

(1951) 04 PAT CK 0003
In the Patna High Court
Case No : Civil Revision No. 774 of 1950

A. Hasan

APPELLANT

Vs

Mohammad Shamsuddin and Another

RESPONDENT

Date of Decision : 26-04-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Payment of Wages Act, 1936 — Section 15, 19, 3

Citation : AIR 1951 Patna 140 : (1951) 2 LLJ 6

Hon'ble Judges : Sarjoo Prosad, J; Das, J

Bench : Division Bench

Advocate : Mohammad Ayub, for the Appellant; T.K. Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Sarjoo Prosad, J.—This petition in revision has been presented by one A. Hasan, proprietor & director of the Sasamoosa Sugar Works Limited. It arises out of a proceeding under the Payment of Wages Act (iv [4] of 1986). The opposite party to the petition are the General Secretary of the Sasamoosa Workers' Union representing the daily coolies of the Sugar Works Limited and one Dhunmun.

2. The facts are briefly these : On the 12th of April, 1950, a number of workers of the Sugar Works presented several petitions before the District Magistrate of Saran, who is the prescribed Authority within the meaning of the Act claiming that a deduction of wages had been made without any legal justification during specified periods for which they had been working, and that accordingly these amounts which were justly due to them should be realised from the Sugar Works concerned. Another such petition was also, presented to the same Authority on the 25th of August, 1960, by another set of workers. The Authority concerned admitted the applications and issued notice against the petitioner and one S. M. Zaki, described at one place in the petition as the General Secretary and at another place as the General Manager of the Sasamoosa Sugar Works Limited. When the case was taken up on the 6th of October, 1950, the petitioner who

appeared on the date seems to have raised preliminary objections that the application under the Act (Section 15) was not maintainable as proper persons were not parties to the applications and further that the application was time-barred. The Prescribed Authority aforesaid disallowed these objections. The petitioner then wanted time to examine accounts and to produce witnesses, and the said Authority adjourned the case to be put up on the 2nd of November, 1950. It may be observed that the two objections on the date in question were raised orally without any regular petition stating all the material facts bearing on them. The applicants, who are opposite party here, filed in reply a petition praying that Mohammad Qasim Lari may be made a party to the applications to avoid any technical objection. Later, on 12-10-1950, after the above order had been passed, a written petition was actually filed before the Authority mentioning the particulars on which the preliminary objections were based. The allegation in this petition is that one Mohammad Qasim Lari had been named as the manager of the factory under Clause (c) of sub Section (1) of Section 9, Factories Act (XXV [25] of 1935) corresponding to Section 7 of the Act of 1948, & that the said Qasim Lari, was responsible for payment of wages to the persons employed in the factory. Therefore, it stated that the said Qasim Lari should have been made a party to the applications filed by the workers, & he being not a party, the applications could not be entertained. It was also alleged that the applications were barred by limitation within the proviso to Sub-section (2) of Section 15, Payment of Wages Act. This petition the Authority directed to be put up for hearing in the presence of the parties on the date fixed, that is, 2-11-1950, & the application has not yet been disposed of. Before the application could be taken up, on 1-11-1950, the petitioner moved this Court & obtained a rule as also an order for stay of further proceedings.

3. It would thus appear from the facts stated above that the petition filed on 12-10-1950, containing the preliminary objections is still pending, & it was, therefore, premature on the part of the petitioner to rush up to this Court & obtain a rule as also a stay of further proceedings without disclosing the fact that a regular petition containing the objections aforesaid was still pending consideration by the Authority competent to hear & decide the matter. It is pointed out that u/s 15, Sub-section (3), Payment of Wages Act, it is not necessary that the objections should be raised in the form of a regular petition & the preliminary objections having been raised & disallowed by the order, dated 6-10-1950, the petitioner was entitled to move this Court against the afore-said order. It is true that a petition in writing is not necessarily required under the Act in order to raise such objections but the order complained against does not indicate what the two preliminary objections were; & at any rate, unless the full particulars had been given, this Court was not in a position to know what were the actual arguments advanced before the said Authority, & whether or not all the relevant materials were placed before him. The fact that subsequently such a regular petition was filed containing the particulars indicates that at the earliest" stage the Authority was not presumably apprised of the details & the matter is

still pending consideration by him. The grounds of objection may be tenable or untenable ; it is for the Authority to pronounce upon the validity of those grounds. But before the Authority does so, it must have all the facts on which the objections are founded. In the absence of those facts, it was impossible for the Authority to entertain the objections. It appears to me, therefore, that the present application filed by the petitioner is premature & the proper course for the petitioner was to wait until the petition filed by him on the 12th of October last had been heard & disposed of on the date fixed by the Authority.

4. It has, however, been urged on behalf of the petitioner that now that the matter has attracted the attention of this Court, & the questions involved being purely questions of law affecting the jurisdiction of the Authority to entertain the applications filed by the workers, this Court should finally decide the matter & give appropriate directions to the Authority concerned. This undoubtedly opens out a wide vista of controversial questions which arise for our determination. The case, therefore, had to be heard on various dates & we had to devote much more time & attention to the matter than what the merit of the case actually demanded. Before I take up the question whether applications were not maintainable on account of the alleged absence of a necessary party, there are various preliminary questions which have to be met & answered. The questions are : (1) whether the Authority competent to hear & decide all claims under the Payment of Wages Act is a "Court" with the meaning of Section 115, Civil P. C. In this connection an incidental question has also been raised, namely, whether it is a "Civil Court" ; (a) whether if it is a "Court", it is Subordinate to the High Court, & (3) whether, if it is a Court subordinate to the High Court, its order is revisable by this Court when under the provisions of the said statute the directions given by the Authority are final subject to appeal as specified therein. These questions, in my opinion, have been more than adequately considered in several important decisions of this Court as also of other High Courts.

5. The word "Court" has not been defined & the definition given to it in the Indian Evidence Act is obviously not exhaustive. We have, however, to find out the salient attributes or characteristics of a "Court" which means a place where justice is administered or a person who administers justice. In *Mt. Dirji v. Goalin* 20 Pat 373 which is a Special Bench decision of this Court, Fazl Ali, J. (as he then was) laid down certain tests for determining whether a certain person or authority is a "Court".

6. He points out that

"in order to be a Court the person or persons who may be said to constitute it must be entrusted with judicial functions. Judicial function means the function of "deciding litigated questions according to law" deciding them not arbitrarily but on evidence & according to certain rules of procedure which ensure that the person, who is called upon to decide them, acts with fairness & impartiality."

7. This evidently implies that the judicial function of a Court comprehends three

factors (i) the presence of litigated questions (ii) the decision of those questions according to law, that is, not arbitrarily but on evidence, (iii) the observance of certain rules of procedure so as to ensure fairness & impartiality in giving those decisions.

8. The other attribute which the learned Judge postulates is that a "Court" must have not only judicial functions but it should possess "judicial powers";

"such as the power to receive evidence bearing on the matter which it is called upon to decide, the power to enforce the attendance of witnesses & the production of documents & material objects before it & the power to pronounce judgment & carry it into effect between the person & parties who bring a case before it for decision."

9. The third important feature to which the learned Judge refers is that a "Court" exercises jurisdiction over persons by reason of the sanction of the law & not merely by reason of voluntary submission to such jurisdiction & that the proceedings before it are public.

10. His Lordship also deals with the meaning of the expression "persons designata" used with reference to certain persons or officials discharging certain duties under particular statutes, & he observes:

"there is no real antithesis between the expressions "persona designata" & "Court" or in other words, given a persona designata may be a Court. Whether he is a Court or not depends upon his powers & the functions which he has to discharge. It is not inconceivable that in some cases when an officer of the Court, say the District Judge, is called upon to decide a certain matter not as a District Judge, but as a persona designata, he may still be a Court by reason of some special provision in the Statute which authorises him to decide the matter. The Statute may expressly say that he will be deemed to be a Court or that his decision will be subject to appeal or revision by a superior Court."

The real question which is to be enquired into in such cases is whether the person so designated has been invested with the powers of a Court. If he is so invested with the powers of a Court, the necessary implication in such a case would be that the jurisdiction of the Court is enlarged, & its decision is subject to all the incidents of such jurisdiction.

11. In the case in question the learned Judges were dealing with the position of the Commissioner appointed under the Workmen's Compensation Act, & the question which they had to answer was whether such a person answered the description of a "Court". They found upon a review of the various provisions of the Act that the function of the Commissioner under the Act was not merely to enquire & advise but to judge & decide the matters before him, & in doing so, had to proceed judicially & not arbitrarily. They, therefore, held that having regard to the tests laid down by them the Commissioner satisfied the requirements of a "Court". The Special Bench of course left the question open as

to whether the Commissioner was a "Court subordinate to the High Court" in the sense in which the expression is used in Section 115, Civil P. C. But when the matter went back to the Division Bench after the point had been answered by the Special Bench, namely, that the Commissioner under the Workmen's Compensation Act was a "Court", the Division Bench found that the Commissioner was a Court subordinate to the High Court within the meaning of Section 115 of the Code, & as such, the order of the Commissioner could be revised. The reason which has been given for coming to the conclusion that the Commissioner was a Court subordinate to the High Court is that the Act provided for an appeal to the High Court from the order of the Commissioner where the amount in dispute was over Rs. 300. The Commissioner was, therefore, held subject to the appellate jurisdiction of the Court, & as such, a Court subordinate to the High Court : (vide *Mt. Dirji v. Sm Goalin*, 21 Pat. 173).

12. If the provisions of the Payment of Wages Act are examined in the light of the tests formulated above, I feel no hesitation in coming to the conclusion that the Authority acting u/s 15 of this Act acts as a Court.

13. Section 15 enacts that the Provincial Govt. may, by notification appoint any Commissioner for Workmen's Compensation or other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be the authority to hear & decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages of persons employed or paid in that area. Sub-section (2) of the same sections says:

"Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner or any official of a registered trade union authorized in writing to act on his behalf, or any other person acting with the permission of the authority appointed under Sub-section (1), may apply to such authority for a direction under Sub-section (3)".

Then comes a proviso to Sub-section (2) & this proviso embodies a period of limitation for presenting such applications which period is six months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made, as the case may be & it further provides that any application may be admitted after the said period of six months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period. Then follows the other significant provision of Section 15, namely, Sub-section (3) of that section. It lays down the broad heads of the procedure which is to be followed by the authority when an application has been presented & entertained. It provides that the authority shall hear the applicant & the employer or other person responsible for the payment of wages u/s 3, or give them an opportunity of being heard, & after such further inquiry (if any) as may be necessary, may, direct the refund to the employee of the amount deducted, or the payment of the delayed wages together with such compensation as the authority may deem fit & exceeding a certain amount.

14. It follows from the above that the authority has to decide certain litigated questions according to law. The question in dispute relates to unauthorised deduction in wages or delay in payment of wages. The petition before him has to be filed within a period of limitation & if not so filed, it is for him to condon the delay & entertain the application on sufficient cause shown. After he has entertained the application, he must hear the applicant & the employer or any other person responsible for the payment of wages, & after such further enquiry give a direction for refunding the amount to the employee-applicant together with appropriate compensation.

15. The authority may under Sub-section (4) of the same section in case it finds that the application was malicious or vexatious, impose a penalty on the employee to be paid to the employer or other persons responsible for the payment of wages, & these refunds, compensation or penalty are liable to be recovered as fines imposed by a Magistrate under Sub-section (5) of the same section.

16. Section 16 of the Act then lays down a procedure for filing a single application in respect of claims of a person or persons belonging to the same unpaid group under given circumstances. Then there is another important provision in Rule 17 of the Act which enacts that an appeal against a direction made under Sub-section (3) or Sub-section (4) of Section 15 may be preferred, within thirty days of the date on which the direction was made, in a Presidency-town before the Court of Small Causes & elsewhere before the District Court by the person aggrieved under the direction given by the authority whether it is a case of refund or a case of penalty & Sub-section (2) of Section 17 postdates that subject to the above right of appeal any direction given by the authority u/s 15 shall be final. The decision of the authority, evidently, therefore, cannot be an arbitrary decision but has to be based on evidence & appropriate materials because the party aggrieved by his direction has been given a right of appeal under the Act".

17. In exercising his judicial functions he is also given certain judicial rights ; for instance, u/s 18 of the Act it is provided that the authority appointed under Sub-section (1) of Section 15 shall have all the powers of a civil Court under Civil P. C., 1908, for the purpose of taking evidence & of enforcing the attendance of witnesses & compelling the production of documents, & every such authority shall be deemed to be a civil Court for all the purposes of Section 195 of chap. XXXV, Criminal P.C., 1898.

18. The authority can also enforce the directions given by him as provided by Section 19 of the Act which says that in case the authority or the Court referred to in Section 17 is unable to recover from any person responsible u/s 3 for the payment of wages any amount directed by such authority u/s 15 or Section 17 to be paid by such person, the authority shall recover the amount from the employer of the employed person concerned. The orders of the authority are thus *ex-proprio vigore* binding on the parties & determine their rights &

obligations.

19. I need not refer to some of the other provisions of the enactment expect Sections 22 & 26. Section 22 provides for a bar to the entertainment of any suit for recovery of wages or of any deduction from wages in so far as the sum so claimed forma the subject of an application u/s 15 which has been presented by the pltf. & which is pending before the authority appointed under the section or an appeal u/s 17 or has formed the subject of a direction u/s 15 in favour of the pltf. ,or has been adjudged, in any proceeding u/s 15. Then Section 26 provides for certain rule-making powers. Under the section the Governor-General was empowered to make rules to regulate the procedure to be followed by the authorities & Courts referred to in Sections 15 & Sections 17, but by the Adaptation of Indian Laws Order, 1937, the Provincial Govt. has since been authorised to make such rules in order to give effect to the provisions of this Act. The section further shows that the rules so framed may relate to various matters, namely, the maintenance of records, registers, returns & notices; the display in a conspicuous place & premises of notices sent the imposition of fines; the scales of costs allowed & various other matters relating to such proceedings. In the rules framed under the authority of this section it appears that the rules lay down almost a complete & self-contained set of procedure & do not leave it to the discretion of the authority to evolve a procedure of his own. The rules, for instance, provide for the form of the application, the nature of the authority for re presentation; the presentation of documents; the refusal to entertain applications under certain circumstances; & then most important of all is Rule 8 relating to appearance of parties. This rule I am referring to in particular because it proves that if the application is entertained the Authority shall call upon the employer by a notice in form E to appear before him on a specified date together with all relevant documents & witnesses & shall inform the applicant of the date so specified & if the employer or his representative fails to appear on the specified date, the Authority shall proceed to hear & determine the application ex parte. Similarly, if the applicant fails to appear on that date the authority may dismiss the application, & the authority may in certain cases set aside these orders & re-hear the matter on goad cause being shown within one month from the date of the order. Then another important rule is Rule 9. Under this rule, the authority shall in all cases enter the particulars indicated in Form P & at the time of passing orders shall sign & date the Form. In case where no appeal lies, no further record shall be necessary. In a case where an appeal lies, the authority shall record the substance of the evidence & shall append it under his signature to the record of direction in Form p. Then Rule 13 provides for the manner in which the appeal is to be preferred.

20. A review of these provisions very clearly establishes that the authority acting u/s 15 of the Act acts as a Court. He is bound to decide judicially the matter in dispute before him. He has to give his decision or "direction" as it is called after hearing the parties, & on the evidence or materials produced before him, according to certain definite & specified rules of procedure laid down under the

Act as also supplemented by statutory rules framed thereunder for his guidance, & his decision is, subject to appeal to the District Court, binding on the parties. It is true that at places in the Act a distinction has been made between the authority & the Court but that distinction is really without any difference because in the context the word "Court" has been used to denote the Court to which an appeal lies against the directions or the orders passed by the authority. The real point is to see whether the authority is acting as a Court, & I have already indicated that keeping in view the important tests laid down in ". the decision of Mt. Dhirji v. Sm. Goalin, mentioned above, there seems to be little doubt that the authority is acting as a Court.

21. The above tests were applied & followed in another Full Bench case of this Court in Arjun v. Krishna Chandra, 21 Pat. 1 which arose under the Orissa Tenancy Act, 1913 (B. & O. Act II (a) of 1913). The questions in that case were whether the Court of the Collector acting under the provisions of the Act was of a grade inferior to that of a District Court, there being definite provisions providing for an appeal from the decision of the Collector to the District Judge, & also Whether the orders of the Collector passed under the Act, though final in such cases, could be revisable by the High Court u/s 115, Civil P. C. The majority Judges were of the opinion that the Court of the Collector being subordinate to the appellate jurisdiction of the District Court (which, in other words, mean the Court of the District Judge which is the principal Civil Court of the district) the former was obviously inferior to the latter, & this inferiority would continue to subsist even in case of such orders of the Collector as were not by reason of their pettiness appealable to the District Judge. It was accordingly held that although in certain cases there may be a finality to the order of the Collector, still the Court of the Collector was a Court subordinate to this Court within the meaning of Section 115, Civil P. C. inasmuch as the section confers the power of revision, precisely in those cases decided by a subordinate Court in which no appeal lies to the High Court. The power of revision is, therefore, not excluded merely because the subordinate Court is empowered to pass an original order which is declared final, or an appellate order from which there is no appeal to the High Court. The separate judgments delivered in the case by the three learned Judges constituting the Bench are very comprehensive & furnish a very interesting reading for their wealth of details in tracing the developmental powers of the High Court. Meredith J., after an exhaustive review of the decisions of various High Courts bearing on the point, summed up as follows:

"Having examined the views of the various High Courts in so far as they have been expressed in reported decisions, let us now turn to an examination of the question itself. It is unnecessary in the present case finally to decide whether the Court of the Collector is subordinate to the High Court within the meaning of Section 115, Civil P. C. in a case where an appeal lies under the statute to the Commissioner. I will only say, first, that, in my view, it would be an anomaly for subordination to depend upon a mere question of valuation; the Collector's Court to be subordinate when dealing with a case valued at over Rs. 100, but to escape

that subordination merely because the case of a lower valuation. The pettiness of a case may be a good reason for providing that there shall be no appeal; it can surely be no reason for providing that the Court shall escape subordination & be free from all supervision in regard to questions of jurisdiction, so as to be able to act without jurisdiction, or to refuse to exercise jurisdiction. It is difficult to imagine that the legislature could ever have intended that....."

22. He thereafter considers the argument that a Revenue Court cannot at the same time be a Civil Court as if the two are mutually exclusive. He observes that the assumption is quite a wrong assumption, & he holds that where the Revenue Courts exercise judicial functions & decide ordinary civil disputes which have been specially assigned to them, they are nonetheless civil suits & the Courts that decide them are, therefore, Civil Courts. These Revenue Courts in such cases are merely one species of the genus Civil Court. They are a subdivision of Civil Courts in the general sense & the fact that there are special provisions regarding these Revenue Courts, as in Section 5, Civil P.C. & that they are specially defined in particular statutes & special legislations did not legally affect the position because to define the species MA not exclude it from the genus. The learned Judge also held:

"Where one Court is made subject to the appellate jurisdiction of another, the former is obviously thereby made inferior to the latter, & plainly that inferiority must still subsist where by reason of the pettiness of the cause no appeal is provided for. Otherwise the absurd result would follow that the Court rises in grade in inverse ratio to the importance of the case."

23. It is of importance to mention in this con-text that Meredith J. in his decision refers to a Full Bench decision of the Calcutta High Court of five Judges in *Emperor v. Har Prasad Das* 40 Cal. 477, in which it was held that in the case of an order passed by a civil Court or Revenue Court u/s 476, Criminal P.C. Section 439 of the Code had no application, but the High Court could exercise the powers vested in it by Section 115, Civil P. C. or Section 15, High Courts Act. This was equally applicable to a case where action is taken by a Revenue Court u/s 476, the proceeding before it being not a proceeding before an inferior criminal Court, the order in the proceeding was revisable u/s 115, being made by a Revenue-authority as a Court in course of a judicial proceeding before it, & with reference to such judicial proceedings the Revenue Court being a Court "Subordinate to the High Court within the meaning of Section 115, as being a Court subject to the appellate jurisdiction of the High Court. He also relied upon a decision of the Privy Council in *Rajah Nilmoni Singh v. Taranath*, 9 I. A. 17. It was held by the Privy Council in that case that the Rent Courts established by Act X [10] of 1859 were civil Courts within the meaning of Act VIII [8] of 1859, the CPC as it then was, in other words, in the case of Revenue Court in regard to which the provisions were even more special & exclusive than in the case of Revenue Courts under the Orissa Tenancy Act, his Lordship observed that the Privy Council held them to be civil Courts within the meaning of the Code of Civil

Procedure, so as to make Section 284 of the old Code, relating to transfer of decree for execution to another district applicable to those Courts, & he argued that "if Section 284, then why not Section 115 & Section 8 of the present corresponding Act." Meredith J. was then confronted with the observations of Rankin J. (as he then was) in *Allen, Brothers & Co. v. Bando dt Co.*, 49 Cal. 981. Rankin J. in that case is reported to have observed that the expression "civil Court" as used is the CPC containing the new provisions of Sections 3, 4 & 5 which were not in the earlier Code of 1859 was not used in the general sense to connote the genus, but only in reference to that particular species of civil Court, which had full powers of original jurisdiction within the meaning of Section 9. Meredith J., observed that although the point was an arguable one, yet in view of the Privy Council decision referred to above much could not be said in support of it, & he finally disposed of the argument in these words:

"To my mind it is a construction impossible to square with the decision of the Privy Council with which I have just dealt. There is no getting over the fact that, where in the corresponding Code of 1859 the same expression is used in, generally speaking, the same contexts, the Privy Council has said that the rent Courts established by the Bent Act of 1859 must be held to fall within Section 284 of Act VIII [8] of 1859, the expression used in Section 284 being simply "Civil Court". So far as I can see by comparing the two Codes the expression "Civil Court" is used in exactly the same sense in both the Codes of 1859 & that of 1908, & it is to be noted that in both cases the preamble describes the Act as relating to "Courts of Civil Judicature"."

24. Dhavle J. does not appear to have altogether accepted the position that a Revenue Court was a civil Court when exercising judicial functions & deciding ordinary civil disputes assigned to them but he also by another line of reasoning comes to the same conclusion that such Courts were amenable to the revisional jurisdiction of the High Court as provided by Section 115 of the Code. To quote his own language, he says as follows :

"This distinction between Civil & Revenue Courts in Section 5 of the Code is not without a bearing on Section 3, & in my opinion, the Civil Courts contemplated in Section 3 are, to use the words of Rankin J. in *Allen Brothers & Co. v. Bando & Co.*, 49 Cal. 931, "Civil Courts exercising all the powers of Civil Courts as distinct from Courts which only exercise powers over civil matters of a special class or classes, e. g., the rent Courts under Act X [10] of 1859 & the Land Acquisition Judge." This, however, does not affect the subordination of our Revenue Court to the High Court for the purposes of Sections 115, Civil P. C. because as the same learned Judge, also observed in the same case, "the word "subordinate" is not defined by the Code because Section 3 is not a definition. This section does not claim to be, & is not intended to be, exhaustive ; *Purshottam v. Mahadev* 97 Bom. 114." Section 115, Civil P. C. does not require the subordinate Court to be a Civil Court within Section 3, & the Orissa Tenancy Act definitely involves the subordination of the Revenue Court to the High Court [by way of appeal under

Sub-section (3) of Section 204], & thus, through the general provision contained in Section 192 (2), attracts the operation of Section 115, Civil P.C., giving the High Court a power of revision free (SO far as I can gather) from the limitations to which its appellate powers are subject."

It would thus appear that the two learned Judges, though for different reasons, both agreed in holding that the Court of the Collector which was subordinate to the appellate jurisdiction of the District Court was a Court subordinate to the High Court within the meaning of Section 115 of the Code & what is more significant that in dealing with Section 3 of the present Civil P.C. Dhavle J., opines in concurrence with Rankin J., that the word "subordinate" had not been defined in the Code & Section 3 of the Code was not a definition clause. I need not refer to other parts of the judgment which, as I have already observed, will repay perusal for its wealth of detail & exhaustive treatment of the law on the points.

25. Manohar Lal J., the dissentient Judge appears to have been of the view that in petty cases where the Collector had jurisdiction to call for the record of a case in which an appeal would lie to him & where no question of title was involved, & Collector's order was final. But where the Deputy Collector & the Collector tried suits u/s 204 (5), Orissa Tenancy Act, of over Rs. 100 in value, they became subject to the appellate jurisdiction of the High Court, because appeals lay in the first instance to the Dist. J. or to the High Court of the case may be, & that being so any orders passed by these Revenue Courts in such cases become revisable by the High Court u/s 115, Civil P. C., but that jurisdiction was limited to such cases only. The conclusion, therefore, is that all the three learned Judges were of the view that in cases where an appeal lay to the Dist. J. from the orders of the Collector or Deputy Collector, the Court of the Collector or Deputy Collector was subordinate to the High Court & their orders were revisable u/s 115 of the Code by this Court.

26. The question again arose in connection with the proceedings of an Election Commissioner under the Bihar Election Petitions Rules 1939, in Abdul Razak v. Kuldip Narain 22 Pat 577 & all the three learned Judges concerned therein were unanimously of the view that the Election Commissioner referred to in the Bihar District Board Election Petitions Rules 1939, is a Court & a Court subordinate to the High Court within the meaning of Section 115, Civil P. C. I will refer to a few pertinent passages from the respective judgments of Chatterji & Meredith JJ. Chatterji J. observed as follows :

"On the question whether the Election Commissioner is a Court, I think that the decision of the Full Bench of this Court in Mt. Dirji v. Sm. Goalin, 20 Pat. 373 affords a complete answer. In that case it was held that a Commissioner under the Workmen's Compensation Act (VIII [8] of 1923) is a Court. The facts laid down there are fully satisfied in the present case. To use the words of Fazl Ali J., who delivered the judgment (Harries C. J. & Manohar Lal J. agreeing), the Election Commissioner "constitutes an independent tribunal & his function is to

judge & decide & not merely to enquire & advise, & in judging or deciding the matters before him he has to proceed judicially & not arbitrarily. The procedure to be followed by the Election Commissioner is, as nearly as may be, the procedure applicable under the CPC to the trial of suits (see Rule 11 (2)); he has also in respect of certain matters, such as, enforcing the attendance of witnesses, compelling the production of documents, examining witnesses on oath, etc.. the powers which are vested in a Court under the CPC when trying a suit (see Rule 23). Rule 23 also provides that he shall be deemed to be a Civil Court for the purposes specified therein. There can, therefore, be no doubt that he is a Court,

AS regards his subordination to the High Court, the very definition of Election Commissioner given in the Boles makes the position clear. According to Rule 2 (g) "Election Commissioner" means the Dist. J. or the Judicial Commissioner exercising jurisdiction over the area in which the election, in respect of which an election petition under these rules is filed, was held. In other words, the Dist. J. or the Judicial Commissioner is given the powers of an Election Commissioner. Undoubtely the Dist. J. is subordinate to the High Court. Necessarily the Election Commissioner as a Court is subordinate to the High Court.

This view is supported by the Full Bench decision of the Madras High Court in Parthasarthy Naidu v. Chintlacharvu Rao 47 Mad. 369. In that case their Lordships had to consider the following rule framed under the Madras Local Boards Act of 1920 : "No election of a member or of a President of a District, Taluk, or Union Board shall be called in question except by an election petition, presented in accordance with these rules to the District or Subordinate Judge having jurisdiction. They held that "A District or Subordinate Judge, to deciding an election petition presented before him under the rules issued by the Local Govt. under the Local Boards Act, 1920, is acting not merely as a persona designate,, but as a Court in the exercise of its ordinary jurisdiction extended for that purpose; consequently, the High Court is competent to exercise its powers of revision over decisions in election petitions".

Meredith, J. was equally emphatic on the point (vide p. 589 of the report):

"A further question, however, now arises. Has this Court any power u/s 115, Civil P. C., to interfere in revision with the Election Commissioner's orders. That depends upon whether the Election Commissioner is a Court & if so, a Court subordinate to the High Court. The question whether Election Commissioner is a Court presents no real difficulty. The material considerations in determining such a question are clearly set out in the Pull Bench case of this Court, Mt. Dirji v. Sm. Goalin, 20 Pat 373. Applying the tests there specified, there can be no doubt about the matter. The Election Commissioner acts judicially ; he follows the procedure of the Code of Civil Procedure, & has that powers which are vested in a Court under the CPC when trying a suit. Finally, he has the power to grant a declaration. The question of subordination too presents no real difficulty. Upon this point there is a significant Full Bench decision of the Madras High Court in

Parthasarathy Naidu v. Chintlacharvu, 47 Mad 369, where a quotations is made from Rex v. Shoredith Assessment Committee (1910) 2 K.B. 859 wherein it was pointed out that subjection to the High Court is a necessary & inseparable incident to all tribunals of limited jurisdiction. The existence of the limit presupposes a higher authority to determine & enforce it. Any inferior tribunal cannot be permitted to determine the limits of its own, jurisdiction, or to trespass beyond those limits without some power of check. That would be intolerable. In this country, in the absence of anything to the contrary, it is the High Court to which such a tribunal will be subordinate.

I have myself examined the position at length with regard to subordination is Arjun v. Krishna Chandra) 21 Pat 1, & it is necessary to repeat here what I said there. There also I referred to the very relevant observations in Rex v. Shoredith Assessment Committee. (1910) 2 KB 859. National Telephone Co., Ltd. v. Porf. Master, General 1913 AC 546 is another decision relevant in this connection.

* * * * The Election Commissioner, & a fortiori an Additional Election Commissioner is clearly a Court subordinate to-the High Court within the meaning of Section 115, Civil P. C., & it is open to the High Court to interfere in revision in a proper case."

This decision, I may incidentally observe was-followed recently by this very Bench in Jamuna v. Jogendra, 29 Pat. 851.

27. The cases in which I have referred above were cases undoubtedly arising under different; statutes. But it would not be correct to say that the decisions under those statutes are not helpful in considering the constitution & functions of the Authority constituted under the present enactment. If the tests laid down in those cases are applicable to the Authority constituted under the Payment of Wages Act, there is no reason why the question could not be answered on the application of those principles even in the present case, & I fail to see how such an argument would be misleading unless of course it was pointed out that there was some fundamental difference in the present case from the constitution & functions of the Courts dealt with in the cases discussed above. I find, however, that there is a Full Bench decision of the Lahore High Court in Works Manager Carriage Wagon Shops Mohalpura v. K. G. Hash-mat, AIR 1946 Lah 316:I. L. B. (1917) Lah. 1 precisely in point & arose under the Payment of Wages Act with which we are concerned now. In that case the Judges who decided it held that the Authority appointed u/s 15 of this Act was a civil Court & was subject to the revisional jurisdiction of the High Court u/s US, Civil P. C. They pointed out that one of the fundamental tests as to whether a certain Tribunal was a Court or not was whether it exercised jurisdiction by reason of the sanction of law or whether jurisdiction had been conceded to it by voluntary submission of the parties to the dispute. They also pointed out that the other important test was whether it could take cognizance of a "lis" & whether in exercising its functions it proceeded to act in a judicial manner. The learned Judges found on a scrutiny of the provisions of the Payment of Wages Act, 1936, & the rules thereunder that it was perfectly

obvious that the "Authority" appointed under the Act performed a delegated judicial function of the State & in exercising those functions it proceeded in a judicial manner. The mere fact that the amounts awarded by the "Authority" were described in the enactment as directions rather than decrees, & that the "Authority" as such could not execute its own decrees were not such determining factors as to affect his position as a Court. They, therefore, decided that the "Authority" must be regarded as civil Court & a Court subordinate to the High Court, within the purview of Section 115, Civil P. C. In dealing with the question whether the authority was or was not a Court, their Lordships followed the Pull Bench decision of this Court in Mt. Dirji's case.

28. These decisions, with which I respectfully agree, leave no doubt in my mind that the questions raised above should be answered in favour of the petitioner in this Court & the preliminary points about the maintainability of this application should be disposed of accordingly.

29. Before, however, I conclude this judgment, I must deal with a few of the cases which have taken a contrary view of the matter. In particular, I will have to refer to a decision of the Nagpur High Court on which great reliance has been placed for the opposite party.

30. The decision of the Nagpur High Court is in Sawatram Bamprasad Mills Co. Ltd, v. Vishnu Pandurang AIR 1950 Nag. 14 The importance of this decision arises from the fact that it deals with the very same questions arising under the very same Act, & although it is a Division Bench judgment, it has thought fit to disagree with the Pull Bench of the Lahore High Court, already discussed by me, & appears to rely upon another Division Bench decision of the Bombay High Court in The Spring Mills Ltd. v. G. D. Ambekar A. I. R. (36) 1949 Bom. 188. The question there involved was whether a revision u/s 115, Civil P. C. lay to the High Court against an order of the Authority appointed by the Provincial Govt. u/s 15, Payment of Wages Act, or, in other words, whether the Authority should be said to be a "Court" which was "subordinate to the High Court."

31. The opinion in the Nagpur High Court appears to have been divided on the point. Bose J. (as he then was) had held that the Authority was a "Court" but not a "Court subordinate" to the High Court," while Bobde J. had expressed a contrary opinion. In view of that conflict the point came to be decided by a Division Bench. The learned Judges broadly observed that the opinion of Bose J. had found favour with the Bombay & the Allahabad High Court, & that of Bobde J. in Lahore & Patna. To be more accurate, even Bose J. had held that the "Authority" mentioned in the Act was a "Court" though of course on the other point, whether it was subordinate to the High Court, Bose J. held that it was not. The Division Bench, however, seems to have held that the "Authority" under the Act was not a "Court" at all. Their Lordships observed as follows: "With the growth of administrative institutions a large number of administrative tribunals has Come into existence which perform functions analogous to those of Courts but are not "Courts" in the strict sense. Some of these authorities pronounce

upon valuable rights, act in a judicial manner & even take evidence on oath but they are not "Civil Courts" because their decisions implement some administrative policy or determine controversies not related to matters present generally before the ordinary Civil Courts. The dividing line between administrative tribunals & Courts of civil judicature is always very difficult to define." Yet this dividing line, in my opinion, had to be defined by reference to certain positive tests.

32. I do not find, if I may say so with great respect, any material assistance from the judgment as to in what manner the Authority under the Act should not be held to be a Court except the suggestion that with the development of political, social & economic ideas many valuable rights have come to be recognised which were not before the subject-matter of "lis" in the conventional sense & in their enforcement the policy of the State had been to create special Tribunals with exclusive jurisdiction & to make them in my cases self-contained. This obviously does not take us very far. As I have pointed out above, the "lis" here is generally between the party in whom the right subsists, namely, the workers & the party who is guilty of the infringement of that right, namely, the employer or the person responsible for the payment of wages. Such a right, in my opinion, was a contractual right & could be enforced in a civil Court subject to the bar provided by Section 22 of the Act, & I see no reason to think that the "lis" here did not relate to a civil right between two private parties which could otherwise be enforced by a civil Court.

33. The learned Judges seem to be also of the opinion that where a Tribunal exercises an exclusive & special jurisdiction, it would be wrong to call it a Court of "civil judicature". This opinion they formed from their reading of the preamble & Section 9, Civil P. C. as also the provisions of Sections 3 & 4 of the Code, & they, therefore, held that Section 115 can have no application to Courts which have been given exclusive jurisdiction by express provision of law or by necessary implication but must be confined only to those Courts which are mentioned in Section 3 of the Act. If I may say so with great respect, I do not agree with this view of the law. As I have already pointed out, the word "subordinate" has not been defined in Section 3 of the Code, & the reference to subordinate Courts in Section 3 is not exhaustive. I am supported in this view of Rankin J. (as he then was), who said that Section 3 "does not claim to be & is not intended to be exhaustive" & Dhavle J. took the same view in the case of Arjun Boutara discussed above. Therefore, Section 115, Civil P.C. does not require that the subordinate Court must be a Court of civil jurisdiction within the meaning of Section 3 of the Code.

34. The reasons given by the learned Judges for holding that the "Authority" mentioned in Section 15 is not a Court appear to be mainly two-fold; firstly, that the "Authority" is designated as an "Authority" & not a Judge & it is mere by an accident that under the notification of the Provincial Govt. the Authority in our Province is a Civil Judge. It could be a mere "nobody" with experience as a Judge

or Magistrate". They also observed that the Authority could be moved not only by a person aggrieved but even by an Inspector u/s 14 of the Act or even by a stranger with the permission of the Authority, & this they regard as a very significant difference. The other reason which has been given by them is that there would be no need to give powers under the CPC for the purpose of taking evidence & of enforcing the attendance of witnesses & compelling production of documents if the Authority was a civil Court. This they point out with reference to Section 18, Payment of Wages Act.

35. In my opinion, the fact that a third party could also move the Authority on behalf of the party aggrieved & with the permission of the Authority does not detract from its position as a Court & is not such a material difference as to affect that status if otherwise it answers to all the attributes of a Court. We know in certain cases even under the CPC that a Court of civil jurisdiction can be moved by a person who is not strictly speaking the party aggrieved for instance, the Advocate General in certain cases may move the Court. In regard to the second reasoning, I cannot do better than refer to the observation of this Court in the Full Bench case of 20 Pat. 373, where the learned Judges repelled the contention thus :

"The provisions made in Section 23 may have been made either *ex abundanti cautela* or to avoid the necessity of incorporating in the Act a large number of provisions like those to be found in the CPC or because the framers of the Act wanted to emphasise that for the purpose mentioned in the section the Commissioner shall be regarded as a Civil Court. However that may be, the mere fact that it has been expressly stated that the Commissioner will have the powers of a civil Court, cannot by itself justify the inference that he is not a Court."

I may mention here that Section 23, Workmen's Compensation Act, referred to in the above quotation, is a provision analogous to that of Section 18 of the Act with which we are concerned in the present case.

36. It is fortunate that the learned Judges of the Nagpur High Court who decided the case under reference did not condescend to pay due attention to the important decisions of our own Court which throw a good deal of light on the points in controversy. These learned Judges appear to have brushed aside those decisions with the observation :

"Nor is it helpful to consider those cases in which the constitution & functions of other tribunals have been examined to see whether they are subordinate to the High Court in its revisional jurisdiction u/s 115, Civil P. C. Nothing is likely to be more misleading than an argument based upon certain resemblances which, though apparently there, may not be fundamental to this issue. What we have to do is to find out the points on which particular tribunal either resembles the ordinary civil Courts differs from them."

But the fundamental differences, if any, unfortunately have not been pointed out. The learned Judges only proceed to observe that mere presence of certain

attributes do not constitute the Authority a "Court" subordinate to the High Court but they do not, if I may respectfully suggest, refer to any positive tests, except those I have discussed above, from which it could be definitely ascertained as to what would be attributes of a "Court." I, therefore, cannot find my way to accept the correctness of that decision & to depart from the wholesome view repeatedly expressed in the several decisions of this Court & rightly followed by the Pull Bench of the Lahore High Court.

37. The decision of the Bombay High Court on which reliance has been placed on behalf of the petitioner & which has been approved by the above Nagpur decision does not require any elaborate consideration. The learned Judges there took the view that the mere fact that a statute provides an appeal to a Court from a particular body does not necessarily make that body a Court. They, therefore, opined that the Authority under the Payment of Wages Act is not a Court within the meaning of Section 115 & the High Court has no revisional jurisdiction over the orders of that Authority. In the view which I have taken of the matter & which has been consistently taken by this Court, I am unable to extend my approval to this decision for the reasons already given by me. It is quite unnecessary to dilate upon the negative tests & then hold that a particular tribunal or authority is not a Court. What is required is to determine the essential positive tests & see if those tests are satisfied. In answer to the view taken by the Bombay High Court on the question of subordination of a Court, I may quote for my authority, what has been so often quoted, the pertinent observations in *Rex v. Shoreditch Assessment Committee* (1910 2 K. B 859 at p. 880 :

"subjection to the High Court is a necessary & inseparable incident to all tribunals of limited jurisdiction ; for the existence of the limit necessitates an authority to determine & enforce it."

38. The opposite party has also sought to rely upon a Special Bench decision of this Court in *Jagernath v. Land Acquisition Collector, Patna* 19 Pat. 321. The case arose under the Land Acquisition Act. The decision does not help the contention of the petitioner because their Lordships held that :

"Even assuming the Collector acts judicially in making or declining to make a reference u/s 18 of the Act, it is extremely doubtful whether he can be regarded as a Court."

That being so, they could not but hold that he was not a Court subordinate to the High Court.

39. I am not unmindful of the fact that there may be certain Courts, Authorities or Tribunals which may have functions & duties like those of a, body discharging judicial functions, yet they may not be "Courts" in the technical sense of the word ; for instance, the Industrial Tribunal set up u/s 7, Industrial Disputes Act, 1947.

40. In *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi*

and The Bharat Bank Employees" Union, Delhi, , the Supreme Court held that such a Tribunal was not a Court even though it had all the trappings of a Court exercising judicial functions. In that case the point to remember is that the decision of the Tribunal could not *ex proprio vigore* bind the parties without the aid & instrumentality of some other authority or power viz., a notification by Govt. This distinction was very clearly pointed out by Mukherjea J. as also by the other learned Judges. His Lordship observed thus :

"What is necessary is that the determination by its own force & without the aid or instrumentality of any other authority or power must affect the rights & obligations of the parties or in other words, the decision itself irrespective of the facts decided, must create rights & impose obligations & it should be enforceable as such under the ordinary law of the land. This undoubtedly is one of the fundamental tests which distinguishes a judicial body from one which exercises administrative or quasi-judicial functions."

The other fundamental test which distinguishes judicial or quasi-judicial administrative body, as pointed out by His Lordship, is that the former decides controversies according to law, while the latter is not bound to follow the law for its decision. It is for these reasons that their Lordships held that the Labour Tribunal in question was not a Court though it exercised quasi-judicial functions & had the power of giving decisions on question of differences of an administrative & not justiciable character which cannot be determined by reference to any fixed law or principle of law but were really matters of administrative discretion & judgment.

41. I must, therefore, hold that the preliminary objections raised on behalf of the opposite party could not be sustained & that this Court had ample power to revise the order of the Authority constituted under the Payment of Wages Act.

42. The question then is whether on merits we should interfere with this order. As I have already observed in the bringing of this judgment, the two objections raised in regard to the maintainability of the application filed on behalf of the workers are still pending decision by the Authority concerned. The petitioner, however, contends that the manager, Mr. Qasim Lari, appointed u/s 3 of the Act was a necessary party to the application, & he being not a party, the application should have been dismissed in limine. On his behalf reliance is placed upon a decision of the Bombay High Court in *P. M. Dixit v. Senior Inspector of Factories* A. I. R. (27) 1940 Bom. 87 which is a single Judge decision of that Court. The learned Judge, of course, has not considered the question whether a revision did or did not lie to the High Court, & in a later case, as I have shown, the same Court has taken the view that the order of the "Authority" was not revisable. In any case I should examine the reasoning on which the decision proceeds to hold that the manager is a necessary party to the application, & in the absence of such a party the application should not proceed. There the Dist. J. who heard the appeal himself felt some difficulty in maintaining the order as originally passed against the employer in view of the fact that a manager who was responsible for

the payment of wages within the meaning of Section 3 of the Act had been appointed. That being so, the view taken by the learned Judge was that the direction should not have been given against the employer but against the manager, except where the amount could not be recovered in the first instance from the manager himself. This to some extent influenced the learned Judge of the Bombay High Court in dealing with the matter & in holding that where a manager is appointed the proceedings should be against the manager alone but if no manager is appointed, they should be against the employer. He supports this view on his reading of Section 15 of the Act & says:

"I think the use of the word "or" instead of "and" clearly shows that the proceedings u/s 15 are to be instituted against only one person, whether he is the manager as in this case, or the employer, but not against both."

43. In my opinion, Section 15 of the Act does not bear the interpretation which has been sought to be put upon it. Section 15 nowhere speaks of the parties to the proceeding. It only says that where the contingency has happened, namely, that there has been deduction from wages or delay in payment of wages contrary to the provisions of the Act, the person aggrieved may apply to the authority for a direction under Sub-section (3) of the section subject to certain limitations. Sub-section (3) does not lay down who the opposite party to the application should be. It mainly provides inter alia that where the application is entertained under Sub-section (2), the Authority shall hear the applicant & the employer or other person responsible for the payment of wages u/s 3 or give them an opportunity of being heard etc., & thereafter direct the refund to the employed person of the amount deducted. Apparently it presumes that in the first instance the name of the employer must be there though it does not definitely say so. Rule 8, however, of the rules framed under the Act quite clearly shows that the notice of the application shall be sent to the employer. Rule 8 (1) is worded thus:

"If the application is entertained, the Authority shall call upon the employer by a notice in Form E to appear before him on a specified date together with all relevant documents & witnesses, if any, & shall inform the applicant of the date so specified."

The rule, therefore, definitely contemplates that the notice should go to the employer, Rule 8 does not speak of any notice to the manager or any other person working under the employer. For obvious reasons it would be so, because if the employer on service of notice appears & accepts the claim, then the necessary directions can be at once given, but if the employer pleads that some other person is responsible for the payment of wages, & satisfies the authority that it is so, the Authority may under those circumstances issue citations upon that person & hear him before giving directions against the latter. If at the same time it is assumed that the word "employer" used in Rule 8 of the statutory rules includes also the manager or other person responsible for the payment of wages u/s 3, even then it makes no difference; because in that case it provides for issue of notice apparently to the employer as also, if necessary, to the person

responsible for the payment of wages u/s 3. But as to whether there is such a person responsible for the payment of wages u/s 3 & if so, whether he is actually responsible for making the payment can be only discovered by the Authority after the employer has appeared in pursuance of the notice & placed the materials. The liability of the employer for the payment illegally deducted from the wages or for the payment of the wages unlawfully detained has never ceased; though it may be that for the time being u/s 3 of the Act the employer has made an officer under him responsible for the payment of wages. That person acts under the employer & inevitably subject to his authority :& control. Therefore, it would be wrong to assume that the application would be held to be act maintainable because the employer has been made a party to the application & not the manager named in Section 3. As I have said, Section 15 does not speak of the manager being a necessary party to such an application. Therefore, it cannot be assumed that failure to implead him would result in the dismissal of the duplication & make the application inherently defective. I agree that the "direction" mentioned in the section should in the first instance be made against the manager if he is found to have made the illegal deductions & the payment should be sought to be recovered from him, & it is only where it cannot be so recovered that it should be recovered from the employer. This follows from a perusal of the provisions of Sections 3 & 19 of the Act. But it does not follow that the application also in the first instance or rather primarily should be made against the manager, & if it is not so made the application should be held to be untenable so as to give no jurisdiction to the Authority to act upon it Such an interpretation, in my opinion, is not at all warranted by the provisions of the Act.

44. On behalf of the opposite party it has been also argued that this is not merely a "factory" but an "industrial establishment", & in the case of an "industrial establishment" the question of making the manager a party does not arise. The expression "industrial establishment" has been defined in Section 2 of the Act to mean any workshop or other establishment in which articles are produced, adapted or manufactured, with a view to their use, transport or sale. It is pointed out that in this establishment sugar is manufactured & produced for transport & sale. In the case of industrial establishments Section 3(b) of the Act provided that if there is a person responsible to the employer for the supervision & control of the industrial establishment, then that person shall be responsible for the payment of wages to the persons employed. It appears that in this case there is a general manager of the Sasamoosa Sugar Works who has been made a party to the application. This question if at all relevant is really a matter for investigation by the Authority concerned as all the materials on the point are not before us. But as I have held in any event even if the manager appointed u/s 3(a) of the Act has not been made a party to the applications, that would not affect the maintainability of the same. The workers opposite party have already filed an application for making the alleged manager, Qasim Lari, a party to the applications & that matter may have to be dealt with by the Authority himself as also the question of limitation which is entirely within his purview He may in

appropriate cases on sufficient cause shown condone the delay, if any.

45. For the above reasons, I consider that the application fails & must be dismissed with costs; hearing fee five gold mohurs.

46. I should, however, make it clear that the Authority should write out a self-contained order Sealing specifically with the points raised. I have no doubt that if the learned officer had devoted little attention to the matter, much of the wastage of time & inconvenience could have been avoided.

Das, J.

47. I agree with my learned brother as to the order proposed to be passed by him. I also agree generally with him as to the reasons for the conclusions he has come to, on the questions involved in this case. I do not, therefore, propose to say anything more than this that in view of the decisions of this Court in *Mt. Dirji v. Sm. Goalin* 20 Pat 373, *Arjun Bautara v. Maharaja Krishna Ghandra Gajapati Narayan Deo*, 21 Pat. 1 & *Abdul Razak v. Kuldip Narain* 22 Pat 577, it must be held (1) that the prescribed authority under the relevant sections of the Payment of Wages Act is a Court & (2) that it is a civil Court, subordinate to this Court within the meaning of Section 115, Civil P. C. I think that the aforesaid decisions are binding on us, & it is not open to us to follow the Nagpur decision "*Sawairam, Ramprasad Mills Co. Ltd. v. Vishnu Pandurang Hingnekar*" A I R 1950 Nag 14. I must, however, make it clear that, as at present advised, I consider that the reasons on which the above decisions of this Court are based are good reasons the validity of which does not appear to me to have been shaken by the Nagpur decision.

48. I am in entire agreement with my learned brother that the failure to make Mr. Lari a party at the first instance did not make the applications incompetent, & there can be no objection to adding Mr. Lari as a party at a subsequent stage.