

**(1953) 03 GAU CK 0010**

**In the Gauhati High Court**

**Case No :** Civil Rules No's. 40, 69, 75 and 85 of 1952

Ghanasyam Das and Others

APPELLANT

Vs

State and Others

RESPONDENT

**Date of Decision :** 06-03-1953

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Government of India Act, 1935 — Section 296

**Citation :** AIR 1953 Guw 170

**Hon'ble Judges :** Sarjoo Prosad, C.J; Ram Labhaya, J

**Bench :** Division Bench

**Advocate :** F.A. Ahmed, Bar-at-law and B.C. Barua, in Civil Rule No. 69 of 1952, S.K. Ghose and P. Choudhury, in Civil Rule No. 75 of 1952, P. Choudhury and A.R. Baruah, in Civil Rule No. 85 of 1952 and P. Chaudhury, in Civil Rule No. 40 of 1952, for the Appellant; S.M. Lahiri, General, R. Goswami, Jr. Govt. Advocate (for Nos. 1-3), S.N. Choudhury, (for No. 4) and P. Choudhury, (for Nos. 5-6) in Civil Rule No. 69 of 1952, S.M. Lahiri, General, R. Goswami, Jr. Govt. Advocate (for Nos. 1-3) and S.N. Choudhury, (for No. 4) in Civil Rule No. 75 of 1952, S.M. Lahiri, General, R. Goswami, Jr. Govt. Advocate (for No. 1), R. Goswami, (for No. 2) in Civil Rule No. 85 of 1952 and S.M. Lahiri, General, R. Goswami, Jr. Govt. Advocate (for No. 1), D.N. Medhi and S.C. Das, (for No. 2) in Civil Rule No. 40 of 1952, for the Respondent

**Final Decision :** Partly Allowed

## Judgement

Ram Labhaya, J.—This order shall cover Civil Rules 69/52, 75/52 85/52 and 40/52.

2. All these Rules are directed against the orders purporting to have been passed by Sri J.J.M. Nichols Roy, Minister in charge of Excise, in the capacity of Excise Appellate Authority, Assam and in the exercise of powers conferred on him by notification No. MEX. 120/43/1 dated 15-6-1948.

3. The petitioners in their respective cases have assailed the validity of his orders on several grounds. One ground of attack is common to all. In my opinion, these

rules can be disposed of on this ground alone.

4. It is contended that the notification of 15-6-1948 by which the Governor of Assam appointed the Minister in charge of Excise as the authority to entertain appeals and review decisions in matters arising under the provisions of the enactments specified in Schedule B to the Assam Revenue Tribunal (Transfer of Powers) Act (Act 4 of 1948) in supersession of Revenue Department Notification No. R. T. 22/47/29 dated 17-4-1948 was "ultra vires" inasmuch as it contravened the prohibition contained in Section 296 of the Government of India Act 1935. The prohibition enacted by that section was that "no member of the Dominion Legislature or of a Provincial Legislature shall be a member of any tribunal in a Governor's or Chief Commissioner's Province having jurisdiction to entertain appeals or revise decisions in revenue cases." It is argued that the Minister of Excise is a member of the Provincial Legislature. Matters in which he was given appellate and revisional powers were revenue cases within the meaning of Section 296 (Government of India Act, 1935). The notification by which he was invested with jurisdiction which he purported to exercise in these cases involves a patent contravention of a mandatory prohibition of the Constitution Act which was in force in 1948. The notification was therefore void. It could not effectively confer any appellate or revisional jurisdiction in revenue cases on him and he was never invested in the eye of law with any such jurisdiction. His orders are in the exercise of jurisdiction which he never possessed and are void and of no effect.

5. The learned Advocate General has disputed the proposition advanced on behalf of the petitioners by their learned Advocates. He contends that the notification in question did not purport, and was not intended to confer appellate and re-visional jurisdiction on the Minister of Excise in revenue cases; nor was the Excise Minister constituted a tribunal within the meaning of Section 296 of the Government of India Act, 1935. His case is that the Excise Minister when exercising appellate and revisional jurisdiction under the provisions of the enactments specified in Schedule B to the Assam Revenue Tribunal (Transfer of Powers) Act 1948 was no more than an administrative authority, in no sense a tribunal, and jurisdiction conferred on him was not in matters which could be appropriately described as revenue cases. He urges that the notification in question is not hit by Section 296. It is wholly outside its ambit and therefore no contravention of it is involved.

6. The history of the devolution of powers which were conferred on the Excise Minister throws a flood of light on the questions raised. It is not necessary to travel back farther than 1937. The impugned notification was issued u/s 3 (3) of the Assam Revenue Tribunal (Transfer of Powers) Act. u/s 3 (1) of this Act the Assam High Court was invested with such jurisdiction to entertain appeals and revisions in revenue cases as was vested in the Provincial Government immediately before the 1st day of April, 1937. The jurisdiction was subject to the provisions contained in Section 3 (3) of the Act. Without prejudice to the

generality of the powers conferred on the High Court, Clause 2 of the section expressly provided that the High Court shall have jurisdiction to entertain appeals and revise decisions in all revenue cases arising under the provisions of the enactments specified in Schedule A in which such jurisdiction was vested in the Provincial Government immediately before the first day of April, 1937. The provisions of Clause (3) are important. They form the foundation of the contention raised by the learned Advocate General. This clause is reproduced below:

"Without prejudice to the foregoing provisions the authority appointed by general or special order of the Provincial Government shall exercise such jurisdiction to entertain appeals and revise decisions "in matters arising under the provisions of the enactments specified in the Schedule B" as is exercised now" by the Revenue Tribunal and was vested in the Provincial Government before the first day of April, 1937."

7. It will be noticed that the expression "revenue cases" does not occur in this clause as it did in the two preceding clauses. It speaks of jurisdiction in matters arising under the provisions of certain specified enactment. By virtue of this clause, the authority appointed by general or special order of the Provincial Government has to exercise jurisdiction to entertain appeals and revise decisions in matters arising under the provisions of the enactments specified in Schedule B as was exercised by the Revenue Tribunal before it and was vested in the Provincial Government before the first day of April, 1937.

8. The contention is that cases arising under the enactments specified in Schedule B to the Act were not described as revenue cases. The Provincial Government before April 1937 and the Revenue Tribunal till 1948 exercised jurisdiction also in matters other than revenue cases. In revenue cases jurisdiction was left to the High Court and for other matters Provincial Government was given the power to appoint authorities by general or special order for entertaining appeals and revisions. It is urged that matters covered by Clause (3) are executive and administrative in nature and the authority invested with jurisdiction in them is also administrative or executive, different and distinguishable from a tribunal as contemplated by Section 296, Government of India Act.

9. It will be noticed that the effect of the argument if it were to prevail would be that the authority invested with appellate and revisional jurisdiction in matters arising under the enactments specified in Schedule B shall be reduced to a purely administrative authority. Schedule B specifies four enactments. The first is the Eastern Bengal and Assam Excise Act, 1910. The other three are the Opium Act, 1878, the Assam Forest Regulation, 1891 and the Motor Vehicles Act, 1938. The impugned notification conferred on the Excise Minister authority to entertain appeals and revisions in matters arising under the provisions of all the four enactments. Pushed to its logical conclusion the proposition of Mr. Lahiri has a surprisingly sweeping character. He has not shown by reference to the provisions

of all the Acts specified in Schedule B that the very tall claim he has made is justified.

10. The Excise Minister by virtue of the powers vested in him by the notification in question could entertain appeals against the order of the Excise Commissioner and had the power to call for proceedings and revise orders of subordinate officers u/s 9.

11. By Section 9 of the Assam Revenue Tribunal (Transfer of Powers) Act 1948 (Act IV of 1948), the Assam Revenue Tribunal Act 1946 and its amending Act of 1947 were repealed. The Revenue Tribunal was abolished. By Section 3, the jurisdiction and the powers of Revenue Tribunal were divided between the High Court and such authorities as the Provincial Government by general or special order might appoint.

12. The Assam Revenue Tribunal which was abolished in 1943 was constituted by the Assam Revenue Tribunal Act (II of 1946). Section 3 of this Act provides for the constitution of the Revenue Tribunal. The Provincial Government is charged with the duty of constituting the Revenue Tribunal. It had to consist of a President and two members. The President had to be a non-official and was to possess the qualification of a High Court Judge as laid down in Sub-section (3) of Section 220 of Government of India Act, 1935. One of the two Members was to be a pleader, advocate or barrister of not less than ten years' standing or some one who had for at least ten years held a judicial office in British India not inferior to that of a subordinate Judge. The 3rd member was to be the Director of Land Records. The composition of the tribunal gives some indication of the nature and character of its duties. Section 5 of the Act dealt with the powers and jurisdiction of the Tribunal. It was invested with such jurisdiction to entertain appeals and revise decisions "in Revenue cases" as was vested in the Provincial Government before 1-4-1937.

Clause 2 of Section 5 laid down without prejudice to the generality of the provisions contained in Clause 1 that the Tribunal shall have jurisdiction to entertain appeals and revise decisions in all revenue cases arising under the provisions of enactments specified in the Schedule in which such jurisdiction was vested in the Provincial Government before 1-4-1937. These enactments include all the enactments of Schedule B to the Act of 1948 by which after the abolition of the Revenue Tribunal its jurisdiction and powers were divided. The Eastern Bengal and Assam Excise Act was within the ambit of its jurisdiction and it was specifically and in express terms authorised to entertain appeals against the orders of the Excise Commissioner and to call for proceedings and revise orders of subordinate officers, u/s 9. Thus, so far as the Eastern Bengal and Assam Act is concerned, the powers of the Revenue Tribunal were identical with the powers conferred on the Excise Minister by the impugned notification. Matters under the Eastern Bengal and Assam Excise Act were expressly described as revenue cases u/s 5 (2) (a) of the Assam Revenue Tribunal Act (2 of 1946).

13. The provisions contained in Section 5(1) and 5 (2) (a) of Act 2 of 1946 completely demolish Mr. Lahiri's contention that matters arising u/s 9, Eastern Bengal and Assam Excise Act, are not revenue cases. There is legislative recognition and treatment of these matters as revenue cases. The matters continued to be treated as revenue matters till the Revenue Tribunal was abolished in 1948. It was abolished by Act 4 of 1948. In Section 3 of that Act matters over which jurisdiction was left to the High Court were expressly described as revenue cases. Matters covered by Section 3 (3) were not so expressly described. But even though the Act of 1948 was repealed in 1948, the nature of matters which were revenue cases till Act 4 of 1948 came into force could not change by a mere emission to describe them as revenue cases. No different description was given to them. There is nothing in Clause (3) of Section 3 to indicate that legislature decided to treat them differently.

14. The Revenue Tribunal no doubt could be invested with powers to entertain and decide appeals and applications for revision in cases in which the Provincial Government had or may have had jurisdiction to entertain and decide such appeals and applications besides cases covered by Sections 5(1) and (2) of Assam Revenue Tribunal Act. We have not been shown that this power was ever exercised. The Assam Revenue Tribunal (Transfer of Powers) Act 1948 merely deals with the distribution of powers under enactments specified in Schedule A of the Revenue Tribunal Act of 1946 (Act 2 of 1946). Matters arising under all these enactments were described as Revenue cases in Act 2 of 1946. u/s 3(1) and 3(2) of Act 4 of 1948 jurisdiction in certain revenue cases was given to the High Court. The conferment of this power does not exhaust the list of revenue cases. It was expressly stated in Section 3(1) that the Assam High Court shall have jurisdiction to entertain appeals and revise decisions in revenue cases as was vested in the Provincial Government. The opening words of Section 3 "subject to the provisions of Sub-section (3) of this section" are significant. The general power conferred on the High Court was subject to the provisions of Clause (3). It authorised the Provincial Government to confer jurisdiction in Revenue cases to other authorities it may appoint under Clause 3. All powers in revenue cases were not given to this Court irrevocably. By Clause (2) power was expressly given to the High Court to entertain appeals and revise the revenue cases arising under specified enactments. These enactments were not all matters arising under which, were treated expressly as revenue cases in Act 2 of 1946. Provision could be thus made under Clause 3 for certain revenue cases not covered by Clause (2) of Section 3 of Act 4 of 1948.

The very object of the Act (4 of 1948) was to transfer the powers and jurisdiction exercised by the Assam Revenue Tribunal to the Assam High Court and to an authority appointed by general or special order by the Provincial Government. Powers of the Tribunal not conferred on the High Court had to be transferred by the Provincial Government by general or special order. The word "matters" instead of revenue cases has been used as a synonym with revenue cases. The Act dealt with powers of the Revenue Tribunal in revenue cases alone. The word

"matters" therefore cannot have any different meaning given to it than revenue cases. The words "cases" & "matters" are words of wide import. They are used interchangeably. Section 296, Government of India Act, which deals with revenue cases describes them as revenue matters on the margin. Reading Section 3 of Act 4 of 1948 as a whole it becomes clear that it was intended to cover revenue cases arising under enactments referred to in Clause 2 of Section 5 of Act 2 of 1946. By Section 9 of Act 2 of 1946 (The Revenue Tribunal Act) the Assam Revenue Tribunal constituted under the Government notification No. 128 R dated 1-4-37 was abolished. The Tribunal constituted in 1937 came into existence on the day Part III of the Government of India Act containing Section 296 came into force. It was in compliance with the mandatory requirements of Section 296 that the 1st Revenue Tribunal was brought into being under the notification of 1-4-37. The Tribunal constituted under Act 2 of 1946 was its successor. Both Tribunals were constituted for the disposal of revenue cases.

15. The above review of the relevant enactments leads irresistibly to the conclusion that appeals and applications u/s 9 of the Eastern Bengal and Assam Excise Act are revenue cases within the meaning of the words "revenue cases" used in Section 296 of the Government of India Act.

16. From the history of legislation given above, it is also clear that the impugned notification was intended to bring into existence a tribunal within the meaning of the expression as used in Section 296, Government of India Act. It was on the date that Part III of the Government of India Act came into force that the first Tribunal was constituted by notification No. 1228 R dated 1-4-1937. This Tribunal was abolished when a new tribunal could take its place under Act 2 of 1946. When the tribunal created under the Act was abolished, the Minister of Excise was given appellate and revisional jurisdiction in matters arising under some of the enactments. The jurisdiction conferred by the impugned notification on the Minister of Excise was the same that was exercised by the Revenue Tribunal before him though part of the jurisdiction of the Tribunal was conferred on the High Court. In 1948, therefore the High Court and the Minister of Excise as the appellate authority under certain enactments became the successors of the Revenue Tribunal for purposes of enactments specified in Schedule A to Act of 1946. The intention of the Government thus is quite clear. A tribunal for disposal of revenue matters was being constituted by the impugned notification though with jurisdiction substantially curtailed, for a greater part of the jurisdiction fell to the share of the High Court.

17. Quite apart from the conclusion that is indicated from the history of legislation, there can be no manner of doubt that the Minister of Excise when exercising powers conferred on him under the impugned notification was undoubtedly a tribunal in the sense in which the expression has been used in Section 296 of the Government of India Act. The word "tribunal" has not been defined anywhere. It should carry its usual connotation. It means the seat of a judge or a court of justice. The essential attribute of a tribunal is to give

judgment between two parties. The decision should have legal sanction. The function of the tribunal involves the exercise of the sovereign power of the State to do justice. An exercise of the faculty of judgment also would be necessary in the discharge of the functions of a tribunal. The import of the expression is necessarily wider than of the word "court".

18. The expression has been used in Article 136 and Article 227 of the Constitution of India. It was held in-- *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi*, by a majority of the learned judges of the Supreme Court that Supreme Court could entertain applications for leave to appeal from decisions of the Industrial Tribunal under Article 136. The Tribunal constituted under the Act was regarded as a body discharging judicial functions although it was not a court in the technical sense of the word. In-- *Haripada Dutta Vs. Ananta Mandal*, the expression as used in Article 227 of the Constitution was interpreted to mean "a person or a body other than a court set up by the State for deciding rights between contending parties in accordance with rules having the force of law", not by executive action but by determination of the questions coming before it. In coming to this conclusion the learned Judge relied on two previous decisions of the Calcutta High Court reported in-- *Sabitri Motor Service Ltd. Vs. Asansol Bus Association*, and-- *P.C. Guha and Others Vs. B.A. Basil*, In the former case the Commissioner of a Division acting as the appellate authority under the Motor Vehicles Act and in the latter case an appellate court under the Rent Control Act of 1950 were held to be tribunals.

19. The expression "tribunal" has also been used in a number of statutes before the Constitution and unless the context indicates to the contrary, the expression should bear the same meaning in all these enactments. A "tribunal" as the dictionary meaning of expression implies must be charged with the duty of judging and deciding disputes. It is a person or a body of persons having authority to hear and decide disputes so as to bind the disputants. Substantially the same meaning was given to the expression in *Haripada Dutta Vs. Ananta Mandal*, . It should bear the same meaning in Section 296, Government of India Act, as was given to it for purposes of Article 227 by the learned Judges of the Calcutta High Court in *Haripada Dutta Vs. Ananta Mandal*, That meaning affords an accurate and convenient test for determining whether a particular authority is a tribunal within the meaning of Section 296 or not.

20. If the test stated above is applied, there can be no doubt that the impugned notification was meant to bring into existence a tribunal to exercise appellate and revisional jurisdiction under the 4 Acts including the East Bengal and Assam Excise Act. The function entrusted to it was to decide disputes arising under the provision of specified enactments in conformity with provisions of law and any rules having the force of law. Its decisions had the necessary legal sanction for purposes of enforcement.

21. Section 9 of the Eastern Bengal and Assam Excise Act with which we are

concerned lays down that in all proceedings under the Act the Excise Commissioner, and the Commissioner of the Division shall be subject to the control of the Board. The Board is now substituted by the appellate authority under the impugned notification. The Collector is subject to the control of the Excise Commissioner and the appellate Authority. Appeals are provided to the District Collector, to the Excise Commr. and also from the orders of the Excise Commissioner or the Commissioner of Division. Revisional jurisdiction is also conferred on these authorities by Section 9 (4). The Act regulates imports, exports and transport, manufacture, possession and sale of intoxicants and also fees leviable on licenses for excisable articles. The appellate and the revisional jurisdiction conferred on the Excise Minister by the impugned notification was meant to be utilised for correcting errors of the subordinate officials exercising jurisdiction under the Act. By the exercise of this jurisdiction the appellate authority can enforce compliance with the provisions contained in the enactments under which it exercises jurisdiction and the rules made thereunder. It has to be exercised in disputes calling for the exercise of the faculty of judgment in accordance with laws or rules having the force of law. The decisions are legally enforceable. The appellate authority thus is clothed with all the attributes of a tribunal.

22. The impugned notification in these circumstances must be found to be void. The Minister of Excise was constituted a tribunal for the decision of revenue cases. He admittedly was a member of the Dominion Legislature. The notification therefore contravenes Section 296 of the Government of India Act and is void by reason of its repugnancy to a mandatory prohibition contained in it. The Excise Minister thus acquired no jurisdiction to exercise appellate and revisional jurisdiction under the Acts enumerated in Schedule B to Act 4 of 1948 by reason of his inherent incapacity to possess that jurisdiction.

23. The learned Advocate General has tried to save the notification from the taint of constitutional invalidity on another ground. He urges that even if the notification was void under the Government of India Act, 1935, it could be given effect to after the Constitution came into force. He points out that the prohibition contained in Section 296 of the Government of India Act does not find any place in the Constitution of India. The impediment to the appointment of a Minister as the appellate or the revisional authority under the relevant Acts having been removed, the notification which was initially void acquired validity. In support of this contention he has relied on -- *G.P. Stewart Vs. Brojendra Kishore Roy Chaudhury*, In that case Section 10-C was inserted in the Assam Court of Wards Act by an amending Act of 1937. The amending Act received the Governor's assent on 5-11-1937. The Act contained a special clause which provided that the Act shall come into force on such a date as the Provincial Government may by notification in the official Gazette appoint in this behalf. On 12-1-1938, it was notified that the Governor directs that the Act shall come into force from 5-11-1937. It was held that the notification of 12-1-1938 was ultra vires. But the learned Judges gave effect to the notification from 12-1-1938 onwards. It was



not permitted to have retrospective effect. The ratio decidendi adopted was that the impugned Act was not known to the public as being in force until 12-1-1938 and therefore it could be given effect to on the principle that where a statutory order is made on a certain date, the courts can and give effect to it from a subsequent date on the ground that it was not known to the public until the latter date. The principle on which reliance was placed in that case has got no application to the facts of the case before us. In that case, the notification fixing the date of the commencement of the Act first appeared on 12-1-1938. It could be said that the date of the commencement of the Act first became known to the public on 12-1-1938. We cannot say the same here.

The impugned notification in this case was issued on 15-6-1948. The Minister of Excise has been exercising jurisdiction under that notification since then. By no stretch of imagination can it be said that the public had been unaware of that notification till the Constitution came into force. Nor is there any question of the severance of this notification into two parts. No part of it had any constitutional validity. It was wholly void. The question that arises in the case is very different from that which arose in *G.P. Stewart Vs. Brojendra Kishore Roy Chaudhury*, What we have to decide is whether the removal of an impediment which existed in 1948 when the notification was issued in the shape of Section 296 of the Government of India Act can have the effect of giving force and effect to a notification which it did not have at all. The learned Advocate General has not even contended that this is possible. No authority has been produced in support of any such proposition. As at present advised, I do not think that the mere removal of that impediment would be enough to confer constitutional validity on the impugned notification from the date on which the Constitution came into force. A power which did not exist in the Revenue Minister, could not be brought into existence merely by the removal of the impediment. A fresh notification could have accomplished the purpose. But in its absence a void notification may not be pressed into service on the ground that after 26-1-1950 the Minister could legally be invested with jurisdiction which never vested in him.

24. For reasons given above, I am firmly of the opinion that the impugned notification is void and that the Minister of Excise had no jurisdiction to dispose of appeals which the petitioners preferred from the orders of the Commissioner in all the four cases. The decisions given are therefore void and of no effect. The result is that the appeals remain undisposed of. It also follows that a competent appellate authority should dispose of these appeals according to law.

25. The learned Advocate General has also argued that as the validity of the constitution of the appellate authority has been challenged, the court cannot grant any writ of any kind. He has relied on a decision reported in--"*Union of Workmen of B. S. N. & I. G. N. Rly. Co. Ltd. v. River Steam Navigation Co. Ltd.*" AIR 1951 Gau 96 . I was a party to that decision with Thadani C. J. The learned Chief Justice held that Article 226 contemplated a duly constituted person or authority including in appropriate cases a Government and not a person,

authority or Government not duly constituted. Similarly in his view courts and tribunals contemplated by Article 227 were courts and tribunals duly constituted and not usurpers of office. In that case the constitution of the Industrial Tribunal was challenged on the ground that the appointment of Mr. I.P. Barua was illegal & "ultra vires" as he was not qualified to be appointed a tribunal u/s 7(3) (b), Industrial Disputes Act, 1947, he being over 60 years of age at the time of his appointment. It was also urged that Mr. Barua was neither a High Court Judge, nor a District Judge nor had he occupied those positions at any time before. It was contended that Mr. Barua was not validly constituted as a tribunal. The learned C. J. relying on Article 1482 of Halsbury's Laws of England, Hailsham 2nd Edn. held that the contention that the tribunal was not validly constituted was enough to disentitle the petitioners to relief as both Arts. 226 and 227 contemplated duly constituted authorities including courts and tribunals.

26. The learned C. J. however did not base the decision of his case on this ground as will appear from the following observations:

"Similarly, courts and tribunals contemplated by Article 227 must be courts and tribunals duly constituted and not usurpers of office. On this ground alone, we will be justified in refusing to act under the provisions of Arts. 226 and 227 of the Constitution of India. However, we propose to consider the grounds 1 to 8 on the assumption that the challenge to the validity of the constitution of the tribunal has been abandoned."

Since the observations bearing on the requirements, of Articles 226 and 227 did not form the basis of this decision, these remarks ought to be treated as obiter dicta.

27. I may however point out with great respect that Article 1482 of Halsbury's Laws of England, Hailsham, 2nd Edition on which the learned C. J. relied, does not lend support to the proposition that both Articles 226 and 227 contemplate duly constituted person or authority and courts and tribunals. The Article in question deals only with a writ of certiorari. It does not deal with other writs. Even in regard to writs of certiorari what is laid down in it is that where the proceedings in, the court below are not voidable but absolutely void as where an unauthorised person has purported to act in a judicial capacity, a certiorari will not be granted. Article 1482 may be reproduced to bring out its import. It is as follows:

"Where grounds are made out upon which the court might grant the writ, it will not do so where no benefit could arise from granting it and where the proceedings in the court below are not merely voidable but absolutely void, as where an unauthorised person has purported to act in a judicial capacity or where such proceedings have become void by the operation, of a statute, certiorari shall not be granted."

The learned C. J. on the argument advanced in that case assumed the tribunal as usurper of office, when laying down the proposition on which the learned

Advocate General has now relied. It is true that a certiorari can issue only when a body of persons having legal authority to determine the question of rights of subjects and having the duty to act judicially act in excess of their legal authority (Vide--"R. v. London County Council" 1931 2 KB 215 and according to article 1482 a "certiorari" will not be issued where the proceeding is absolutely void as when an unauthorised person purports to act in judicial capacity. The rule may apply to usurpers of office on whom no authority to act has been conferred. But where authority is conferred, though the individual constituting the tribunal may be disqualified from acting, it may not be said that the disqualified person was not authorised to act or was in any sense a usurper of office. In this case a certain jurisdiction was meant to be conferred on the Minister of Excise by a notification of the Government. The Government had the power to issue that notification. The Minister of Excise on whom jurisdiction was conferred continued to act under that notification for over three years. He was a tribunal constituted by competent authority, even though it was not noticed at the time of appointment that as a member of the Provincial Legislature he was disqualified from functioning as the appellate or revisional authority in revenue cases.

The tribunal constituted by his appointment was not a mere usurper of office though by reason of the fact that the Excise Minister was disqualified from acting by reason of the prohibition contained in Section 296 of the Government of India Act, he acquired no jurisdiction to act in the matter. Article 1482 of Halsbury's Laws of England, Hailsham, 2nd Edition therefore does not appear; to cover such a case. Its operation seems to be limited to usurpers of office or to unauthorised persons who purport to act in a judicial capacity and in regard to the issue of writs of certiorari only. A court or a tribunal though duly constituted, may act without or in excess of jurisdiction, "where the members of the court or any one of them is disqualified to sit" vide--"R. v. Cheltenham Commissioners" 1841 1 QB 467 Basu's Constitution of India (2nd Edition). Certiorari therefore may not be refused on the ground that the Minister of Excise was a usurper of office. All that is urged against him is that he was disqualified from acting as the appellate and the revisional authority by reason of the repugnance of the notification to Section 296, Government of India Act, 1935.

28. I also referred to Article 1482 as justifying a refusal to issue a writ of certiorari where proceedings are absolutely void as where unauthorised persons purport to act in judicial capacity. I pointed out that the award in that case was being challenged as void on the ground that Mr. Barua who constituted the tribunal was disqualified from acting. The allegations made in the petitions were disputed and enquiry into facts was necessary. An action was regarded by me as an appropriate remedy in the circumstances of that case. In my view the decision in-- The State Vs. Ashiruddln Master and Others, may not be regarded as an authority for the proposition that no writ under Article 226 can issue where the individual appointed as a tribunal though appointed by competent authority, is personally disqualified from acting as such.

29. In the present case the orders passed by the Minister of Excise in the exercise of powers which the impugned notification purported to confer on him were wholly void. It is necessary that these orders should be set aside in order that the appellants may have the appeals disposed. They can be quashed even if they are treated as orders of an administrative authority. These orders which are liable to be quashed, serve as an impediment to the disposal of appeals which still remain to be disposed of. The petitioners have got no other remedy, effective or otherwise, for obtaining disposal of appeals which should be dealt with and disposed of according to law. It is this feature of the case which distinguishes it from--"AIR 1951 Assam 96 (P)", even on facts. Relief therefore under Article 226 may not with any justification be refused. It is therefore ordered that the orders of the Minister of Excise in all the four cases in his capacity as the appellate authority u/s 9, Eastern Bengal and Assam Excise Act 1910, are quashed. The undisposed of appeal shall be disposed of in accordance with law by the appellate authority constituted under Notification No. REX. 184/2/1 dated 15-9-1952. Till the appeals remain undisposed of, this court can grant no relief under Article 226 or Article 227. The petitions are allowed to the extent indicated above. The Rules are made absolute in terms of this order.

Sarjoo Prosad, C.J.

30. I agree.