants (In C.A. No. 357 of 1966) and Respondents (In C.A. No. 356 of 1966).

G.R. *Appeal dismissed.*

[SUPREME COURT.]

V. Bhargava and *C.A. Vaidialingam, JJ.*

6*th October*, 1967.

M/s. Braithwaite & Co. (India) Ltd. *v.* The E. S. I. Corporation.

C.A. No. 1056 of 1966.

Employees State Insurance Act (*XXXIV of* 1948), *section* 2 (22)—*Definition of* '*Wages*' —*Whether* '*Inam*' *paid to workman under the Inam Scheme comes under the definition of of wages—Explanation to Article* 286 (1) *of the Constitution.*

It appears that the High Court committed an error in applying the legal fiction, which was meant for sections 40 and 41 of the Act only, and extending it to the definition of wages, when dealing with the question of payment in the nature of Inam under the Scheme started by the appellant. The fiction in the Explanation was a very limited one and it only laid down that wages were to be deemed to include payment to an employee in respect of any period of authorised leave, lock-out or legal strike. It did not lay down that other payments made to an employee under other circumstances were also to be deemed to be wages. A legal fiction is adopted in law for a limited and definite purpose only and there is no justification for extending it beyond the purpose for which the Legislature adopted it. In the *Bengal Immunities Co., Ltd.* v. *State of Bihar and others*, (1955) 2 S.C.R. 603 at p. 646 : (1955) 2 M.L.J. (S.C.) 168 : (1955) S.C.J. 672 : A.I.R. 1955 S.C. 661, this Court, dealing with the explanation to Article 286 (1) of the Constitution, as it existed before 11th September, 1956, held :—

"Whichever view is taken of the *Explanation*, it should be limited to the purpose the Constitution makers had in view when they incorporated it in clause 1. It is quite obvious that it created a legal fiction. Legal fictions are created only for some definite purpose."

Applying the same principle, we have to hold that the Explanation to section 11 is not to be utilised for interpreting the general definition of "wages" given in section 2 (22) of the Act and is to be taken into account only when the word "wages" requires interpretation for purpose of sections 40 and 41 of the Act. It cannot therefore, be held that remuneration payable under a scheme is to be covered by the word "wages", if the terms of contract of employment are taken to have been

fulfilled. What is really required by the definition is that the terms of the contract of employment must actually be fulfilled. It is, therefore, not correct to hold that because payments made to an employee for no service rendered during the period of lock-out, or during the period of legal strike, would be wages, Inam paid under the scheme must also be deemed to be wages.

This Court in *Balasubrahmanya Rajaram* v. *B. C. Patil and others*, (1958) S.C.R. 1504 at p. 1508 : (1958) 2 M.L.J. (S.C.) 121 : (1958) 2 An.W.R. (S.C.) 121 : (1958) S.C.J. 851 : A.I.R. 1958 S.C. 518, had to interpret the meaning of word "wages" as defined in the Payment of Wages Act, where also wages were defined as remuneration which would be payable if the terms of the Contract of employment express or implied, were fulfilled.

A. N. Sinha and *D. N. Gupta*, Advocates, for Appellant.

R. N. Sachthey and *S. P. Nayar*, Advocates, for Respondent.

G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

J.C. Shah, S.M. Sikri and *J. M. Shelat, JJ.*
16*th October*, 1967.

Sita Ram *v.* Radha Bai.
C.A. No. 961 of 1964.

Hindu Law—Maxim "In pari delicto, portiorest conditio defendentis".

It is settled law that "where the parties are not *in pari delicto*, the less guilty party may be able to recover money paid, or property transferred, under the contract. This possibility may arise in three situations.

First, the contract may be of a kind made illegal by statute in the interests of a particular class of persons of whom the plaintiffs is one.

Secondly, the plaintiff must have been induced to enter into the contract by fraud or strong pressure.

Thirdly, there is some authority for the view that a person who is under a fiduciary duty to the plaintiff will not be allowed to retain property, or to refuse to account for moneys received, on the ground that the property or the moneys have come into his hands as the proceeds of an illegal transaction. "See Anson's 'Principles of the English Law of Contract' page 346. It was the plaintiff's case that it was at the persuasion of Lachhmi Narain that the jewellery was entrusted to him. Again on the plaintiff's case Lachhmi Narain was under a fiduciary duty to the plaintiff and he could not withhold the property entrusted to him on the plea that it was delivered with the object of defeating the claim of a third party.

A Hindu son governed by the Mitakshara law is liable to pay the debts of his father even if they are not incurred for purposes of legal necessity or for benefit to the estate, provided the debts are not avyavaharika or illegal. But there is no evidence that the appellant is sought to be rendered liable for a debt which is avyavaharika or illegal. In raising his contention Counsel assumes that Lachhmi Narain had misappropriated the jewellery entrusted to him, but for that there is no support. Granting that the appellant was, after the death of Lachhmi Narain, unable to trace the jewellery entrusted by the plaintiff, it cannot be inferred that the jewellery was misappropriated by Lachhmi Narain. The burden of proving that there was a debt and that the debt was avyavaharika or illegal lay upon the appellant. There is no evidence to prove that the debt was avyavaharika or illegal.

Case considered : L.R. 61 I.A. 350.

J. P. Goyal and *Sobhag Mal Jain*, Advocates, for Appellant.

Dr. W. S. Barlingay, Senior Advocate, (*A. G. Ratnaparkhi*, Advocate, with him), for Respondent No. 1.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

K.N. Wanchoo, C.J., R.S. Bachawat, V. Ramaswami, G.K. Mitter and *K.S. Hegde, JJ.*
19*th October*, 1967.

Alok Kumar Roy *v.* Dr. S.N. Sharma.
C.A.No. 1028 of 1967.

High Courts—Can a Judge dispose of a petition outside the seat of the High Court—Where a Judge holds a temporary commission of enquiry—Judicial decorum.

Where a Judge heads temporary Commissions of Enquiry under the Commission of Enquiry Act, he remains a part of the High Court and is entitled to sit and act as a Judge of the High Court whenever he thinks fit. The appointment of a Judge as Commission of Enquiry does not deprive him of the rights and privileges of a Judge of the High Court. Whenever he finds time to attend to his duties as a Judge of the High Court while acting as a Commission of Enquiry, he can do so.

It is necessary to emphasise that judicial decorum has to be maintained at all times and even where criticism is justified it must be in language of utmost restraint, keeping always in view that the person making the comment is also fallible. Remarks such as these made by the learned Chief Justice make a sorry reading and bring the High Court over which he presides into disrepute. Even when there is justification for criticism, the language should be dignified and restrained. But in this case we do not see any justification at all for such remarks.

We therefore allow the appeal and set aside the order of the High Court dismissing the writ petition and send it back to the High Court with the direction that the High Court should reconsider whether the petition should be admitted, taking it as represented on the day it reached Gauhati, and if so it should be set down for hearing in due course. In the circumstances we make no order as to costs.

Case considered : (1966) 1 S.C.R. 974 : A.I.R. 1966 S.C. 707.

Sarjoo Prasad, Senior Advocate (*Barthakur* and *R. Gopalakrishnan*, Advocates, with him), for Appellant.

C. K. Daphtary, Attorney-General for India, (*Naunit Lal*, Advocate, with him), for Respondents.

G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

J.C. Shah, S.M. Sikri and *J. M. Shelat, JJ.*
19*th October*, 1967.

The Naihati Jute Mills Co. Ltd. *v.* Khyaliram Jagannath.
C.A.No. 44 of 1965.

Arbitration Tribunal—Sections 32, 56, *Indian Contract Act—Principle of frustration of the Contract.*

In *Ganga Saran* v. *Ram Charan*, (1952) S.C.R. 36 : (1951) S.C.J. 799 : A.I.R. 1952 S.C. 9, this Court emphasised that so far as the Courts in this country are concerned they must look primarily to the law as embodied in sections 32 and 56 of the Contract Act. In *Satyabrata Ghose* v. *Mugneeram*, (1954) S.C.R. 310 : (1954) 1 M.L.J. 41 : (1954) S.C.J. 1 : A.I.R. 1954 S.C. 44, also, Mukherjea J., (as he then was) stated that section 56 laid down a rule of positive law and did not leave the matter to be determined according to the intention of the parties. Since under the Contract Act a promise may be express or implied, in cases where the Court gathers as a matter of construction that the contract itself contains impliedly or expressly a term according to which it would stand discharged on the happening of certain circumstances the dissolution of the contract would take place under the terms of the contract itself and such cases would be outside the purview of section 56. Although in English law such cases would be treated as cases of frustration, in India they would be dealt with under section 32. In a majority of cases, however, the doctrine

of frustration is applied not on the ground that the parties themselves agreed to an implied term which operated to release them from performance of the contract. The Court can grant relief on the ground of subsequent imposibility when it finds that the whole purpose or the basis of the contract was frustrated by the intrusion or occurrence of an unexpected event or change of circumstances which was not contemplated by the parties at the date of the contract. There would in such a case be no question of finding out an implied term agreed to by the parties embodying provision for discharge because the parties did not think about the matter at all nor could possibly have any intention regarding it. When such an event or change of circumstances which is so fundamental as to be regarded by law as striking at the root of the contract as a whole occurs it is the Court which can pronounce the contract to be frustrated and at an end. This is really a positive rule enacted in section 56 which governs such situations.

In the view that the said contract cannot be said to be or to have been void and that in any event the stipulation as to obtaining the import licence was absolute, the question that arbitration clause perished along with the contract and consequently the arbitrators had no jurisdiction cannot arise. But assuming that the appellant had established frustration even then it would not be as if the contract was *ab initio* void and therefore not in existence. In cases of frustration it is the performance of the contract which comes to an end but the contract would still be in existence for purposes such as the resolution of disputes arising under or in connection with it. The question as to whether the contract became impossible of performance and was discharged under the doctrine of frustration would still have to be decided under the arbitration clause which operates in respect of such purposes. (*Union of India* v. *Kishorilal*, (1960) 1 S.C.R. 493 at page 514 : (1960) S.C.J. 1101 : A.I.R. 1959 S.C. 1362.

B. Sen, Senior Advocate (*B. P. Maheshwari* and *R. K. Choudhuri*, Advocates, with him), for Appellant.

Niren De, Additional Solicitor General of India, (*D. N. Mukherjee*, Advocate, with him), for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

K.N. Wanchoo, C.J.,
R.S. Bachawat,
V. Ramaswami,
G.K. Mitter and
K. S. Hegde, JJ.

20th October, 1967.

S. Azeez Basha etc. *v.*
Union of India etc.
W.Ps. Nos. 84, 174, 188, 241 and 242 of 1966.

Aligarh Muslim University (Amendment) Act (LXII of 1951) *referred to as* 1951 *Act—Aligarh Muslim University Amendment Act (XIX of* 1965) *refers to as* 1965 *Act—Articles* 14, 19, 23, 26, 29, 30 *and* 31 *of the Constitution—Aligarh Muslim University Act (XLI of* 1920) *referred to as* 1920 *Act—Meaning of (Educational Institutions).*

It was the Central Legislature which brought into existence the Aligarh University and must be held to have established it. It would not be possible for the Muslim Minority to establish a university of the kind whose degrees were bound to be recognised by Government and therefore it must be held that the Aligarh University was brought into existence by the Central Legislature and the Government of India. Article 30 (1), which protects educational institutions brought into existence and administered by a minority, cannot help the petitioners and any amendment of the 1920 Act would not be *ultra vires* Article 30 (1) of the Constitution. Any amendment of the 1920 Act by which it was established, would be within the legislative power of Parliament subject of course to the provisions of the Constitution. The Aligarh University not having been established by the Muslim Minority, no amendment of the Act can be struck down as unconstitutional under Article 30 (1).

Nor do we think that the provisions of the Act can bear out the contention that it was the Muslim Minority which was administering the Aligarh University, after it was brought into existence.

It is not necessary to go into all the implications of the word " maintain "; it is enough for present purposes to say that the right to maintain institutions for religious and charitable purposes would include the right to administer them. But the right under clause (*a*) of Article 26 will only arise where the institution is established by a religious denomination and it is in that event only that it can claim to maintain it. As we have already held, the Aligarh University was not established by the Muslim Minority and therefore no question arises of its right to maintain it within the meaning of clause (*a*) of Article 26.

In the circumstances, it cannot be said that the 1965 Act deprived the Aligarh University of the property vested in it. As for the Muslim Minority they had already given up the property when the Aligarh University was brought into existence by the 1920 Act and that property was vested by the Act in the Aligarh University. The Muslim Minority cannot now after the Constitution came into force on 26th January, 1950, lay claim to that property which was vested in the Aligarh University by the 1920 Act and say that the 1965 Act merely because it made some change in the constitution of the Court of the Aligarh University deprived the Muslim Minority of the property, for the simple reason that the property was not vested in the Muslim Minority at any time after the 1920 Act came into force. The argument that there has been breach of Article 31 (1) has therefore no force.

Cases considered : (1959) S.C.R. 995 ; (1962) 1 S.C.R. 383 ; (1951) 1 All E.R. 559.

M. R. M. Abdul Karim, K. Rajendra Chaudhuri and *K. R. Chaudhuri*, Advocates, for Petitioners (In W.P. No. 84 of 1966).

Dr. B. K. Bhattacharya, Senior Advocate, (*M. I. Khowaja*, Advocate, with him), for Petitioners (In W.P. No. 174 of 1966).

Danial A. Latifi, Senior Advocate (*M. I. Khowaja*, Advocate, with him), for Petitioners (In W.P. No. 188 of 1966).

K. L. Gauba, Senior Advocate (*S. Shaukat Hussain*, Advocate, with him), for Petitioners (In W.P. No. 241 of 1966).

S. Shaukat Hussain, Advocate, for Petitioners (In W.P. No. 242 of 1966).

C. K. Daphtary, Attorney General for India and *N. S. Bindra*, Senior Advocate, (*R. H. Dhebar*, Advocate and *S. P. Nayyar*, Advocate for R.N. *Sachthey*, Advocate, with them), for Respondent (In W.Ps. Nos. 84, 174 and 241 of 1966) and Respondents Nos. 1 and 3 (In W.P. No. 188 of 1966).

C. K. Daphtary, Attorney General for India, (*Miss Lily Thomas* and *P. C. Kapur*, Advocates, and *R. H. Dhebar*, Advocate for *R.N. Sachthey*, Advocate, with him) for, Respondent (In W.P. No. 242 of 1966).

G.R. *Petitions dismissed.*

[SUPREME COURT.]

J.C. Shah, S.M. Sikri and *J.M. Shelat, JJ.*
23*rd October*, 1967.

Calcutta Credit Corporation Ltd. *v.* Happy Homes (P.) Ltd.
C.A. No. 71 of 1965.

West Bengal Premises Rent Control (Temporary Provisions) Act (XVII of 1950)—*Transfer of Property Act (IV of* 1882), *sections* 111 *and* 113.

The contention that in order to determine a tenancy under the Transfer of Property Act at the instance of a tenant, there must be actual delivery of possession before the tenancy is effectively determined, cannot be accepted. It is contrary to the plain terms of section 111 (*h*) of the Transfer of Property Act. Therefore by virtue of the notice dated 12th August, 1953, and acceptance thereof by the landlord, the tenancy of Allen Berry was determined at 3-30 P.M. on 31st August, 1953. It is unnecessary in that view to consider whether the notice dated 20th February, 1954 requiring Allen Berry to vacate and deliver possession of the premises to the Landlord on expiry of 31st March, 1954, was a valid notice.

Sub-section (1) of section 13 is not directly concerned here. That sub-section only deals with sub-letting by a tenant inferior to "the tenant of the first degree". In the present case, Allen Berry were direct tenants from the landlord and initially were "tenants of the first degree". Sub-section (2) deals with cases of sub-letting by tenants of the first degree or by a tenant inferior to the tenant of the first degree as defined in the Explanation to sub-section (1), and such sub-lease is binding on the landlord of such last mentioned tenant. It is provided thereby that if the tenancy of such tenant is lawfully determined otherwise than for personal occupation, the sub-lessee will be deemed to be a tenant in respect of such premises or part thereof and will hold directly under the landlord or the tenant whose tenancy has been determined.

Considered in the light of the scheme and object of the Act, the expression "tenant" in clause (*c*) of section 12 (1) or in section 13 (2) must, in our judgment, mean a contractual tenant alone and not a statutory tenant. The definition in section 2 (11) of the expression "tenant" includes a statutory tenant. But the definition does not apply if there is anything repugnant in the subject or context. A statutory tenant has no interest or estate in the premises occupied by him, and we are unable to hold that the Legislature without making an express provision to that effect intended to invest him with power to induct into the premises in his occupation a person who would be entitled to claim the right and interest of a contractual tenant. If the view which has appealed to the High Court of Calcutta be accepted, a statutory tenant whose right of occupation is determined by a notice to quit, because of conduct which entails forfeiture of the protection of the Act, may induct a sub-tenant so as to defeat the claim of the landlord, and presumably a tenant sued in ejectment may also exercise that privilege, for the right if granted would ensure till a decree in ejectment is passed. The Legislature has not made any such express provision, and no provision to the effect which makes the right of the landlord conferred by the Act to obtain a decree in ejectment against his tenant wholly illusory may be implied.

L.R. (1867 68 L.R. 3 Ex. Cases 303; (1964) 4 S.C.R. 892; (1954) 1 All E.R. 874; (1965) 3 S.C.R. 329; A.I.R. 1961 Cal. 505. considered.

T. P. Dass, M. G. Poddar, V. N. Poddar, H. K. Puri and *B. N. Kirpal*, Advocates, for Appellants.

A. N. Sinha and *S. N. Mukherjee*, Advocates, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

V. Bhargava and *C.A. Vaidialingam, JJ.*
26*th October*, 1967.

Narayan Swami *v.* State of Maharashtra.
Cr.A. No. 165 of 1967.

Penal Code (*XLV of* 1860), *sections* 195 *and* 196 *read with section* 34—*Criminal Procedure Code* (*V of* 1898), *sections* 342 *and* 479-*A*.

The legal position is quite clear, *viz.*, that the evidence, given by Dilwar, in the decoity case, cannot be used as evidence against the appellant, who had no opportunity to cross-examining Dilwar, in the said case ; and the statements of Dilwar, as co-accused, made under section 342 Criminal Procedure Code, in the present trial, cannot be used against the appellant. We are not certainly inclined to accept the contention of the learned Counsel, for the State, that these very serious illegalities, committed by the learned Sessions Judge, must be considered to have been approved, by the learned Judges of the High Court, when they dismissed the appeal, summarily. In fact, by dismissing the appeal summarily, the learned Judges of the High Court have omitted to note these serious illegalities, contained in the judgment of the learned Sessions Judge. As to whether there is other evidence, on record, which would justify the conclusion that the appellant has been rightly convicted, is not a matter on which it is necessary for us to embark upon, in this appeal. That is essential for the High Court, as a Court of appeal, to investigate, and come to a conclusion, one way or the other.

The question as to whether the appellant has been given an opportunity, of being heard, under section 479-A, is again, not only in our opinion, an arguable point, but also a substantial and important one.

The discussion, contained above, will clearly show that the appeal, filed by the appellant, before the High Court of Bombay, was an arguable one, and it also raised substantial and important questions, for consideration at the hands of the High Court. The High Court was not justified, in dismissing the appeal, filed by the appellant, summarily.

Therefore, the order of the High Court, dated 27th April, 1967, dismissing Criminal Appeal No. 74 of 1967, is set aside, and the said appeal is remanded to the High Court, for fresh disposal, in the light of the observations, contained in their judgment. Appeal is allowed, accordingly.

(1953) S.C.R. 809 ; (1964) 1 S.C.R. 237 ; (1955) S.C.R. 1177. considered.

W. S. Barlingay, Senior Advocate, (*A. G. Ratnaparkhi*, Advocate, with him), for Appellant.

H. R. Khanna and *S. P. Nayar*, Advocates, for Respondent.

G.R. ——— *Appeal allowed. case Remanded.*

[SUPREME COURT.]

J. C. Shah, S. M. Sikri, and *J. M. Shelat, JJ.*
30*th October*, 1967.

The Divisional Forest Officer Himachal Predesh *v.* Daut
C. A. No. 128 of 1965.

Himachal Pradesh Abolittion of Big Landed Estates and Land Reforms Act, 1953 (*XV of* 1954), *section* 11—*Punjab Alienation of Land Act* (*XIII of* 1900)—*Meaning of words* '*Owner*'—*Transfer of Property Act* (*IV of* 1882), *section* 8.

There can be no doubt that trees are capable of being transferred apart from land, and if a person transfers trees or gives a right to a person to cut trees and remove them it cannot be said that he has transferred land. But the question there is whether under section 11 of the Act trees are included within the expression "right, title and interest of the landowner in the land of the tenancy." The expression

"right, title and interest of the land owner in the land" is wide enough to include trees standing on the land. It is clear that under section 8 of the Transfer of Property Act, unless a different intention is expressed or implied, transfer of land would include trees standing on it. Section 11 has to be construed in the same manner.

If the contention of the learned Counsel were correct, even cultivable land which is expressly mentioned in section 84 (*a*) (*i*) would not vest in the tenant under section 11 of the Act. Section 11 is drafted very simply and under sub-section (6) the tenant becomes the owner of the landcomprised in the tenancy on and from the date of grant of the certificate, and it is expressly provided that the right, title and interest of the land owner in the said land shall determine. In the context the word "owner" is very comprehensive indeed, and it implies that all rights, title and interest of the landowner pass to the tenant. Further, it would lead to utter confusion if the contention of the learned Counsel is accepted. There would be interminable disputes as to the rights of the erstwhile land owners to go on the lands of erstwhile tenants and cut trees or take the fruit. Moreover, under section 15 of the Act we would, following the same reasoning, have to hold that the trees on the land of the landowner did not vest in the State. This could hardly have been the intention.

A.I.R. 1961 H.P. 32 ; A.I.R. 1942 Lah. 152 ; I.L.R. (1924) 5 Lah. 385 ; A.I.R. 1919 Punjab Rep. 237 cases considered.

Vikram Chand Mahajan and *R. N. Saehthey*, Advocates, for Appellants.

Rameshwar Nath and *Mahinder Narain*, Advocates of *M/s. Rajinder Narain & Co.*, for Respondents.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

S. M. Sikri and *J. M. Shelat, JJ.*
30th October, 1967.

Rai Bahadur Ganga Bishnu Swaika v. Calcutta Pinjrapole Society.
C. A. No. 136 of 1965.

Land Acquisition Act (*I of* 1894), *sections* 4, 5-A, 6, 7—Mala fide *plea—Amendment Act, XXXVIII of* 1923.

The contention that it is imperative that the satisfaction must be expressed in the declaration or that otherwise the notification would not be in accord with section 6 is not correct.

The construction put on section 6 is supported by the decision in *Ezra* v. *The Secretary of State* (1903) I.L.R. 30 Cal. 36 at 81; where it was held that a notification under section 6 need not be in any particular form. The case went up to the Privy Council but it appears from the report of that case that these observations were not challenged or disputed before the Privy Council in L.R. 32 I.A. 39. No statutory forms appear to be prescribed by the West Bangal Government for such a declaration either under the Act or the rules made thereunder though there are model forms framed presumably for the guidance only of the officers of the Acquisition Department. There being thus no statutory forms and section 6 not requiring the declaration to be made in any particular form, the mere fact that the notification does not *ex facie* show the Governments satisfaction, assuming that the words "it appears" used in the notification do not mean satisfaction, would not render the notification invalid or not in conformity with section 6.

The fact that section 5-A inquiry was held and objections were filed and heard, the fact that the Additional Collector had recommended the acquisition and had sent his report to that effect and the Government thereafter issued section 6 notification would in the obsence of any evidence to the contrary, show that the condition precedent as to satisfaction was fulfilled. We are therefore of the view that the High Court was in error when it held that section 6 notification was not in accord with that section and that proceedings taken thereafter were vitiated.

As regards the question of *mala fides*, there is no justification for reopening the concurrent finding of the Trial Court and the Additional District Judge.

In the result, the appeal is allowed, the High Court's Judgment and decree are set aside and the judgment and decree passed by the Trial Court and confirmed by the Additional District Judge dismissing the suit of the 1st respondent society are restored.

S. V. Gupte, Senior Advocate (*D. N. Mukherjee*, Advocate, with him), for Appellants.

B. K. Bhattacharya, Senior Advocate (*M. K. Ghose and P. K. Ghose*, Advocates, with him), for Respondent No. 1.

P. K. Chatterjee, G. S. Chatterjee and *P. K. Bose*, Advocates, for Respondent No. 2.

G.R. ——— *Suit dismissed.*

[SUPREME COURT.]

J. C. Shah,
S. M. Sikri and
J. M. Shelat, JJ.
31*st October*, 1967.

The Municipal Corporation, Indore *v.*
Rai Bahadur Seth Hiralal.
C. A. No. 141 of 1965.

Indore City Municipal Act (*IV of* 1909)—*Madhya Bharat Municipalities Act*, 1954—*Repealing amongst others the Indore City Municipality Act*, 1909—*Right to levy House Tax.*

Ordinarily the Municipal Corporation has to prepare a fresh assessment list every year. The legislature however has empowered by section 79, as other State Legislatures have similarly done in several Municipal Acts, to adopt the valuation and assessment contained in the assessment list prepared in an earlier year provided, however that it prepares a fresh list once in every 4 years. But sub-section 2 of section 79 provides expressly that when such a previous list is adopted for a particular official year it can be done subject to the provisions of sections 75 and 76.

In order to prevent such a result the legislature has provided by sub-section 2 of section 79 that where a municipality adopts a previously prepared list for any subsequent year the provisions of sections 75 and 76 shall be applicable as if a new assessment list has been completed at the commencement of that particular official year. The word, "if" appearing in sub-section 2 of section 79 is obviously a mistake and must be read as "as if" because the word "if" standing by itself makes no sense at all. Section 79 therefore has to be construed to mean that though a municipality need not prepare a fresh assessment list every year and need prepare such list once in every 4 years and can adopt and earlier assessment list such an adopted list becomes the assessment list for that particular year as if it was a new list and to which sections 75 and 76 apply.

The result of the foregoing discussion is that the appellant-Corporation was entitled to adopt the assessment list prepared for the year 1952-53 for the two assessment years 1953-54 and 1954-55, under section 79 and therefore that list became the assessment list for each of the 2 years in question. That fact however does not entitle the appellant-Corporation to impose the house tax on the basis of the gross annual letting value as such imposition is inconsistent with section 73 under which the annual letting value would be the gross annual letting value less 10 per cent. statutory allowance.

Therefore, it was argued, both the annual letting value and the amount of tax shown in that list were conclusive evidence and could not be assailed. Counsel however forgets that even on the footing that the resolution passed by the Indore Municipality to levy the tax at 7 per cent. of the gross annual letting value and on the strength of which the list for 1952-53 was prepared was saved and was deemed to have been made under the 1954 Act it can be deemed to have been so made in so far as it is consistent with the provisions of the Act. Therefore, to the extent

that it is inconsistent with section 73 it is neither saved nor deemed to have been made under the Act and has to be adjusted in the light of the provisions of section 73 (2). It follows that the appellant-Corporation was not entitled to demand the tax assessed on the gross annual letting value. The High Court therefore was right in decreeing the suit and to order refund of the said excess amount against the appellant-Corporation.

B. P. Jhanjharia and *P. C. Bhartari*, Advocates, and *J. B. Dadachanji* and *O.C. Mathur*, Advocates of *M/s. J. B. Dadachanji & Co.*, for Appellant.

Dr. W. S. Barlingay, Senior Advocate (*V.G. Tambvekar* and *A. G. Ratnaparkhi*, Advocates with him), for Respondents Nos. 1, 2 and 4 to 7.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

J.C. Shah,
V. Ramaswami and
G.K. Mitter, *JJ.*
2*nd February*, 1968.

Shri Amolakchand *v.*
Raghuveer Singh.
C.A. No. 1352 of 1967.

Representation of the People Act (*XLIII of* 1960), *sections* 116-*A*, 100, 33 (2), 36 (7) (b) —*An elector proposing more than one candidate declaration of ones caste.*

It is true that section 36 (6) as it stands at present enables a proposer to file more than one nomination paper in respect of the same candidate, but this sub-section has no bearing on the question presented for determination in the present appeal. It is manifest that there is no express ban or prohibition under section 33 or 36 of the present Act against an elector proposing more than one candidate for a single seat constituency. Mr. Gupte has not been able to point out anything in the context or language of other sections of the Act for leading to the necessary implication that an elector cannot propose more than one candidate for a single seat constituency on the other hand amendment to section 33 of the Act by the amendment Act XXVII of 1956 indicates that it was the intention of parliament that there should be no ban on the number of nomination papers or the number of candidates to be proposed by an elector for a single seat constituency. On behalf of the appellant reference was made to page 133 of Schofield's 'Parliamentary Elections' 2nd Edition in which it is said that no person is permitted to sign more than one nomination paper at the same election and if he does then his signatue is operative only in the case of the paper which is first delivered. But this statement is based on rule 8 (2) of the Parliamentary Election Rules of the British Parliament. There is no such statutory provision made under the Act for Parliamentry Elections in India and the anology is not applicable.

Section 32 (2) of the Act imposes an obligation on the candidate in the reserved constituency to make declaration in the proper column but there is no direction in the statute with regard to General Constituency.

The mention of the case in one of the candidate in the nomination form was a clear superfluity because it is not necessary for the candidate to fill in the column when he was contesting in a General Constituency, but there is nothing either in the section or in the rules forbiding the candidate from mentioning his caste. There is no violation of section 33 of the Act or breach of general directions continued in rule 4 and the nomination papers cannot be held to be invalid on this account.

S. V. Gupte, Senior Advocate with *Rameshwar Nath*, Advocate of *M/s. R. N. & Co.*, for Appellant.

D.D. Verma and *Ganpat Rai*, Advocates, for Respondent.

G.R. *Appeal dismissed.*

P.S. Kailasam, J.
21*st March*, 1967.

P.V. Srinivasan *v.*
The Prescribed
Judicial Authority (District Judge).
W.P.No. 2760 of 1966 and
C.R.P.No. 2212 of 1968.

Madras District Municipalities Act (*V of* 1920), *sections* 50 (1) (*hh*), 331 (1)—*Councillor—Disqualification—Non-payment of property tax and water charges—Service of demand notice for property tax—Merely throwing notice through the open window—Not proper service—Non-payment on such service—Not to entail disqualification—Payment of water charges within time after a general notice.*

Under section 50(1) (*hh*) of the Act a councillor ceases to hold his office if he fails to pay arrears of any kind due by him to the municipality within three months after a bill or notice has been served upon him under the Act or where in the case of any arrear the Act does not require the service of any bill or notice, within three months after a notice requiring payment of the arrear has been duly served upon him by the executive authority.

The method of serving a notice is prescribed in section 331 (1) of the Act. It provides that when any notice is required to be served on any person by the Act, the service may be effected (*a*) by giving or tendering the said document to such person, or (*b*) if such person is not found, by leaving such document at his last known place of abode or business or by giving or tendering the same to some adult member or servant of his family.

Where the house was found locked, merely throwing the demand notice (property tax) inside the house through an open window would not constitute a valid service of notice. Service of notice by leaving the notice at the last known place of abode could be effected only if the bill collector attempted to serve the notice on the person concerned and could not do so.

So far as the water charges are concerned the Act or the rules or the by-laws framed thereunder do not require any service of notice. In such a case section 50 (1) (*hh*) provides that the arrears should be paid within three months after a notice requiring payment of the arrears has been duly served upon the person by the executive authority. Where there was issued a general notice calling upon the consumers to pay water charges and was paid within three months of such publication, no disqualification could be incurred within the scope of section 50 (1) (*hh*).

T. S. Subramaniam, for Petitioner.

T. Selvaraj and *G. Ramanujam*, for Respondent.

V.S.

Petition dismissed.

P. Ramakrishnan, J.
29*th August*, 1967.

Madurai Sugars Staff Union *v.*
State of Madras.
W.P.No. 82 of 1965.

Industrial Disputes Act (*XIV of* 1947), *section* 10—*Reference by State Government—Principles.*

In making the reference under section (10) of the Industrial Disputes Act, the principles to be adopted by the Government may be classified as follows. The Government need not confine itself to the conciliation Officers report. It can go into other facts which came to its notice and which are relevant for the purpose. The Government can go into facts and find out whether a *prima facie* case for reference has been made out on the merits. Where there is a disputed question of fact, the Government cannot reach a final conclusion on those facts and it will be for the Labour Court to reach a conclusion. The Government should exercise its discretion *bona fide* in the matter of deciding whether to make a reference or not. When the Government declines to make a reference it is obliged to state its reasons ; but, it

need not record all the reasons in the sense that the reasons should be exhaustive. The reasons which are given should be relevant and should not be extraneous to the subject-matter. If the Government makes a reference the Court cannot in a writ petition go into the question whether it acted properly in making the reference.

K. Venkatasubbaraju, for *P. R. Gokulakrishnan* and *K. Vezhavendan*, for Petitioner.

Assistant Government Pleader on behalf of the State.

S. M. Subramanian for *R. Viswanathan*, for Respondent No. 2

V.S. *Petition dismissed.*

P. Ramakrishnan, J.
31st August, 1967.

P.N. Ganesan *v.* State of Madras.
W.P.No. 170 of 1965.

Land Acquisition Act (I of 1894), section 4 (1) 5 (A), 17—Acquisition of land for the purpose of opening a path-way to the Harijan colony—No individual notice to owners of land obligatory under section 4 (1)—Existence of casuarina trees on the land—Still arable land—Urgency provisions can be invoked—Absence of a regular path-way and difficulty of passage made out—Invoking urgency provision—Jurisdiction.

Individual notice to owners of land proposed to be acquired of the notification under section 4 (1) of the Act is not obligatory. The existence of casuarina trees on the land would still bring the land under the classification of arable land for the purposes of section 17 (1) and section 17 (4) of the Act. The Government stated that the Harijan families living in the Harijan colony did not have the benefit of a regular path-way from their houses to the road and that there were only the ridges of the fields which could not be used at all during rainy seasons and at the time of the standing crops. The connected file also showed that Collector had reported after necessary enquiry, that Harijans were experiencing difficulties for want of a proper path-way and that consequently the urgency provision was being resorted to. The above reasons are not either un-related to the purpose in view or *mala fide*. The resort to the urgency clause cannot be considered to be without jurisdiction.

T. R. Venkataraman, for Petitioner.

Assistant Government Pleader on behalf of the Respondent.

V.S. *Petition dismissed.*

P. Ramakrishnan, J.
6th October, 1967.

M.C.Muthukrishnan, Managing Trustee, of Sri Pachaimman Temple *v.* Commissioner, H.R. & C.E. Madras.
W.P.No. 954 of 1965.

Madras Hindu Religious and Charitable Endowments Act (XXII of 1959), sections 21, (1), 101—Scope—Deputy Commissioner—Certificate obtained by managing trustee that certain property belongs to a temple—Order set aside at the instance of a cultivating tenant of the property, by the Commissioner under the powers of revision—Jurisdiction—Orders by Deputy Commissioner under general powers delegated by the Commissioner—Interference by Commissioner in revision—Validity—Writ.

The first stage, under section 101 of the Act deals with the issue of a certificate by the Commissioner that a certain property belongs to a temple and the second stage deals with the issue of an order by a Magistrate delivering possession of the property

to the person to whom the certificate had been issued. The third proviso to section 101 (1) (*b*) leaves intact the title of the person to the property which forms the subject-matter of the certificate or of an order for delivery of possession and such title can be decided in an independent suit. Any person aggrieved against an order granting the certificate can apply to the Commissioner in revision and it is open to the Commissioner to interfere in revision. The third proviso is not directed against the proceedings granting certificates, but deals with a different matter, namely, the question of title which is unaffected by the grant of the certificate.

Where the Deputy Commissioner exercises power on the strength of a general delegation from the Commissioner, the Commissioner as the supervising authority can rely upon section 21 to correct erroneous or illegal orders passed by the Deputy Commissioner exercising in specific case powers under a general delegation.

T. A. Ramaswami Reddy, for Petitioner.

J. Kanakaraj, for the Government Pleader.

V.S. *Petition dismissed.*

P.S. Kailasam, J.
20th December, 1967.

Madurai District Co-operative Supply and Marketing Society Ltd., by its Secretary *v.* Kumaravelu Pillai.
W.P.Mo. 2383 of 1966.

Industrial Disputes Act (*XIV of* 1947), *section* 33 (c) (2)—*Employee of co-operative society—Retirement on attainment of superannuation—Application to Labour Court—Computation of monetary benefits—By-law—Pay, if would include dearness allowance.*

Constitution, of India (1950), *Article* 226—*Bye-law—Construction by Labour Court—High Court—Interference—Jurisdiction.*

Under the Industrial Disputes Act and the Payment of Bonus Act, the term 'wags' by virtue of the definition includes dearness allowance. So far as the Fundamental Rules are concerned, the word 'pay' is used as distinct from other allowances. As the extended meaning of the word 'wages' is given by the inclusive definition, normally the term 'wages' cannot be construed as distinct from the allowances.

Under the concerned bye-law, the note explaining th term 'pay' provides that pay means the average monthly salary drawn during the last year of the employee's service. But as to whether 'pay' includes dearness allowance or not, the note is not clear.

The respondent therefore would only be entitled to fifteen month's basic pay without taking into account the dearness allowance.

As the interpretation relates to the construction of a bye-law it is a matter of law and it is for the Court to arrive at a proper meaning of the bye-law and the interpretation put upon it by the Labour Court is open to interference by the High Court.

S. Chellaswamy and *A. Shanmugham*, for Petitioners.

N. K. R. Prasad for *Rao and Reddy* for 1st Respondent.

V.S. *Petition allowed.*

[SUPREME COURT]

K.N. Wanchoo, C.J., R.S. Bachawat, V. Ramaswami, G.K. Mitter and *K.S. Hegde, JJ.*
7th November, 1967.

State of Orissa *v.* Sudhansu Sekhar Misra.
C.As. Nos. 625 to 630 of 1967.

Constitution of India (1950), *Articles* 233, 235 *and* 236 (b) *and Article* 229—*Meaning of 'Judicial Service'—Government of India Act*, 1935—*Orissa Superior Judicial Service Rules*, 1963.

The cadre with which we are concerned in this case consists of three parts, *i.e.*, (1) presiding officers of district Courts, (2) the Registrar of the High Court and (3) the judicial officers working in the Secretariat. No doubt all these officers belong to the judicial service of the State and they were before 1962 presiding over district Courts or Courts subordinate to them and as such were under the control of the High Court. Hence without the consent of the High Court, the Government could not have posted them to administrative posts in 1962. It must be presumed that they were taken over by the Government with the consent of the High Court. While sparing the service of any judicial officer to the Government it is open to the High Court to fix the period during which he may hold any executive post. At the end of that period, the government is bound to allow him to go back to his parent department unless the High Court aagrees to spare his services for some more time. In other words, the period during which a judicial officer should serve in an executive post must be settled by agreement between the High Court and the Government. If there is no such agreement it is open to the Government to send him back to his parent department at any time it pleases. It is equally open to the High Court to recall him whenever it thinks fit. If only there is mutual understanding and appreciation of the difficulties of the one by the other, there will be harmony. There is no reason why there should be any conflict between the High Court and the Government. Except for very good reasons we think the High Court should always be willing to spare for an agreed period the services of any of the officers under its control for filling up such executive posts as may require the services of judicial officers. The Government, in its turn should appreciate the anxiety of the High Court that judicial officers should not be allowed to acquire vested interest in the Secretariat. Both the High Court and the Government should not forget the fact that powers are conferred on them for the good of the public and they should act in such a way as to advance public interest. If they act with that purpose in view as they should, then there is no room for conflict and no question of one dominating the other arises. Each of the organs of the State has a special role of its own. But our constitution expects all of them to work in harmony in a spirit of service.

In the result these appeals are partly allowed and the order of the High Court holding that Shri N. K. Patro, Shri K. K. Bose and Shri P.C. Dey had no authority to hold the posts they were holding on or after 10th October, 1966, is set aside. Though we hold that the orders of the High Court posting Shri B. K. Panda as Law Secretary, Shri T. Misra as Superintendent and Legal Remembrancer and Shri P. K. Mohanti as Deputy Law Secretary were in excess of its powers, we do not set aside the *mandamus* issued by it for the reasons mentioned earlier. In other respects the judgment appealed against is upheld.

C. K. Daphtary, Attorney General for India and *N. S. Bindra*, Senior Advocate (*G. Rath* and *R. N. Sachthey*, Advocates, with them), for Appellant (In all the Appeals).

Sarjoo Prasad, Senior Advocate (*S.N. Prasad*, Advocate, with him), for Respondents Nos. 8, 23, 8 and 5 (In C.As. Nos. 625, 627, 629 and 630 of 1967, respectively).

N.M. Patnaik and *Vinoo Bhagat*, Advocates, for Respondents Nos. 5 to 7 (In C.As. Nos. 625 and 629 of 1967, and Respondents Nos. 20 to 22 (In C.A. No. 627 of 1967).

G.R.

Appeals allowed in part.

[SUPREME COURT]

M. Hidayatullah,
V. Bhargava and
C. A. Vaidialingam, JJ.
8th November, 1967.

State of Gujarat *v.*
Munilal Joitaram & Co.
Cr.A.No. 250 of 1964.

Forward Contracts (Regulation) Act (LXXIV of 1952), sections 20 (1) (b) and (c), 21 (b) and (c)—"*Transferable specific delivery contract*' and "*non-transferable specific delivery contract*" *as defined in section* 2 (f).

The learned Judge was clearly in error and misunderstood the connection between the first sub-section and its proviso. Distinction is made in the proviso between recognised and unrecognised associations. Persons can organise and assist in organising or be member of an association which is recognised even if the association provides for performance of non-transferable specific delivery contracts without actual delivery. The prohibition is against persons arranging for avoidance of delivery through an unrecognised association and read with the penalty sections, it is clear that such acts are rendered illegal. If the acts are illegal then non-transferable specific delivery contracts by members of unrecognised associations become illegal also. They are forward contracts and being entered into otherwise then between members of a recognised association or through or with any such member are rendered illegal by section 15.

Thus there is no doubt whatever in the case that offences under section 21 (*b*) and (*c*) were committed. It is enough to read these clauses to see that they fit the acts of nine appellants (accused 1 to 9) and their position *vis-a-vis* the unrecognised association of which they were directors makes them liable to penalty under section 21 (*b*) and (*c*) but the remaining two appellants (accused 11 and 12) being only members are liable to penalty under section 21 (*b*) only. As regards the other offences unders section 20 (1) (*b*) and (*c*) we are clear that these offences were also committed. But as the Sessions Judge acquitted them under clause (*c*) and there was no appeal to the High Court we say nothing about it. As regards the offence under section 20 (1) (*b*) the Magistrate did not clearly record a finding of acquittal. However, his reasoning seems to be in favour of holding that the clause did not cover the case as the contracts were not non-transferable specific delivery contracts. His finding was the reverse of the finding of the Sessions Judge. The question thus remains whether the Sessions Judge could alter the finding in an appeal from a conviction (and the High Court too if it so chose) when it was a question of choosing between two clauses of a penalty section depending on whether the true nature of the contracts was as held by the Magistrate. The ruling of this Court cited earlier was invoked to suggest that such a course was not possible for the Sessions Judge or the High Court. We do not pause to consider whether the ruling prohibits such a course and if it does whether it does not seek to go beyond the words and intendment of section 423 (1) (*b*) of the Code of Criminal Procedure. This is hardly a case in which to consider such an important point. We, therefore, express no opinion upon it. It is sufficient to express our dissent from the High Court on the interpretation of the Act and hold the respondents guilty of infractions where the ruling does not stand in the way.

We accordingly set aside the acquittal of the respondents under clauses (*b*) and (*c*) of section 21 and restore their conviction under those clauses as confirmed by the Sessions Judge. We sentence all the respondents to a fine of Rs. 25 (or one week's simple imprisonment in default) under section 21 (*b*). No separate sentence under section 21 (*c*) is imposed on the respondents who were original accused Nos. 1 to 9. The appeal shall be allowed to the extent indicated in this paragraph.

R. Ganapathy Iyer and *S.P. Nayar*, Advocates, for Appellant.

M. V. Goswami and *C. C. Patel*, Advocates, for Respondent.

G.R. ——— *Order accordingly.*

[SUPREME COURT]

J. C. Shah and *S.M. Sikri, JJ.*
9th November, 1967.

Lallu Yeshwant Singh *v.* Rao Jagdish Singh.
C.A. No. 145 of 1965.

Quanoon Mall, sections 226 *and* 235—*Quanoon Ryotwadi, sections* 82, 137 *and* 163 *of erstwhile Gwalior State—Constitution of India* (1950), *Articles* 227, 226—*Specific Relief Act* (*I of* 1877), *section* 9.

In our opinion, the law on this point has been correctly stated by the Privy Council, by Chagla, C.J., and by the Full Bench of the Allahabad High Court, in the cases.

For the aforesaid reasons we hold that the High Corrt erred in quashing the order of the Board of Revenue. The appeal is accordingly allowed with costs, judgment of the High Court set aside and the order of the Board of Revenue restored.

L.R. 51 I.A. 293 at 299; I L.R. (1954) Bom. 950; I L.R. (1958) All 394 at 404 referred.

N. S. Bindra, Senior Advocate (*P. W. Sahasrabudde* and *A. G. Ratnaparkhi*. Advocates, with him), for Appellant.

Rameshwar Nath and *Mahinder Narain*, Advocates of *M/s. Rajinder Narain & Co.*, for Respondents Nos. 1 to 3.

G.R. ——— *Appeal allowed.*

[SUPREME COURT]

K. N. Wanchoo, C.J., *R. S. Bachawat* and *G. K. Mitter.*
10*th November*, 1967.

P. S. N. S. Ambalavana Chettiar & Co. Ltd. v. Express Newspapers, Ltd., Bombay.
C. As. Nos. 165 and 166 of 1965.

Contract Act (*IX of* 1872), *section* 176—*Sale of Goods Act* (*III of* 1930), *sections* 18 *and* 54 (2).

The seller can claim as damages the difference between the contract price and the amount realised on resale of the goods where he has the right of resale. Under section 54 (2) it arises if the property in the goods has passed to the buyer subject to the lien of the unpaid seller. Where the property in the goods has not passed to the buyer, the seller has no right of resale under section 54 (2). The question is whether the property in the 300 tons of newsprint in sheets had passed to the appellants before the resale.

Section 18 of the Sale of Goods Act provides that where there is a contract for the sale of unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained. It is a condition precedent to the passing of property under a contract of sale that the goods are ascertained. The condition is not fulfilled where there is a contract for sale of a portion of a specified larger stock. Till the portion is identified and appropriated to the contract, no property passes to the buyer. (*Gillett* v. *Hill*, (1834) 2 C & M 535 : 149 R.R. 871, 873).

The respondent is entitled to claim as damages the difference between the contract price and the market price on the date of the breach. Where no time is fixed under the contract of sale for acceptance of the goods, the measure of damages is *prima facie* the difference between the contract price and the market price on the date of the refusal by the buyer to accept the goods, see *Illustration* (*c*) to section 73 of the Contract Act.

In the result, Civil Appeal No. 165 of 1965. is allowed in part, the decrees passed by the Courts below are varied by substituting therefor a decree in favour of the respondent against the appellants for a sum of Rs. 10,980-12-8 with interest

thereon at 6 per cent per annum from 30th July, 1952. The decrees for costs passed by the Courts below are affirmed. There will be no order as to costs in this Court. Civil Appeal No. 166 of 1965 is dismissed. No order as to costs thereof.

S. V. Gupte, Senior Advocate (*Naunit Lal* and *R. Thiagarajan*, Advocates, with him), for Appellants (In both the Appeals).

N. C. Chatterjee, Senior Advocate (*S. Balakrishnan*, Advocate for *R. Ganapathy Iyer*, Advocate, with him), for Respondent (In both the Appeals).

G.R. ——— *C.A.No.* 165 *of* 1965 *allowed;*
C.A. No. 166 *of* 1965 *dismissed.*

[Supreme Court]
S.M. Sikri and
J.M. Shelat, JJ.
14*th November*, 1967.

Harjinder Singh *v.*
Delhi Administration.
Cr.A. No. 21 of 1965.

Penal Code (*XLV of* 1860), *sections* 302, 304 *and* 326.

Held: The High Court has not considered whether the third ingredient laid down by Bose, J., in *Virsa Singh* v. *State of Punjab*, (1958) S.C.R. 1495, has been proved in this case or not. In our opinion, the circumstances justify the inference that the accused did not intend to cause an injury on this particular portion of the thigh. The evidence indicates that while the appellant was trying to assault Dalip Kumar and the deceased intervened, the appellant finding himself one against two took out the knife and stabbed the deceased. It also indicates that the deceased at that stage was in a crouching position presumably to intervene and separate the two. It cannot, therefore, be said with any definiteness that the appellant aimed the blow at this particular part of the thigh knowing that it would cut the artery. It may be observed that the appellant had not used the knife while he was engaged in the fight with Dalip Kumar. It was only when he felt that the deceased also came up against him that he whipped out the knife. In these circumstances it cannot be said that it has been proved that it was the intention of the appellant to inflict this particular injury on this particular place. It is, therefore, not possible to apply clause 3 of section 300 to the act of the accused.

Nevertheless, the deceased was in a crouching position when the appellant struck him with the knife. Though the knife was 5" to 6" in length including the handle it was nonetheless a dangerous weapon. When the appellant struck the deceased with the knife he must have known that the deceased then being in a bent position the blow would land in the abdomen or near it a vulnerable part of the human body and that such a blow was likely to result in his death. In these circumstances it would be quite legitimate to hold that he struck the deceased with the knife with the intention to cause an injury likely to cause death. We are, therefore, of the opinion that the offence falls under section 304, Part I.

The appeal is allowed and the conviction is altered from one under section 302 to section 304, Part I and the appellant is sentenced to seven years rigorous imprisonment.

A. S. R. Chari, Senior Advocate (*C. L. Sareen, J. C. Talwar* and *R. L. Kohli*, Advocates, with him), for Appellant.

B. R. L. Iyengar, Senior Advocate (*S. P. Nayar*, Advocate for *R. N. Sachthey*, Advocate, with him), for Respondent.

G.R. ——— *Appeal allowed;*
Conviction altered to one under section 304, Part I.

[SUPREME COURT]

M. Hidayatullah, V. Bhargava and *C. A. Vaidialingam, JJ.*
16*th November*, 1967.

Ishwarlal Girdharilal Joshi *v.* State of Gujarat.
C.As. Nos. 883, 915 to 967. and 1042 to 1044 of 1967.

Land Acquisition Act (*I of* 1894), *sections* 4, 5-*A*, 6, 9 (1), 17 (4)—*Rules of Business Rules* 4, 7 *and* 10—*Oral Instructions of Minister to Secretaries.*

There is nothing in the Rules or Instructions which prescribes that the authority must be in writing or by Standing Orders. Standing Orders are necessary for the disposal of cases in the Department (paragraph 3) and this applies to cases generally Paragraph 4, on the other hand, refers to "matters or classes of matters" and that is not a "case" but a "matter" in a case.

It will be noticed that compensation was then payable for standing crops and trees (if any). There can be no question of crops on waste land for the crops can only be on arable lands because if crops could grow or were actually grown the land would hardly be waste. The words in parenthesis obviously indicate that land may have crops or be fallow and compensation was payable for crops if there were crops.

Turning now to the section as it is today it will be noticed that the first sub-section corresponds to the first and second paragraphs of section 17 of the Act of 1870 taken together. The third paragraph of the former Act corresponds to the third sub-section of the present Act. The difference in language in the third sub-section is necessary because the provisions of sub-section (3) are now intended to apply also to the second sub-section of the present Act which is new. Hence the opening words in every case under either of the preceding sub-sections, which means all cases arising either under sub-section (1) or sub-section (2). The words in parenthesis (if any) in relation to the first sub-section continue to have the same force and no other, as they had previously. The learned Judges of the High Court of Bombay did not give sufficient consideration to the fact that the opening words "in every case under either of the preceding sub-section" do not play any more part than to indicate that what follows applies equally to cases under sub-section (1) and sub-section (2). They ought to have read the words that follow the opening words in relation to sub-section (1) and if they had so read them, there would have been no difficulty in seeing the force of the words in parenthesis (if any) or any crops are mentioned when the words of the sub-section are waste and arable. The quotation from Roger's Agriculture and Prices quoted in the Oxford Dictionary "half the arable estate, as a rule, lay in fallow", gives a clue to the meaning of the words "if any". In our judgment, therefore, the conclusion of the Bombay High Court was erroneous and the judgment under appeal is right on this point.

Finally there remains the question of the constitutionality of sub-sections (1) and (4) of section 17. On this point very little was said and it is sufficient to say that the High Court judgment under appeal adequately answers all objections.

In the result the appeals fail and are dismissed.

Cases considered: L.R. 72 I.A. 241; A.I.R. 1952 Orissa 200; A.I.R. 1965 Bom. 224; A.I.R. 1967 A.P. 280; A.I.R. 1965 All. 433; A.J.R. 1965 Pat. 400; (1890) 25 I.R. 110; (1831) 7 Bing. 640; 131 F.R. 249.

B. Sen, Senior Advocate (*S. K. Dholakia* and *Vineet Kumar*, Advocates, with him), for Appellant (In C.A. No. 883 of 1967).

S. K. Dholakia and *Vineet Kumar*, Advocates, for Appellants (In C.As. Nos. 919 to 967 and 1042 to 1944 of 1967).

S. V. Gupte, Senior Advocate (*A. K. Kazi, O. P. Malhotra* and *S. P. Nayar*, Advocates, with him), for Respondents (In C.A. Nos. 883 and 915 to 967 of 1967).

A. K. Kazi, O. P. Malhotra and *S. P. Nayar*, Advocates, for Respondents (In C.As. Nos. 1042 to 1044 of 1967).

G.R.

Appeals dismissed.

[SUPREME COURT.]

M. Hidayatullah and *C.A. Vaidialingam, JJ.*

20th November, 1967.

Mahendra Pratap Singh *v.* Sarju Singh.

Cr.A. No. 23 of 1965.

Criminal Procedure Code (*V of* 1898), *sections* 439, 107—*Penal Code* (*XLV of* 1860), *section* 302—*Revisional Powers of High Court.*

The practice on the subject has been stated by this Court on more than one occasion. In *D. Stephens* v. *Nosibolla*, 1951 S.C.R. 284, only two grounds are mentioned by this Court as entitling the High Court to set aside an acquittal in a revision and to order a retrial. They are that there must exist a manifest illegality in the judgment of the Court of Session ordering the acquittal or there must be gross miscarriage of justice. In explaining these two propositions, this Court further states that the High Court is not entitled to interfere even if a wrong view of law is taken by the Court of Session or if even there is misappreciation of evidence. Again, in *Logendranath Jha and others* v. *Shri Polailal Biswas*, 1951 S.C.R. 676, this Court points out that the High Court is entitled in revision to set aside an acquittal if there is an error on a point of law or no appraisal of the evidence at all. This Court observes that it is not sufficient to say that the judgment under revision is "perverse" or "lacking in true correct perspective". It is pointed out further that by ordering a retrial, the dice is loaded against the accused, because however much the High Court may caution the Subordinate Court, it is always difficult to re-weigh the evidence ignoring the opinion of the High Court. Again in *K. Chinnaswamy Reddy* v. *State of Andhra Pradesh*, (1963) 3 S.C.R. 412, it is pointed out that an interference in revision with an order of acquittal can only taken place if there is a glaring defect of procedure such as that the Court had no jurisdiction to try the case or the Court had shut out some material evidence which was admissible or attempted to take into account evidence which was not admissible or had overlooked some evidence. Although the list given by this Court is not exhaustive of all the circumstances in which the High Court may interfere with an acquittal in revision it is obvious that the defect in the judgment under revision must be analogous to those actually indicated by this Court. As stated, not one of these points which have been laid down by this Court was covered in the present case. In fact on reading the judgment of the High Court it is apparent that the learned Judge has re-weighed the evidence from his own point of view and reached inferences contrary to those of the Sessions Judge on almost every point. This cannot be his duty in dealing in revision with an acquittal when Government has not chosen to file an appeal against it. In other words, the learned Judge in the High Court has not attended to the rules laid down by this Court and has acted in breach of them.

In view of all the circumstances it was held the Sessions Judge acted within his rights in deciding the case which also appears to be somewhat doubtful in many respects and the High Court was therefore in error in taking upon itself the duty of hearing a revision application as if it was an appeal and setting aside the acquittal not by convicting the accused but reaching the same result indirectly by ordering a retrial. In our opinion, the judgment of the High Court cannot be allowed to stand.

Appeal succeeds and the order of retrial is therefore revoked and the acquittal is restored.

Nur-ud-din Ahmed and *D. Goburdhan*, Advocates, for Appellant.

R. C. Prasad, Advocate, for Respondent No. 1.

G.R.

Appeal allowed; acquittal restored.

[SUPREME COURT]

M. Hidayatullah and *C.A. Vaidialingam, JJ.*
21st November, 1967.

Ibrahim *v.* State of West Bengal.
Cr.A. No. 19 of 1965.

Merchant Shipping Act (1958), *sections* 191 (1) (a) *and* (b), 194 (b) *and* (e) *read with section* 436—*Desertion.*

The gist of desertion is the existence of an animus not to return to the ship or, in other words, to go against the agreements under which the employment of seamen for sea voyages generally takes place. This definition may be taken as a workable proposition for application to the present case. There is nothing in this case to show that after the seamen left the vessel, they intended to return to it. In fact they went and later took their baggage, because under the law penalty includes forfeiture of the effects left on board. The whole tenor of their conduct, particularly the intervention of labour leaders is indicative of the fact that they left the ship with no intention to return to it unless their demands were met forthwith even though before the Master the Company had stated that the matter would be finally considered at the end of the voyage and the termination of the agreement. There are provisions in the Act under which the seamen have got rights to enforce payment against their employers by taking recourse to a Magistrate who in summary proceedings may decide what amount is due to them and order its payment. It is true that this action could only be taken at Cochin where the registered office of the Company is situate, but in any event the crew were required under the agreement to take back the vessel to Cochin and could well have waited till they returned to the home port and then made the demand before the appropriate authority. The way they have acted clearly shows that they were using the weapon of strike with a view to force the issue with their employers and were not intending to return to the vessel unless their demands were acceded to immediately. In these circumstances, it is legitimate to infer that they were breaking the agreement with the company which was to keep the ship in voyage upto 10th June, 1964, which could not take place if all the crew remained on shore and the vessel could not weigh anchor and leave the port without ratings. It was therefore held that this was a case of desertion and that it fell within the definition of the term as stated by us.

In the present case there was not that sufficient cause even for purpose of clause (*b*) of section 191 (1). After all the dispute was before the shipping Master, meetings had taken place and minutes had been recorded. The log book of the shipping Company would show the different voyages and their duration and the muster roll would show the attendance of the crew.

We see no reason therefore to interfere in this appeal which fails and will be dismissed.

Cases considered : (1945) 1 All E. R. 128 ; (1841) 1 Wm. Rob. 316.

A.K. Sen, Senior Advocate (*S.C. Majumdar*, Advocate, with him), for Appellants.

P. K. Chakravarti, Advocate and *G. S. Chatterjee*, Advocate for *P. K. Bose*, Advocate, for Respondent No. 1.

K. B. Mehta and *Miss Indu Soni*, Advocates, for Respondent No. 2.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT]

M. Hidayatullah and *C. A. Vaidialingam, JJ.*
22nd/23rd November, 1967.

State of A. P. *v.* K. Satyanarayana.
Cr.A. No. 40 of 1965.

Hyderabad Gambling Act (*II of* 1605-*F*), *sections* 4, 5 *and* 7—*Definition of common gambling house under Public Gambling Act* (1867), *section* 3.

The Club is not proved to be a commmon gambling house. The presumption under section 7 even if it arises in this case, is successfully repelled by the evidence which has been led, even on the side of the prosecution.

It is submitted for the appellant that non-members also play and further that the club provides no other amenities besides making it possible for members and non-members to play the game of Rummy on the premises. The evidence on this part is not quite satisfactory. No doubt one witness has stated that chess is also played, but that does not prove that amenities other than card games are catered for by the club. But on the other side also there is no definite evidence that there is no other amenity in this club but the playing of card games. In these circumstances, to hold that the club does not provide other amenities is tantamount to making a conjecture which is not permissible in a criminal case.

There is no satisfactory proof that the protection of section 14 is not available in this case. The game of Rummy is not a game entirely of chance like the three card game mentioned in the Madras case to which we were referred.

Of course, if there is evidence of gambling in some other way or that the owner of the house or the club is making a profit or gain from the game of Rummy or any other game played for stakes, the offence may be brought home. In this case, these elements are missing and therefore the High Court was right in accepting the reference as it did.

Case considered : A.I.R. 1948 Mad. 264.

P. Rama Reddy, Senior Advocate (*B. Parthasarathy*, Advocate, with him), for Appellant.

A. S. R. Chari, Senior Advocate (*K. Rajendra Chaudhuri* and *K. R. Chaudhuri*, Advocates, with him), for Respondents.

G.R. *Appeal dismissed.*

GENERAL INDEX.

[SUPREME COURT.]

GENERAL INDEX.

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