

(1974) 04 DEL CK 0007

In the Delhi High Court

Masco Private Limited

APPELLANT

Vs

Employees" State Insurance Corporation

RESPONDENT

Date of Decision : 12-04-1974

Acts Referred:

Citation : (1975) 1 LLJ 29

Hon'ble Judges : H.L. Anand, J

Bench : Single Bench

Judgement

H.L. Anand, J.—This appeal u/s 82(2) of the Employees" State Insurance Act, 1948 (hereinafter called "the Act" is directed against the order of the Employees" Insurance Court, Delhi, on a petition u/s 77 of the Act for a direction to the respondent and raises the question as to the construction of Section 45A of the Act, and as to the extent of the power of the Employees" State Insurance Corporation (hereinafter called "the Corporation", to make an ad hoc determination of liability of an employer under the Act.

2. By a petition u/s 77 of the Act, the appellant, an employer within the meaning of the Act, challenged the legality, validity and the correctness of the demand of Rs. 6,950.54 made by the Corporation by notice for the recovery of the amount u/s 73D of the Act which was issued by the Regional Director of the Corporation to the Collector of Delhi seeking its realisation as arrears of land revenue. The petition was grounded on the allegation that the assessment of the contribution made by the Corporation on an ad hoc basis u/s 45A of the Act was not permissible in law because the appellant had requested the Corporation on a number of occasions to inspect the records of the appellant but that the officials of the Corporation declined to inspect the relevant records. It was further alleged that in determining the liability of the appellant u/s 45A of the Act, the Corporation had ignored the principle of natural justice inasmuch as no proper hearing had been given to the appellant before making the determination. It was further contended that the determination of the contribution was not based on the provisions of the Act and in making the determination, the Corporation had

ignored the total wages paid during the period of the notice by the appellant to its employees. The basis on which the assessment was made was also challenged as being contrary to proper accounting. The petition was resisted on behalf of the Corporation and on the pleadings of the parties, the Employees' Insurance Court framed the following two issues:

1. What amount is payable by the petitioner as the employees' and employer's special contribution for the period in question ?

2. Relief.

At the trial of the petition before the Court below, both oral and documentary evidence was led on behalf of the parties.

3. The appellant examined M.L. Malhotra, managing director of the appellant, who stated that he had received the notice Ext. P1 from the Corporation which was replied to by a letter, of which Ext. P2 was the copy, vide Ext. P3 which was the certificate of posting and no reply had been received by the appellant from the Corporation. He further stated that Shri Sehgal, Inspector of the Corporation, visited the factory on July, 11, 1968, and checked all the records and all the details with respect of the contribution to be made by the appellant had been mentioned to him in reply, copy of which was Ext. P2. He further stated that he had brought with him all the books of account for the period July, 1, 1967 to June 30, 1968 along with attendance register for the period April, 1967 to October, 1968. The attendance register was marked as Ext. P4. He further stated that this register was inspected by Mr. P.N. Malhotra, Inspector of the Corporation, who had signed register at place marked "X" in the presence of the witness. He further stated that Mr. Sehgal, Inspector of the Corporation, had also signed the register at place marked "Y" and that the appellant's letter was admitted in the Corporation's letter which was marked as Ext. P5. He further stated that he had brought with him the wage register in Court and according to his calculation, the employees contribution payable by the appellant for the disputed period came to Rs. 627.40 and a similar amount was payable as the employer's special contribution. In cross-examination, he stated that he had brought wage register but could not say as to how many employees were employed in the company in October, 1967. He added that there may be 24 or 25 at that time but that in the wage register only 11 were shown to be in employment in October, 1967. He further added that there was no other wage register for that period and that he had not brought the ledger or cash book of the company in respect of the period in dispute nor he had brought the inspection book of the Inspector for the year 1967-68. He added that he did not remember as to how many employees the petitioner-company had in any of the months in dispute but added that in the attendance register, a total of 14 employees were shown as in employment in the month of November, 1967, but in the wage register, only 7 were shown for the month and that in the month of October, 1967, 23 employees were shown in the attendance register while the number in respect of December, 1967, was only 10 while the corresponding

entries in the wages register showed only 4 employees. He admitted that the wages register had not been signed by any officer or the accountant of the company on the foot, although they may have had an accountant in the employment of the company in 1967. He further stated that in April, 1968, in the pay-bill and acquaintance roll only 3 persons were shown whereas in the attendance register 5 employees were shown. The register was produced in Court and was marked as "A". He was, however, unable to say on a reference to the register, as to how many persons signed and thumb-marked in token of receipt of their wages for the month of February 1968, He also produced the wages register which was marked as "B".

4. The Corporation produced two witnesses, R.W. 1, C.L. Sehgal, Inspector and R. W. 2, T.N. Sharna, another Inspector. R. W. 1 stated in the course of his evidence that he went to inspect the records of the appellant on November 3, 1967 and July 17, 1968 and produced the two reports which were marked as Ext. R1 and Ext. R2. He further stated that the manufacturing process was being carried on by power. In cross-examination he stated that on the day of the inspection he found workers working in the factory. Eight workers were working in the factory according to the attendance register. He, however, corrected himself and stated that the attendance register was not produced but he found 8 workers working in the factory. He further stated that one accountant was available on the spot when he inspected the factory and that he checked the wages register, attendance register and the ledger. He further stated that he had checked the registers and found them correct and initialed them. He was, however, unable to give the names of the workers found working in the factory. He added that on November 3, 1967, all other documents except ledger were produced before him and that he only saw the wages and attendance register and they were found to be correct and that he initialed the registers on the said day. He added that on July 17, 1967, he inspected the ledger and on that day, the managing director of the appellant was also present and had been informed of the defects and the amount of arrears orally but no written intimation in that respect was given by him to the appellant. He identified his signatures on Ext. P4 which was marked as Ext. P4/1. R. W. 2, the other Inspector stated in the course of his evidence that letters Ext. R.W. 2/1 to Ext. R.W. 2/5 were issued to the appellant by the Corporation under the signature of D.N. Sehgal, Assistant Regional Director. In cross examination, he stated that he was unable to say whether these letters were served on the appellant but added that they were sent under registered covers and they were not received undelivered. He was, however, unable to produce the postal receipts. He further stated that the basis of the calculation of the dues claimed from the appellant were the records of the employer including wages register, vouchers, cash book and ledger and added that in cases where other records were not available, the Corporation had to resort to ad hoc calculation authorised by the provisions of the Act and Government of India's notification issued in that behalf. He, however, admitted that he had never inspected the ledger of the appellant and added that the

assessment of contribution in the case had to be made on an ad hoc basis as the ledgers were not produced.

5. As regards the documents, Ext. P1 is a communication of October 29, 1968, from the Regional Director of the Corporation to the Collector of Delhi requesting the Collector to make recovery of a sum of Rs. 2,265-65 from the appellant on account of arrears due under the Act in respect of the period in dispute which the appellant had failed to pay in spite of notice of demand in that behalf. Exhibit P2 purports to be a copy of the appellant's letter to the Regional Director with reference to the Regional Director's letter of October 29, 1968, and of an earlier communication from the Regional Director of August 22, 1968, in course of which the correctness of the assessment and the liability of the appellant was denied and an alternative mode of assessment was suggested. Exhibit P3 is the certificate of posting in respect of this letter, Ext. P4 is the wages register and Ext. P5 is the Corporation's letter to the appellant by which it is confirmed that the appellant's establishment would not be covered under the Act with effect from November 1, 1968, but the appellant was advised to submit the necessary return and records in respect of the earlier periods. Exhibit P1 is the report of Mr. Sehgal, Inspector, dated November 3, 1967, which, inter alia, mentions that the ledger was incomplete and that the attendance register was not produced before him. Exhibit R2 is the report of Mr. Sehgal of July 17, 1968, to the Regional Director in course of which while referring to the inspection of the records of the appellant, it was stated that only ledger of the year 1966-67, was produced that wage rolls pertaining to April to June, 1966, for which inspection was pending was again not produced and Inspector was told that the same were not readily available. The report further added that on a perusal of the ledger, it had been observed that the entries were made in such a way that neither it was possible to tally wages rolls nor the exact amount of wages for each month could be worked out satisfactorily. It was further stated that the wages mentioned in the ledger were inclusive of over-time and production bonus paid to the workers from time to time over and above the ordinary wages and that the only workable solution to finalize the actual claim of the employer's special contribution and the employees' contribution was that the Corporation may take into account the total wages referred to in the ledger from April, 1966 to March, 1967, which was stated to be of the order of Rs. 29,029 27. It was further added that in addition to the above, a sum of Rs. 10,813.79 had been shown as wages at the end of the year, i.e., March 31, 1967, by showing transfer entry of advance which had been transferred to the wages account of March, 1967. It was further stated in the report that it had been explained to the employer that this amount would be taken into account for the purpose of determining the contribution but the employer protested and explained that the amount was advanced to workers and could not be recovered from them at the proper time. It was further suggested in the report that the total wage for the period April, 1966 to March, 1967, be taken into account for the purpose of determination of the dues under the Act and the Regional Director was requested to finalise the claim on the total amount of Rs.

29,029-27 for the period April, 1966 to March, 1967 in supersession of the amount of wages and over-time reported in the earlier report of November 3, 1967, pertaining to the period II/66 to I/67, It was further added that so far as the period II/67 and III/67 was concerned, the employer did not produce the ledger but promised to produce the ledger from April, 1967, onward.

6. Exhibit R.W. 2/1, Ext. R.W.2/2 and Ext. R.W. 2/3 are cyclostyled notices from the Corporation to the appellant in respect of production of ledger and other records as also claim for the amount in dispute while Ext. R.W. 2/4 is a copy of Ext. P1, the claim sent to the Collector, Exhibit R.W. 2/5 is another cyclostyled notice claiming the total sum of Rs. 2184. 89.

7. By an order under appeal, the Employees" Insurance Court came to the conclusion that the appellant had failed to produce the necessary records or to maintain the records required by law and the statement made by P.W. 1 did not inspire confidence and that the Corporation was in the circumstances ,justified in making an ad hoc determination of the amount due under the Act by way of special contribution and the employees" contribution and it was justified in referring the same for the recovery to the Collector.

8. This it how the Employees" Insurance Court put this conclusion:

It cannot be said that the petitioner has maintained any proper registers as required under the law and consequently it follows that absolutely no reliance can be placed upon these registers even if they have been produced and shown to the Inspector of the Corporation. The Inspector of the Corporation Shri T.N. Sharma has been examined as R.W. 2 and he has stated that letters Ext. R.W. 2/1 to Ext. R.W. 2/5 were issued by the respondent-Corporation and he has further stated that they have not been received back undelivered. As regards the basis of calculation of the dues it is stated by him that it was records of the employers including wages register, vouchers, cash book and ledgers and in case where these records were not produced the Corporation has to stick to ad hoc calculations authorised by the provisions of the Act and the notification of Government of India issued in this behalf. It is finally stated that the assessment of contributions in the case had to be resorted to on ad hoc basis as ledgers were not produced. Nothing has been brought out during his cross-examination to believe his statement-in-chief. From, whichever angle the matter may be considered by me I have come to the conclusion that the respondent-Corporation was well within its rights to compute the employers special contribution and employees contribution on ad hoc basis in accordance with the provisions of E.S.I. Act read with the appropriate notification of Government of India in this behalf and that the petitioner cannot now for his own conduct challenge the right of the respondent to resort to ad hoc calculations of the contributions. Once this conclusion is arrived at it follows that it cannot be said that the amount sought to be recovered by the respondent as employers special contribution and employees contribution through the Collector were not correct or were illegal, arbitrary or unwarranted and consequently I hold that the petitioner is liable to pay and

respondent is entitled to recover the amount sought to be recovered by it through the letter sent to the Collector on 29th October, 1968, and decide this issue accordingly.

9. Mr. D.K. Kapur, counsel for the appellant, assailed the judgment of the Court below on the ground that the finding recorded by the Court as to the correctness, validity and legality of the claim of the respondent was based on a misconstruction of the provisions of Section 45A of the Act, that the Court below in any event should not have stopped at the finding that the Corporation was entitled to make an ad hoc determination but should have proceeded to determine on the material placed before it as to the amount which was payable by the appellant in terms of issue No. 1 which was struck by the Court on the pleadings of the parties as to what amount was payable by the appellant as the employer's special contribution and employees' contribution for the period in question and also criticised the finding of the Court below that the appellant had not placed the necessary records before the Corporation or that the records of the appellant could not be relied upon for the purpose of determining the amount payable by the appellant under the Act.

10. Mr. C.M. Oberoi, learned Counsel for the respondent on the other hand, sought to justify the order of the Court below and particularly its finding that in the circumstances in which the determination was made by the Corporation, it could not be said that such determination was not justified by the terms of the provisions of Section 45A of the Act. He further justified the determination as being on the basis of the formula evolved by the Central Government for the determination of the amount payable by way of special contribution and the employees' contribution on an ad hoc basis where the records of the employers were either not available or were otherwise unreliable.

11. The first question that, Therefore, requires consideration is as to whether, having regard to its true meaning and correct interpretation, the resort by the Corporation to the provisions of Section 45A of the Act for the purpose of an ad hoc determination of the special contribution and the employees contribution payable by the appellant was justified on the facts and circumstances of this case.

Section 45 A of the Act is in the following terms:

45 A. (1) Where in respect of a factory or establishment no returns, particulars, registers or records are submitted, furnished or maintained in accordance with the provisions of Section 44 or any Inspector or other official of the Corporation referred to in Sub-section (2) of Section 45 is obstructed by the principal or immediate employer or any other person, in exercising his functions or discharging his duties u/s 45, the Corporation may, on the basis of information available to it, by order, determine the amount of contributions payable in respect of the employees of that factory or establishment.

(2) An order made by the Corporation under Sub-section (1) shall be sufficient proof of the claim of the Corporation u/s 75 or for recovery of the amount

determined by such order as an arrear of land revenue u/s 45B.

Section 45 A of the Act was inserted in the parent Act by Section 17 of Act 44 of 1966 and appears at the end of Chapter IV of the Act which deals with contributions. Section 38 appearing in this Chapter provides that all employees shall be insured in the manner provided by the Act. Section 39 provides that the contribution payable under this Act in respect of an employee shall comprise contribution payable by the employer and contribution payable by the employee both of which are made payable to the Corporation. It further provides that the contribution shall be paid at the rates specified in the First Schedule to the Act. Section 41 deals with recovery of contribution from immediate employer. Section 42 contains general provisions as to payment of contribution and Section 43 lays down the method of payment of contribution. Section 44 provides for furnishing of returns and maintenance of registers by the principal and immediate employer and Section 45 authorises the Corporation to appoint Inspectors, and sets out their functions and duties. Section 45A with which we are concerned, provides that, where in respect of a factory or establishment no returns, particulars, registers or records are submitted, furnished or maintained in accordance with the provisions of Section 44 or any Inspector or other official of the Corporation referred to in Sub-section (2) of Section 45 is obstructed by the principal or immediate employer or any other person in exercising his functions or discharging his duties under S."45, the Corporation may, on the basis of information available to it, by order, determine the amount of contributions payable in respect of the employees of that factory or establishment and Sub-section (2) of this section provides that an order made by the Corporation under Sub-section (1) shall be sufficient proof of the claim of the Corporation u/s 75 or for recovery of the amount determined by such order as an arrear of land revenue u/s 45B. A reference to the First Schedule indicates that the employees" and employer"s contribution are payable in relation to the average daily wages of an employee and the term "average daily wages" is defined in para, 2 of the First Schedule in the following manner:

2. The average daily wages shall be- (a) In respect of an employee who is employed on time-rate basis, the amount of wages which would have been payable to him for the complete wage period had he worked on all the working days in that wage period, divided by 26 if he is monthly rated, 13 if he is fortnightly rated, 6 if he is weekly rated and 1 if he is daily rated:

(b) in respect of an employee employed on any other basis, the amount of wages earned during the first complete wage period in the contribution period divided by the number of days in full or part for which he worked for wages in that wage period:

provided that where an employee receives wages without working on any day during such wage period, he shall be deemed to have worked for 26, 13, 6 or 1 days or day if the wage period be a month, a fortnight, a week or a day respectively.

12. The First Schedule also gives a table Which shows the employees" and employers" contribution in relation to the various average daily wages.

13. It thus appears that the employer"s and the employees" contribution had to be determined on the basis of the average daily wages of the employees and is to be ascertained from the returns to be filed by the principal and the immediate employer and failing that from the information and particulars that may be made available by the employer pursuant to requisition of the Corporation under Sub-section (2) of Sections 44 and 45 of the Act. Section 45A, Therefore, appears to be an exception to the normal method of computation of the employees" and employer"s contribution when it provides that where no returns, particulars, registers or records are submitted, furnished or maintained in accordance with the provisions of Section 44 or an Inspector or other official of the Corporation, who is authorised to inspect the records for the purpose of carrying out his functions and duties, is obstructed by the principal or immediate employer then in that case, and that alone, the Corporation may instead of determining the contribution payable in terms of the First Schedule of the provisions of Section 38 onwards of the Act may determine the amount "on the basis of information available to it " by an order which then is considered by virtue of Sub-section (2) of that section a sufficient proof of the claim of the Corporation u/s 75 or for recovery of the amount as arrears of land revenue u/s 45B of the Act. A valid determination of the contribution payable u/s 45A of the Act, Therefore, must satisfy three conditions:

(a) either the establishment has not submitted, furnished or maintained in accordance with the provisions of Section 44 of the Act, returns, particulars, registers or records or the Inspector or other official of the Corporation referred to in Sub-section (2) of Section 45 was obstructed by the principal or immediate employer in exercising his functions or discharging duties u/s 45 of the Act;

(b) the determination must be based on information available to the Corporation ; and

(c) the determination must be made by an order.

14. The material on the record does not justify the conclusion that the first condition was satisfied in the present case.

15. According to the allegations made by the Corporation, the particulars sought from the appellant by notices copies of which are Ext. R.W.2/1, Ext, R.W.2/2. Ext. R.W. 2/3 and Ext. R.W.2/5 were not furnished by the appellant although these were sent to the appellant by registered post and they were not returned to the Corporation undelivered. The further allegation is that when the Inspector of the Corporation went for inspection, some of the records maintained by the appellant were not produced while those that were produced were either not complete or it was otherwise not possible for the Inspector to determine the precise average wage being paid or as to the number of employees. The finding that the Employees" Insurance Court returned, however, is that Some records

were maintained but there were some discrepancies in these records and the Court held that no reliance could be placed on these records and returned a finding that it could not be said that the appellant had maintained any proper registers, as required by law. It further came to the conclusion that the resort to Section 45A of the Act was, Therefore, justified.

16. There is, however, nothing on the record which may indicate if the returns required by Section 44 were filed or not.

17. Assuming, however, that the particulars required from the appellant were not furnished by the appellant and the ledger was not produced when the Inspector came to the premises for inspection, and some of the other records maintained and produced by the appellant Contained discrepancies or were otherwise incomplete or did not conform to the norms laid down under the Act or it was otherwise not possible for the Inspector to determine the amount payable on the basis of the entries made in them, could it be said that the appellant did Wet Submit, furnish or maintain any returns, particulars, registers or records within the meaning of Section 45A of the Act so as to entitle the Corporation to proceed with the determination of the amount payable on an ad hoc basis.

18. Learned counsel for the respondent vehemently contended that if an employer failed to submit either a return or failed to submit, furnish any particulars or to maintain any register or record or even if these were submitted, furnished or maintained but such returns, particulars, registers or return or any of these did not conform or the norms laid down under the Act or were found, on inspection, to be incorrect or false or were not regularly maintained, the first condition would be satisfied and the Corporation would be entitled to invoke the provisions of Section 45A of the Act.

19. It appears to me that his Contention is unsustainable and the interpretation sought to be placed on the provisions of Section 45A of the Act on behalf of the Corporation would not be justified either by the plain language of the section or with reference to the intention sought to be achieved by the addition of this section to the parent Act. The normal method for the determination of the contribution is laid down in Section 39(2) of the Act read with First Schedule to it and such determination has to be based on the returns to be filed by the employer pursuant to Section 44 of the Act or where the returns were not submitted then on the basis of particulars that may be furnished by the employer pursuant to the direction under Sub-section (2) of that section or of the records or registers required to be maintained by the employer pursuant to Sub-section (3) of Section 44 of the Act. A perusal of these provisions makes it abundantly clear that the determination of the contributions has to be made on the basis of an objective standard. Section 45A provides for an exception and deals with a situation in which none of the records provided in the various other provisions of the Act are available to the Corporation and lays down an extraordinary procedure for the determination of contribution on the basis of material that may be available with the Corporation in the absence of any returns, particulars,

registers or records. Resort to Section 45A would be possible only if neither of the three sources for normal determination of contributions are available because in such a case, the Corporation would have no option but to determine the contribution on the material available to it. If, however, one of the three sources namely, returns, particulars, registers or records are available, it would not necessarily make the determination on the normal method impracticable or difficult. The difficulty arises only when there is a total absence of data. The use of the expression "or" between the words "registers" and "records" and between the words "furnished" and "maintained" in the first part of the section, on which reliance was placed on behalf of the Corporation for the interpretation canvassed on its behalf, appears to be inappropriate because the use of the word "or" was not intended to convey that the failure either to submit a return or to furnish particulars or to maintain registers or records would attract the provisions of Section 45A, of the Act. The use of the word "or" between the words "registers" and "records" is attributable to the fact that the terms "registers or records" have been used in Sub-section (3) of Section 44 and it is for this reason that the expression has been carried in Section 45A of the Act and it is not possible to read the word "or" between the expression "returns" and "particulars" so that the non-submission, etc., of any of these may attract the provision of the section. Similarly, the word "or" is used between the words "furnished" and "maintained" because while the word "submitted" qualifies "returns", "furnished" qualifies "particulars" and the word "maintained" qualifies "registers or records" and not because it was intended to convey that failure to act in relation to any of these requirements would attract the provision. The use of the expression "no" between the words "establishment" and "returns" clearly indicates that the provisions of Section 45A would be attracted only if none of the requirements were satisfied. To hold it otherwise would amount to converting Section 45A into a penal provision, as it were, intended to punish defaults either in submitting the returns or in furnishing particulars or in maintaining registers or records which clearly was not intended by the said provision because penal provisions are contained in Section 85 of the Act which, inter alia, provides that if any person failed or refused to submit any return or makes a false return, he would be liable to punishment which may extend to three months. Section 45A on the other hand was merely intended to lay down an alternative method for determination in case no material was made available by the employer to the Corporation and the only reasonable way, therefore, would be to hold that the first condition of Section 45A of the Act would be satisfied only if the employer neither submitted the returns nor furnished the particulars nor maintained the registers or records required by law. It is equally difficult to hold that even after these returns, particulars, registers or records were submitted, furnished or maintained but did not conform strictly to the norms or were incorrect or incomplete or mere discrepant or were otherwise unreliable, the first condition of Section 45A of the Act would still be attracted. Such an interpretation is also unjustified on the language of the section and it is not possible to read into the provisions the word which do not occur in it. The interpretation sought to be placed on the first part

of the section on behalf of the Corporation is, Therefore, not possible without committing considerable violence to the language in which the section is couched, which is clearly not permissible.

20. As far as the second alternative of the first condition, the question would be whether on the material available it could be said that when the Inspector went for inspection and while various records were shown to him, the ledger was not produced on the ground that it was not readily available, and when the ledger was not produced in spite of a written requisition could it be said that the employer was thereby obstructing the Inspector in exercising his functions or discharging his duties u/s 45 of the Act, within the meaning of Section 45A of the Act so as to entitle the Corporation to resort to its provisions and make determination on an ad hoc basis.

21. Learned counsel for the Corporation vehemently contended that the expression "obstructed" must be given a wide connotation so as to include within its ambit even a mere failure on the part of the employer to produce any record or to comply with any other requisition or direction made u/s 45(2) of the Act. Learned counsel for the appellant, however, contended that having regard to the true meaning of the term "obstruction" it must be held that it was intended to be used in its narrow sense of a physical obstruction to the Inspector in exercising his functions or discharging his duties.

22. For the purpose of construing the terra "obstructed" it would be necessary to refer to the provisions of Section 45 of the Act which provides for appointment of Inspectors, their functions and their duties. Section 45 is in the following terms:

45. (1) The Corporation may appoint such persons as Inspectors, as it thinks fit, for the purposes of this Act, within such local limits as it may assign to them.

(2) Any Inspector appointed by the Corporation under Sub-section (1) (hereinafter referred to as Inspector), or other official of the Corporation authorized in this behalf by it, may for the purposes of enquiring into the correctness of any of the particulars stated in any return referred to in Section 44 or for the purpose of ascertaining whether any of the provisions of this Act has been complied with-

(a) require any principal or immediate employer to furnish to him such information as he may consider necessary for the purposes of this Act; or

(b) at any reasonable time enter any office, establishment, factory or other premises occupied by such principal or immediate employer and require any person found in charge thereof to produce to such Inspector or other official and allow him to examine such accounts, books and other documents relating to the employment of persons and payment of wages or to furnish to him such information as he may consider necessary; or

(c) examine, with respect to any matter relevant to the purposes aforesaid, the principal or immediate employer, his agent or servant, or, any person found in

such factory, establishment, office or other premises, or any person whom the said Inspector or other official has reasonable cause to believe to be or to have been an employee;

(d) make copies of, or take extracts from, any register, account book or other document maintained in such factory, establishment, office or other premises;

(e) exercise such other powers as may be prescribed.

(3) An Inspector shall exercise such functions and perform such duties as may be authorized by the Corporation or as may be specified in the regulations.

23. It is clear from the provisions of Section 45 that it was intended to provide for the appointment of Inspectors who may inter alia, seek information, enter the establishment for inspection, examine books of accounts and other records, examine the employer or any of his officers, make copies of the records maintained by the employer for the purpose of verifying the correctness of any particulars that may have been set out in any returns or otherwise for the purpose of ascertaining whether any of the provisions of the Act had been complied with.

24. There was considerable controversy before me with regard to the ordinary dictionary meaning of the term "obstruction" and the manner in which the term had been judicially construed and it would be useful at this stage to refer to the various meanings of the terms and to the decisions cited at the Bar in that behalf.

25. According to Chambers's Dictionary, 1969 edition, "obstruct" means to block up, to shut off, to hinder from passing or progressing. According to Shorter Oxford English Dictionary, the term "obstruct" means to block, to interrupt, to impede, hinder, to stand in the way of or persistently appose the progress or course of proceedings. According to Stroud's Judicial Dictionary, third edition, volume 3, the term has various meanings depending on the context in which the term was used. According to one of these meanings, the act of a workman in going away to some unknown place without giving any intimation and thereby making medical examination of the workman impossible, amounted to obstruction to the medical examination in terms of the phrase used in the Workmen's Compensation Act, 1897 F D 42 S.L.R. 192 According to another meaning, an act to warn a person to be on guard against committing an offence, e.g., to warn a motorist of a trap set by the police to catch him driving at excessive speed did not amount to willfully obstructing a constable in the execution of his duty within the meaning of the term used in Section 2 of the Prevention of Crimes Amendment Act, 1885, (now Police Act, 1964), *Pastable v. Little* [1907] 1 K.B. 59. Where, however, the warning was given not merely to prevent the commission of the offence but to a person who was committing it and with a view to prevent him from going on excessive speed over a measured distance or trap set by the police, it was held that such an act caused willful obstruction within the meaning of the above section *Betts v. Stevens* [1910] 1 K.B. 1. According to another meaning, obstruction was not confined to physical

obstruction and included anything which made it more difficult for the police to carry out their duties, *Sykes v. Directors of Public Prosecutions* [1962] A.C. 528 and *Hinchcliffe v. Sheldon* [1955] 1 W. L. R. 1207. According to yet another meaning, refusal to answer questions put by the police or to accompany them to the police station, unless arrested, did not amount to obstructing the police within the meaning of Section 51(3) of the Police Act, [1964] *Rice v. Connolly*, 1966 2 Q.B. 414. According to yet another meaning, physical contact was not necessary to constitute obstruction, *Jobling v. Black town Municipal Council* [1969] 17 L.G.R.A.

26. In *Emperor v. Suleman Abba* AIR 1935 Bom. 24, it was held relying on *Betts v. Stevens* [1910] 1 K.B. 1, that where a person in order to evade payment of toll, drove a motor bus on a side track before reaching the toll bar and did not stop the bus to pay the toll although signaled to do so, he prevented the toll contractor or his servant from collecting the dues under the provisions of the Tolls on Roads and Bridges Act, and thus, obstructed him in the discharge of his duty within the meaning of Section 186 of the Indian Penal Code. In the English case referred to above, the question was whether the accused who had warned the drivers of cars when the police constables were observing and timing the speed of the cars driven along a certain road with a view to prosecution of drivers if they were traveling at an illegal speed and thereby the drivers slackened to the speed amounted to willful obstruction to the constables in the execution of their duties within the meaning of Crimes Amendment Act and it was held that the intention of the accused was to interfere with or prevent the policemen in the discharge of duties and amounted to obstruction.

27. In a number of other cases, the terms "intentionally obstructs" and "voluntarily obstructs" used in Sections 184 and 186 of the Indian Penal Code came up for consideration and the preponderance of judicial authority seems to be in favor of the view that the term "obstruction" meant actual obstruction, that is, actual resistance or obstacle put in the way of a public servant and implies the use of criminal force and mere threat or threatening language or mere abuse were not sufficient and mere passive conduct or mere failure to comply with a lawful direction did not amount to obstruction. In the case of *Gapal Rai* (1904) P.R. No. 7 of 1905, the former Chief Court of Punjab held that there must be something physical to constitute obstruction. This view, however, had been dissented from by the Nagpur High Court in the case of *Prov. Govt., C. P. & Berar Balaram* (1939) Nag. 139, where it was held that no physical obstruction was necessary and that the use of abusive language by a person on an action sale conducted by a public servant made him liable u/s 184 of the Indian Penal Code. In the case of *Sommanna*, (1892) 15 Mad 221, and of *Pandlik Krishna Pal* [1904] 6 Bom. L.R. 254, the term "voluntarily obstructs" appearing in Section 186 of the Indian Penal Code was held as indicating the commission of some overt act of obstruction and was not intended to render penal a mere passive conduct. In the case of *Darken* (1928) Lah 827, a similar view was taken and it was held that the word implied the use of criminal force and mere threat

or threatening language was not sufficient. To the same effect was the decision in the case of Soora-parazu Singayya, (1894) 1 Weir 621. Allahabad High Court, however, in the case of Nanhua Vs. Emperor, held that it was not confined to physical obstruction and mere threat or threatening language was sufficient to constitute an offence u/s 186 of the Indian penal Code. In some cases, however, the view was taken that the threat or the use of threatening language would amount to obstruction if it was made by a person holding an offensive weapon 1933 A.L.J.R. 952 : 34 Cr. L.J. 1211 : 1933 All. 759 : (1939) 60 Cal. 149. In the case of State Vs. Babulal Gaurishanker Misar and Others, , it was held that to constitute obstruction it was not necessary that there should be actual criminal force and that it was sufficient if there was either a show of force or a threat or any act preventing the execution of the process of the civil Court. Where, however, the defendant shut the doors and did not permit the Commissioner who went to the house for search under the orders of a Court, it was held that the defendant committed no offence u/s 186, Sommanan, (1892) 15 Mad 221.

28. In Brightman and Company v. Bunge Y. Born Limitada Sociedad [1924] 2 K.B. 619, it was held that the dilatory scheme of the railway company's servants did not amount to obstruction.

29. In Pattanathan AIR 1937 Mad. 208, it was held that a mere evasion or disobedience to a lawful order did not amount to an obstruction to the officer who issued the order and that the obstruction implied some actual resistance offered to the public servant in the discharge of his duties. The Court was considering the question whether mere failure to stop when asked to stop by the Customs Officer amounted to "obstruction" within the meaning of Section 167(78) of Sea Customs Act (8 of 1878), and was replied in the negative.

30. It thus appears that the ordinary dictionary meaning of the term "obstruct" or "obstruction," would connote a physical obstacle, resistance or hindrance. A wider meaning has been given to the term in some of the cases but the preponderance of judicial opinion appears to be in favor of the view that the term "obstruct" or "obstruction" would be confined either to physical obstacle or obstruction or use of force or threat or threatened use of force but would not include mere passive act or a failure to comply with the lawful direction.

31. On a review of these decisions, it further appears that it is not possible to spell out of these decisions a meaning of the term which may be of universal application because the true meaning of the term must have its colour from the context in which the expressions are used and it appears to me that having regard to the context in the present case, it could not be said that the term "obstructed" was intended to have been used in the wider sense as was contended on behalf of the Corporation, and it would be consistent with the context in the present case if it is held that the term "obstructed" had been used in a narrow sense of an actual physical resistance, use of force or threatened use of force and was in any event not intended to bring within its ambit a mere passive act or conduct or failure to produce a ledger or to furnish any particulars

which may be required of an employer or to comply with "any other direction made by the authority under the Act. As has been pointed out above, Sub-section (1) of Section 45A of the Act provides that either of the two conditions must be satisfied before the Corporation could make a determination on an ad hoc basis. Such a determination could be made either if no returns, particulars, registers or records are submitted, furnished or maintained in accordance with the provisions of Section 44 of the Act or any Inspector or other official of the Corporation referred to in Sub-section (2) of Section 45A was obstructed in exercising his functions and discharging his duties u/s 45 of the Act. Sub-section (2) of Section 45 of the Act empowers any Inspector or other official of the Corporation specially authorized for the purpose to exercise certain powers and discharge certain functions set out in Clauses (a) to (e) of the sub-sections for the purpose of enquiring into the correctness of any of the particulars set out in any return referred to in Section 44 or for the purpose of ascertaining whether any of the provisions of the Act had been complied with. These powers and functions include the power to require any employer to furnish any information, to enter any establishment and require any person found therein to produce the accounts and other documents or to furnish any information, to examine the employer, his agent or servant or the employee, to make copies or take extracts from any register, account books maintained in any establishment or factory and generally to exercise such other powers as may be prescribed. It has been noticed above that the application of Section 45A of the Act would depend on if either of the two conditions envisaged by it have been satisfied. One of these conditions relates to the submission, furnishing or maintenance of returns, particulars, registers or records as the case may be and would, Therefore, include the particulars or information which the official of the Corporation may require an employer to furnish by virtue of the authority conferred on him by Sub-section (2) of Section 45 of the Act. It would also include the requisition under the said sub-section to examine any employer or employee, It, however, appears that of the two conditions envisaged in Sub-section (1) of Section 45A of the Act for the application of that section, one relates to the failure to submit, furnish, or maintain returns, particulars, registers or records as required by Section 44 of the Act and the other relates to the obstruction to any officer in exercising his functions or discharging his duties u/s 45 of the Act. While Section 44 obliges an employer to submit such returns as may be prescribed and where returns had not been filed to furnish such particulars as the Corporation may requisition and to maintain certain registers or records, Section 45 empowers the Inspector or any other officer specially authorized. In that behalf to require an employer to furnish information, to enter any office or establishment, to produce records to examine the employer or any employee, to make copies of or take extracts from the records and to exercise other powers as may be prescribed if such official considers that such a direction is necessary for the purpose of enquiring into the correctness of any of the particulars stated in any returns or for the purpose of ascertaining whether any provisions of the Act had been complied with. The two parts of Sub-section (1) of Section 45A, therefore,

operate in distinct spheres and do not overlap. It further appears that while mere failure to submit, furnish or maintain returns, particulars, registers or records may attract the application of Sub-section (1) of Section 45A of the Act, the other alternative condition requires that the Inspector or the other official must have been obstructed in exercising his functions or discharging his duties u/s 45 of the Act and if the intention of the Legislature by using the expression ""obstructed" was to make the second condition applicable even if there was a mere failure to comply with the direction that may be made by the officer pursuant to his powers" under Sub-section (2) of Section 45 of the Act as distinct from causing a physical obstruction or placing a deliberate hurdle, there was nothing to prevent the Legislature from using in relation to the direction u/s 45 of the Act the same phraseology as was used in relation to the first condition. The only reasonable way to explain the distinguishable phraseology used in the two parts of Sub-section (1) of Section 45A is to construe the expression "obstructed" so as to confine it to cases of physical obstacle, use of force, or threatened use of force and as excluding a mere failure to comply with any direction.

32. It may also be useful to notice that the expression "obstructs" has also been used in Section 85(f) of the Act which makes, among others, an act of obstructing any Inspector or other official of the Corporation in discharge of his duties penal and punishable with imprisonment which may extend to three months and if the term "obstructed" in Section 45A is to be given a wider meaning of a mere failure to comply with the direction, it would not be possible at the same time to give it a narrow meaning for the purpose of Section 85(f) with the result that if the term "obstructed" is given a wide meaning u/s 45A(1) of the Act, the same meaning would have to be attributed to the term "obstructs" in Section 85(f) of the Act so as to make penal a mere failure to comply with any direction. It would also be relevant to notice that while Section 85(e) of the Act makes failure or refusal to submit a return or making of a false return penal, the failure to furnish particulars or information requisitioned by the Inspector or any other official either under Sub-section (2) of Section 44 or Sub-section (2) of Section 45 of the Act is not made penal except in so far as such a non-compliance may amount to the non-compliance with the requirement of the Act or of the rules. In other words, a non-compliance with any direction made by any officer of the Corporation has not been made penal,

33. For all these reasons, I am of the view that the expression ""obstructed" must be construed in its narrow sense so as to confine it to an act of physical obstacle, use of force or threatened use of force, a deliberate hurdle, which may prevent an officer from exercising his functions or discharging his duties and would not include a mere failure to submit an information or to produce any particular books of account and it could not, Therefore, be said that this alternative condition for the application of Section 45A(1) of the Act in this case had been satisfied.

34. In the result, I hold that neither of the two alternatives of the first condition requisite to the application of Sub-section (1) of Section 45A having been satisfied, resort to the said provision for making an ad hoc determination was in excess of power and, Therefore, illegal.

35. The other two conditions for the validity of the determination also do not appear to have been satisfied.

36. In the first instance, the determination u/s 45A(1) of the Act must, according to the terms of the sub-section be made by an "order" and since there are two alternative conditions for the assumption of power in that section, the order must of necessity deal with the question of and satisfaction of one of the said conditions. The order must also set out the basis of the determination because the section envisages that such a determination would be "on the basis of information available to it" and that being so, an order of this type was in the nature of a quasi-judicial order which would have to deal with either of the two conditions, the basis on which the determination is made and the determination itself. In the present case, no order has been placed either before the Employees' Insurance Court, or before me which could be said to be an order within the meaning of Section 45A(1) of the Act and unless such an order had been made and the Employees' Insurance Court was satisfied that such an order had been made and complied with the requirement of law, it could not be said that a valid determination had been made under this section.

37. The third condition for the validity of the determination is that the determination must, in terms of Sub-section (1) 45A of the Act, be made "on the basis of information available" to the Corporation and it appears that this condition could not be said to have been satisfied because admittedly the determination was not made on the basis of information available to the Corporation, that is, the information contained in the various communications from the appellant as also the reports of the Inspectors and the results of their Inspection and the various records but was made on the basis of a formula or a criteria said to have been laid down by the Central Government for the purpose of ad hoc determination of liability. Shri Oberoi, learned Counsel for the Corporation, placed before me a copy of the notification of the Central Government which lays down an abstract formula for the determination of liability u/s 45A of the Act which has no relevance whatever to the actual wage bill of the employer. Such a notification or the criteria or formula laid down by the Central Government could not constitute "information available" to the Corporation within the meaning of the term used in Sub-section (1) of Section 45A of the Act. Such an information must be confined to the information or material that may be available with the Corporation either on the basis of the records of the employer, the particulars and information supplied by the employer from time to time, the result of the inspection by the officials of the Corporation of the records of the employer, the statements of the employer, his employee or the employees concerned but could by no stretch of imagination

include any abstract formula or criteria that the Central Government may evolve for the purpose of ad hoc determination.

38. The determination also suffers from another infirmity. The determination under this section even though it may be necessitated because of the non-co-operative attitude of the employer, nevertheless is an ad hoc determination and by virtue of Sub-section (2) of Section 45A of the Act becomes sufficient proof of the claim of the Corporation u/s 75 and the amount so determined becomes recoverable as arrears of land revenue u/s 45B of the Act. Such a determination, Therefore, has obvious civil consequences for the employer. The proceedings for making such a determination are obviously of a quasi-judicial nature and an order making such a determination would be a quasi-judicial order even though held and made by an administrative or executive authority. The two alternative conditions that must be satisfied before the section is invoked have reference to the conduct of the employer. Under one condition there is a failure on the part of the employer to submit, furnish or maintain any returns, particulars, registers or records as required by provisions of Section 44 of the Act and the failure to submit a return as indeed failure to comply with the various requirements of the Act and the rules has been made penal u/s 85 of the Act. As regards the other condition, it envisaged an obstruction by the employer of an officer of the Corporation which apart from being reprehensible and improper is also made penal u/s 85(f) of the Act. The proceedings for the determination u/s 43A(1) of the Act as indeed an order under that section would, Therefore, of necessity involve a finding of the satisfaction of either of the two conditions. The satisfaction of either of the conditions involves a question of fact in the one case whether there has been any failure to submit, furnish or maintain the returns, particulars, registers or records and in the other where the employer caused any obstruction to the officer of the Corporation. Having regard, Therefore, to the nature of the proceedings and of the order and its civil consequences, it is imperative that the compliance with the principles of natural justice is insisted upon because I am not prepared to concede to the Corporation, the authority to make ex parte determination creating civil liability which can be enforced by the coercive machinery provided under the Land Revenue Act and involve the finding of facts which would also render the employer liable to prosecution. It is, Therefore, imperative that in such proceedings before an order is made, the employer is given a reasonable opportunity of being heard even though the section in terms does not provide any such opportunity and the employer may have a limited protection against the vagaries of the Corporation in invoking the provisions of Section 77 of the Act.

39. It may be useful to consider some of the decisions having a bearing on the question as to the nature of proceedings to which the principle of natural justice could be applied.

40. In the case of A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , the Supreme Court observed (at page 154):

The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. Under our Constitution the rule of law pervades over the entire field of administration. Every organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power.

41. In the aforesaid case, Hegde, J., as he then was, and who spoke for the Court, quoted with approval the following observations of Lord Parker, C.J., in *Regina v. Criminal Injuries Compensation Board; ex-parte Laine* [1967] 2 Q.B. 864:

With regard to Mr. Bridge's second point I cannot think that Atkin, L.J., intended to confine his principle to cases in which the determination affected rights in the sense of enforceable rights. Indeed, in the *Electricity Commissioners* case, the rights determined were at any rate not immediately enforceable rights since the scheme laid down by the Commissioners had to be approved by the Minister of Transport and by resolutions of Parliament. The Commissioners nevertheless were held amenable to the jurisdiction of this Court. Moreover, as can be seen from *Rex v. Postmaster General, Ex-parte Carmichael* [1928] 1 K.B. 291, and *Rex v. Boycott; Ex-parte Keasley* [1939] 2 K.B. 651, the remedy is available even though the decision is merely a step as a result of which legally enforceable rights may be affected.

The position as I see it is that the exact limits of the ancient remedy by way of certiorari have never been and ought not to be specifically defined. They have varied from time to time being extended to meet changing conditions. At one time the writ only went to an inferior court. Later its ambit was extended to statutory tribunals determining a lis inter parties. Later again it extended to cases where there was no lis in the strict sense of the word but where immediate or subsequent rights of a citizen were affected. The only constant limits throughout were that it was performing a public duty. Private or domestic tribunals have always been outside the scope of certiorari since their authority is

derived solely from contract, that is, from the agreement of the parties concerned.

Finally, it is to be observed that the remedy has now been extended, see *Reg. v. Manchester Legal Aid Committee ; Ex-parte R, A. Brand & Co. Ltd.* [1952] 2 Q.B. 313, to cases in which the decision of an administrative officer is only arrived at after an inquiry or process of a judicial or quasi-judicial character. In such a case this Court has jurisdiction to supervise that process.

We have as it seems to me reached the position when the ambit of certiorari can be said to cover every case in which a body of persons of a public as opposed to a purely private or domestic character has to determine matters affecting subjects provided always that it has a duty to act judicially. Looked at in this way the board in my judgment comes fairly and squarely, within the jurisdiction of this Court. It is, as Mr. Bridge said, "a servant of the Crown charged by the Crown, by executive instruction, with the duty of distributing the bounty of the Crown". It is clearly, Therefore, performing public duties.

42. In the aforesaid case, the Supreme Court also referred with approval to a decision of the Court of Appeal of New Zealand (a the case of *New Zealand and Dairy Board v. Okita Co-operative Dairy Co. Ltd.* [1953] New Zea Law Rep 366 . An earlier decision of the Supreme Court in the case of *The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others*, , was also referred to wherein it was observed that:

With the increase of the power of the administrative bodies it has become necessary to provide guidelines for the just exercise of their power. To prevent the abuse of that power and to see that it does not become a new despotism, courts are gradually evolving the principles to be observed while exercising such powers. In matters like these, public good is not advanced by a rigid adherence to precedents. New problems call for new solutions. It is neither possible nor desirable to fix the limits of a quasi-judicial power.

43. Later, in the case of *State of Punjab Vs. K.R. Erry and Sobhag Rai Mehta*, , the Supreme Court held that "...Where a body or authority is judicial or where it has (to determine a matter involving rights judicially because of express or implied provision, the principle of natural justice *audi alteram partem* applies". It was further Observed that ...with the proliferation of administrative decisions in the welfare State it is now further recognized by courts both in England and in this country (especially after the decision of House of Lords in *Ridge v. Baldwin* [1963] 2 All E.R. 66, that where a body or authority is characteristically administrative the principle of natural justice is also liable to be invoked if the decision of that body or authority affects individual rights or interest and having regard to the particular situation it would be unfair for the body or authority not to have allowed a reasonable opportunity to be heard. (para. 20).

44. In the case of *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, , it was observed at page 1271 as follows:

...An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and airplay. The deciding authority, it is true is not in the position of a Judge sailed upon to decide an action between contesting parties and strict compliance with the forms of judicial procedure may not be insisted upon. He is, however, under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defense and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, Therefore, arise from the very nature of the function intended to be performed ; it need not be shown to be superadded. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.

45. These observations were made with reference to an authority which could be described as purely administrative. It was further observed at page 1272:

...It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence.

46. In *In re H.K. (An infant)* [1967] Q.B.D. 617, Lord Parker, C.J., observed as follows:

But at the same time, I myself think that even if an immigration officer is not in a judicial or quasi-judicial capacity, he must at any rate give the immigrant an opportunity of satisfying him of the matters in the sub-section, and for that purpose let the immigrant know what his immediate impression is so that the immigrant can disabuse him. That is not, as I see it, a question of acting or being required to act judicially, but of being required to act fairly. Good administration and an honest or bona fide decision must, as it seems to me, require not merely impartiality, nor merely bringing one's mind to bear on the problem, but acting fairly ; and to the limited extent that the circumstances of any particular case allow and within the legislative framework under which the administrator is working, only to that limited extent do the so-called rules of natural justice apply,

which in a case such as this is merely a duty to act fairly. I appreciate that in saying that it any be said that one is going further than is permitted on the decided cases because heretofore at any rate the decisions of the courts do seem to have drawn a strict line in those matters according to whether there is or is not a duty to act judicially or quasi-judicially.

47. In the said case Blain, J., observed as follows:

I would only say that an immigration officer having assumed the jurisdiction granted by those provisions is in a position where it is his duty to exercise that assumed jurisdiction whether it be administrative, executive or quasi-judicial, fairly, by which I mean applying his mind dispassionately to a fair analysis of the particular problem and the information available to him in analyzing it. If in any hypothetical case, and in any real case, this Court was satisfied that an immigration officer was not so doing, then in my view mandamus would lie.

48. In the case of A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , while dealing with the question as to the changing frontiers of natural justice and the aims of the rules of natural justice, it was observed as follows (at pages 156-157):

The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years ...Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is not questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in Suresh Koshy George Vs. University of Kerala and Others, , the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.

49. It, Therefore, follows that the application of the principle of natural justice, Audi alter partem, is not confined to judicial or quasi-judicial bodies or Tribunals or Court but is being progressively extended even to administrative bodies whose decision is likely to have civil consequences for a person or affects vested rights or interest and these authorities are, Therefore, bound to act judicially in the sense that they must act fairly and reasonably in the exercise of power conferred on them particularly where the power has its foundation in a statutory provision.

50. For all these reasons, I am of the view that the ad hoc determination of the liability of the appellant was contrary to law and the Employees Insurance Court was clearly in error in refusing to strike it down and its failure to itself determine u/s 77 on the material available on the record or on other evidence that may have been placed before it, the true liability of the appellant for the special contribution and the employees' retribution.

51. In the result, the appeal succeeds. The order of the Employees Insurance Court, the determination made u/s 45A(I) of the Act, the notices of demand and the recovery proceedings are set aside and the matter is remanded to the Employees' Insurance Court to determine the true liability of the appellant under the Act in accordance with the provisions of the Act after giving an opportunity to both the parties to produce such material as they may like to.

52. The records of the Employees Insurance Court be transmitted to that Court and the parties are directed to appear before that Court on July 24, 1974.

53. The appellant would also have its costs.