(1982) 04 MAD CK 0007

In the Madras High Court

Case No : Writ Petition No. 1381, etc. of 1979 etc.

Nagarajan and Others APPELLANT

Vs

The Commissioner, Hindu Religious and Charitable Endowments (Administration) Department and Others RESPONDENT

Date of Decision : 15-04-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 63, 64, 65, 66
Criminal Procedure Code, 1973 (CrPC) — Section 195, 5
Evidence Act, 1872 — Section 3
General Clauses Act, 1897 — Section 10, 9
Holding as Inquiries Rules — Rule 11, 15, 17, 18, 2
Industrial Disputes Act, 1947 — Section 7
Limitation Act, 1908 — Section 29(2)
Limitation Act, 1963 — Article 137, 12, 12(2), 14(1), 17
Oaths Act, 1873 — Section 110(2)
Penal Code, 1860 (IPC) — Section 19, 20
Representation of the People Act, 1951 — Section 36, 36(2)
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 3(2), 37, 53(11), 53(2), 53(5)
Telegraph Act, 1885 — Section 16(3)

Citation : (1984) ILR (Mad) 65

Hon'ble Judges : T. Sathiadev, J

Bench : Single Bench

Advocate : B. Soundarapandian, W.C. Thiruvengadam, T.S. Ramu, K.M. Santhanagopalan, V. Raghupathy, P. Pandi, K.T. Palpandian, N. Ganapathy, for Pathy, Sundaram and K. Jayaraman, for the Appellant; V. Raja Narayanan, for Government Pleader, N. Sankaravadivel, P.T. Selvam and D. Raju, for the Respondent

Final Decision : Allowed

Judgement

T. Sathiatdev, J.—Petitioner herein was appointee as fit person of Arulmigu Poomayee Amman Temple by Deputy Commissioner, Hindu

Religious and Charitable Endowments Board, Madurai after removal of the hereditary trustee by order, dated 19th March 1977. Aggrieved

against the said order, Karuppih Bhattar, the hereditary trustee filed an appeal to the first Respondent on 21st December, 1977 and after his death,

his sons, Respondents 2 to 5 have represented him. At the time when the appeal was presented, there was enormous delay of 7 months, but still

first Respondent excused the delay, though there was no sufficient cause and he has now directed the appeal to be posted for hearing on 7th April,

1979 by the impugned order in Appeal Petition No. 10 of 1979 dated 19th January 1979. Though Petitioner had been appointed as fit person of

the temple, he was not communicated with the order and since be is interested in the welfare of the institution, he has come forward to file this writ

petition.

2. According to the Petitioner, Commissioner, H.R. and C.E. Board, is a persona designate, and hence he has no jurisdiction to invoke the powers

u/s 5 of the Limitation Act. It is only the Courts which can exercise the powers u/s 5 of the Limitation Act, and in the instant case, to ground at all

stated for excusing the in ordinary delay. As per Section 53(5) of Tamil Nadu Hindu Religious and Charitable Endowments Act (XXII of 1959),

(hereinafter referred to as T.N.) Act within one month from the date of receipt of the order, an appeal should have been preferred, and therefore,

apart from Section 5 of the Limitation Act, Commissioner has no discretionary power to condone the delay. The petition having been ordered

without notice to Petitioner, it has affected not only his interests but also the interests of the temple because the hereditary trustee was removed on

the ground of maladministration.

3. In a common counter-affidavit filed, it is stated by Commissioner that it is unnecessary to controvert the factual allegations made in the affidavit,

since the question to be determined is whether in functioning as an appellate authority or revisional authority he has power to condone the delay

and whether Section 5 read with Section 29(2) of the Limitation Act of 1963 (hereinafter referred to as 63 Act) would be applicable to such

proceedings or not, As the correct position had not been hitherto under stood, be was condoning the delay, but however, realising the correct legal

position, he has declined to condone the delay Accordingly, in the present case, he had declined to entertain the appeals preferred by the Petitioner herein u/s 69(1) of the Act, as they were out of time.

4. In the impugned order filed in this writ petition, he had stated as follows the delay in filing this appeal is condoned. When the impugned order is

to this effect, in filing tie common counter affidavit and in spite of this being the first writ petition, he has sworn to the effect that be has declined to

entertain the appeal. Such obvious errors will have to be avoided in filing counter-affidavits or at least before presenting counter-affidavit into

Court, Cautions steps should be taken to prevent such solemn affidavits being filed with incorrect particulars.

5. Mr. T.S. Ramu learned Counsel who has appeared for several Petitioners, contends that when Commissioner disposes of appeals filed under

Tamil Nadu Act, he adopts the procedure applicable under CPC to the trial of suits or the hearing of appeals, and that Indian Evidence Act and

the Indian Oaths Act having been made applicable, in disposing of the appeals he functions as a Court which enables him to exercise the power

available u/s 5 read with Section 29(2) of 63 Act. When he is thus vested with ample jurisdiction to give relief in such of those matters where

sufficient cause is made but, it is curious to note that, when hithereto be had been entertaining applications of condonation of delay, he should have

of all of a sudden come, forward to claim that he has no power of condonation. His first endeavour is to show that when Commissioner disposes

of appeals and revisions, for all purposes, he functions as a Court and not as a person a designate or as an administrative Head of the Department,

which is a distinct and different role he discharges under the Act. As to what nature of duties are discharged by him pertaining to exercise of his

appellate are revisional powers, be refers to the following provisions under the Act. u/s 6(6), Commissioner is defined as the Commissioner

appointed u/s 9, which empower the Government to appoint a Commissioner, as it thinks fit. Section 9(2)(a) is to the effect that a Commissioner

shall be appointed by transfer from among the members of the Madras State Higher Judiciary Service or of the Madras State Judicial Service or of

any other service or by promotion from Deputy Commissioner or by direct recruitment. The deputy Commissioner is also appointed by transfer

from among the members of the Madras State Judicial Service or of any other service or by promotion from Assistant Commissioner or by direct recruitment or by agreement or contract.

Section 6(7) defines ""Court"" (i) in relation to math or temple situated in the Presidency town, the Madras City Civil Court.

(ii) in relation to a math or temple situated elsewhere the Subordinate Judge''s Court having jurisdiction over the area in which the math or temple is

situated, or if there is no such Court, the District Court having such jurisdiction.

(iii) in relation to a specific endowment attached to a math or temple, the Court which would have jurisdiction as aforesaid in relation to the math or

temple, and

(iv) in relation to a specific endowment attached to two or more maths or temples, any Court which would have jurisdiction as aforesaid in relation

to either or any of such maths or temples.

Section 8 states that the Commissioner, Deputy Commissioner and Assistant Commissioner are the authorities under the Act and that the

Commissioner is a Corporation Sole and has perpetual succession and a common seal and may sue and he sued in his corporate name, as per

Section 11. Section 12 contemplates that they are all servants of the Government. Section 53(5) enables a trustee, who is aggrieved with an order

of suspension, removal or dismissal, to prefer an appeal to the Commissioner within one month from the date of the receipt of the order passed by

the Deputy Commissioner. Section 69 authorises the Commissioner to dispose of appeals against any order passed by the Deputy Commissioner

in respect of these matters which arise under Chapter V, within sixty days from the date of the publication of the order or of the receipt thereof by

the party. Some of the writ petitions, which would be deal with hereunder, deal with the exercise of powers u/s 69. Section 110 is to the following

effect. Section 110:

(1) Where a Commissioner or a Deputy Commissioner makes an enquiry or hears an appeal under Chapter v. or Chapter VI, the inquiry shall be

made and the appeal shall be beard, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908,

to the trial of suits or the hearing of appeals as the case may be.

(2) The provisions of the Indian Evidence Act, 1872 and the Indian Oaths Act, 1873, shall apply to such inquiries and appeals.

(3) The Commissioner or a Deputy Commissioner holding such an inquiry or hearing such an appeal shall be deemed to be a person acting

judicially within the meaning of the Judicial Officers Protection Act, 1850.

Section 115 is similar to Section 12(2) of 63 Act. Two other sections which are referred to in the course of arguments are Section 70(1), which

enables an aggrieved party as against the order of the Commissioner to file a suit in a Civil Court in respect of certain orders mentioned therein.

Section 118(2)(b)(ii) empowers the Commissioner to exercise of all powers conferred and all duties imposed by such scheme on any Court or

Judge or any other person or body of persons, in respect of the orders which have been passed under the repealed Act. Lastly, reference is made

to Section 37 which provides for extending provisions of the Act to Charitable Endowments after holding an enquiry. Section 3(2) enjoins the

Commissioner to hold an inquiry and in doing so:

He shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purposes of en forcing the attendance of witnesses

and compelling the production of books, accounts, documents, securities, cash and other properties belonging to or in the custody of such

charitable endowment and shall follow the procedure applicable under the said Code in regard to recording of evidence and hearing of parties and

thereafter, he had to submit a report to Government.

6. The contention raised is that, when Commissioner has to discharge such quasi-judicial functions, whenever appeals and revisions are disposed

of and when the proceedings are governed by the CPC and all the necessary trappings of a Court exist, though not called as a Court, none the less

when attributes of a Court being present, he factions as a Court for the purposes of Limitation Act. The first of the decision relied upon is The

Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees'' Union, Delhi, wherein it was held that

the Industrial Tribunals set up u/s 7 of the industrial Disputes Act, 1947, are exercising the functions and duties very much like those of a body

discharging judicial (sic)although it is not a Court in the technical sense of the word. In Brajnandan Sinha Vs. Jyoti Narain, dealing with the powers

exercised by the Commissioner appointed under Public Servants (Inquiries) Act, 1850, it was held that he is not a Court within the meaning of

Contempt of Courts Act. The word Court was not defined in the Act and hence, the definitions of Court available elsewhere have been referred

to. Definitions four Section 3 of Indian Evidence Act and Sections 19 and 20 Indian Penal Code have been adverted to and held, that

pronouncement of a definitive judgment has been considered as the essential sine que non of a Court, and unless and until a binding and

authoritative judgment can be pronounced by a person or body of persons, it cannot be predicted that he or they constitute a Court. The negative

propositions enumerated in Shell Co. of Australia v. Federal Commissioner of Taxation (1931) A.C. 275 were relied upon. They being:

1. A tribunal is not necessarily a Court in this strict sense because it gives a final decision.

2. Nor because it bears witnesses on oath.

3. Nor because two or more contending parties appear before it between whom it has to decide.

4. Nor because it gives decisions which affect the rights of subjects.

5. Nor because there is an appeal to a Court,

6. Nor because it is a body to which a matter is referred by another body.

Again the four requisites as formulated in Cooper v. Wilson (1937) 2 K.B. 309, have been extracted and they being.

A true judicial decision presupposes an existing dispute between two or more parties, and then involves four requisitesï¿½(1) The presentation (not

necessarily orally) of their case by the parties to the dispute; (2) if the dispute between them is a question of fact, the ascertainment of the fact by

means of evidence adduced by the parties to the dispute and often with assistance of argument by or on behalf of the parties on the evidence (3) if

the dispute between them is a question of law, the submission of legal arguments by the parties and (4) a decision which dispose of the whole

matter by a finding upon the facts in dispute and an application of the law of the land to the facts so found, including where required a ruling upon

any disputed question of law.

Reliance was placed on S.A. Venkataraman Vs. The Union of India (UOI) and Another, wherein a Constitution Bench of the Court has laid down

that both finality and authoritativeness were the essential losts of a judicial pronouncement. Relying on these propositions, it was held in the said decision.

...in order to constitute a Court in the strict sense of the term, an essential condition is that the Court should have, apart from having some of the

trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests

of a judicial pronouncement.

After referring to these decisions, the provisions of Public Servants (Inquiries) Act, 1850, were analysed for determining whether the

Commissioner appointed under the Act is a Court or not. Ultimately it was held that the role discharged by him under the provisions of the Act was

that of a mere fact finding authority and his report submitted to Government was merely his expression of opinion and it lacked both finality and

authoritativeness which are the essential tests of a judicial pronouncement.

7. On the question as to whether a returning Officer deciding on validity of nomination paper u/s 36(2) of the Representation of the People Act,

functions as a Court or not. it was held in Shri Virindar Kumar Satyawadi Vs. The State of Punjab, that a Court is charged with a duty to decide in

a judicial manner and declare the rights of a party in a definitive judgment are the parties to the proceedings were entitled as a matter of right to be

heard in support of their claim and to adduce evidence in proof of it and that u/s 36, there is no is involved in which persons, with opposing claims

are entitled to have their rights adjudicated a judicial manner. His function if judicial in character but he is not to act judicially in discharging it. In

Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., , it was held that:

An Industrial Tribunal or a Labour Court dealing with applications or reference under the Act are rot Courts and they are in no way governed

either by the CPC or the Code of Criminal Procedure.

In this decision, the Article 137 found in the third division to the schedule of the Limitation Act was considered. After taking note of the

amendments made in 63 Act, it was held that it enlarged the scope of the third division. But one factor at least remains constant and that is that the

applications must be to Courts to be governed by the articles in this division. This conclusion is relied upon by the Respondent herein to contend,

that an Industrial Tribunal or a Labour Court dealing with the applications on reference under the Act have been treated as not Courts. In

Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others, the question arose as to whether Section 5 of the Limitation

Act could be invoked under Industrial Disputes Act, and it was held that:

... Again u/s 5 it is only a Court which is enabled to admit an application after the prescribed period has expired, if the Court is satisfied that the

applicant had sufficient cause for not preferring the application, seems to us that the scheme of the Indian Limitation. Act, is that it only deals with

applications to Courts, and that the Labour Court is not a Court within the Indian Limitation Act, 1963.

Therefore, this decision is also relied upon to contend that in both the decisions, the Supreme Court had taken the view that inspite of a Labour

Court having all the trapping of a Court, it cannot be treated as a Court, and, hence the Commissioner who hears the appeals under Tamil Nadu

Act, cannot be treated as a Court.

8. The sales Tax Officer under Utter Pradesh Sales Tax Act 1949 has held that to be not a Court within the meaning of Section 195 of the Code

of Criminal Procedure, in Commissioner of Sales Tax v. Parson Tools and Plants 35 S.T.C. 413 (S.C.) even though he was performing the quasi-

judicial functions. Mere administrative Tribunals cannot be held as Courts. As to whether an in come-Tax Appellate Tribunal is a Court or merely a

Tribunal exercising the judicial power of the State, came up for consideration before Gujarat High Court in Commissioner of Income Tax, Gujarat

III Vs. Western India Engineering Co. Ltd., . After analysing the provisions of he Income Tax Act, it was held that it is not a Court, by taking into

account the nature of its constitution and that it''s procedure is not the same as are vested in the Courts under the CPC though applied only in

respect of specific matters. It is not fettered with the technical rules of law of evidence, etc., No doubt, it had the trappings of a Civil Court, but it

would not be sufficient to convert it into a Court, Consequently, it was held that it is not a Court, and therefore the provisions of 63 Act, are not

intended to be made applicable to proceedings before authorities other them the Courts governed by the CPC or Code of Criminal Procedure,

and hence Section 5, will not apply to the Appellate Tribunal.

9. Apart from the concept of Court, Tribunal, etc., in circumstances of this

nature, the concept of ''Persona designate also comes up for

consideration. Mr. T.S. Ramu learned Counsel for some of the Petitioners, by referring to The Central Talkies Ltd., Kanpur Vs. Dwarka Prasad,

would plead that when a persona designate is a person pointed out or described as an individual as opposed to a person ascertained as a member

of a class, or as filing a particular character and that he is person selected to act in his private capacity and not in his capacity as a Judge, and that

in the instant case, when a named authority, is directed to discharge the appellate functions judicially, he cannot be termed as a persona designate .

Mr. D. Raju, appearing for certain Respondents by referring to the said decision would state that, by a named authority called upon to exercise

appellate function it would not make him a Court. The print which came up in that decision for consideration was, whether the Additional District

Magistrate, who granted permission under Evidence Act could be a District Magistrate as defined u/s 2(d) of the Act. It was contended that since

District Magistrate order Section 3 of the Act was a persona designate, either he or an officer authorised by him alone could perform the functions

and that Additional District Magistrate was not competent to grant permission unless authorised by the District Magistrate, and what was done was

only a transfer of proceeding to him. In repelling this objection it was held that Additional District Magistrate under the said Act was not a persona

designate but only a District Magistrate, who was competent to deal with applications u/s 3 of the Uttar Pradesh Act III of 1947 for granting

permission to file a civil suit. As to whether he is a Court or not in the perspective in which requires to be considered was not dealt with in this

decision, as done in Brajnandan Sinha Vs. Jyoti Narain, and Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and

Another, .

10. Mr. D. Raju, would then refer to the decision in T.K. Santhanagopala Chettiar and Others Vs. Thimmi M. Seetharama Chettiar and Others,

wherein, dealing With the powers of the Commissioner, it was held that he was only functioning as a public officer or Government servant and as

such the provisions contained in Section 80, CPC will apply to him. Referring to Section 10 of the Tamil Nadu Act, it was held that when he

makes an enquiry, be is deemed to be a person judicially acting, only for purposes of the Judicial Officer Protection Act, 1850 and that too is

available to him only when be conducts an enquiry or bears an appeal under Chapter v. or Chapter VI of the Act,. The contention raised that he

was functioning as a Judicial Officer was therefore repelled. In a later decision in Ramamurthi v. Rangachari (1975) M.L.J. 407 dealing with the

appellate power exercised by the Commissioner u/s 69(1), it was held that he has the power to remand the matter, which is incidental and

necessary to effectuate the main appellate power conferred upon him. It was nowhere held that the power so conferred resulted in himself

functioning as a Court. In Sri Digyadarsan Rajendra Ramdassjivaru Vs. The State of Andhra Pradesh, in dealing with the powers exercised by the

Commissioner u/s 46 of Andhra Pradesh Act. Which is more or less identical to Tamil Nadu Act., it was held that the procedure which has been

laid down makes all the proceedings before the Commissioner quasi-judicial. Here again nowhere it was held that the powers conferred upon him,

in holding enquires enabled him to function as a Court.

11. To counter these claims made, reliance was placed by. Petitioner on Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank

Ltd. and Another, which dealt with the role played by Assistant Registrar of Co-operative Societies u/s 48 of the Bihar and Orissa Co-operative

Societies Act, 1935. The question was as to whether he functions as a Court for the purpose of Contempt of Courts, Act. After analysing the

functions discharged by the Assistant Registrar under the Act, it was held that be is a Court (at page 1504)

... It must be borne in mind that we do not propose to lay down that all Registrars of all Co operative Society in the different States are Courts for

the purpose of the Contempt of Courts Act, 1952. Our decision is expressly limited to the Registrar and the Assistant Registrar like the One

before us governed by the Bihar and Orissa Co-operative Societies Act.

It was held that it is only by an analysis of the powers exercised by a quasi judicial functionary, it could be held as to whether could be treated as a

Court or otherwise. Relying upon the four requisites laid down in Cooper v. Wilson [l937] 2 K.B. 309 (already extracted above), it was held that

the Assistant Registrar, possessed the said requisites. He was found to be exercising almost all the powers which an ordinary Civil Court of the land would have, summoning witnesses, compelling producer of the concements(sic), examining witnesses on oath and coming to a conclusion on

the evidence and arguments submitted. When his adjudication was attended upon with all the paraphenailia of a Court and the powers of an

ordinary Civil Court of the land, he is a Court within the meaning of the Contempt of Courts Act.

12. Mr. T.S. Ramu then climaxes his submission by relying up in the Division Bench decision reported Rathinaswamy v. Komalavalli (1981)

T.L.N.J. 288 wherein, this Court in dealing with the appellate powers exercised u/s 23(1)(b) of Tamil Nadu Act XVIII Of 1960, held that the

appellate authority is a Court.

13. As done in Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another, ; Commissioner of Income Tax, Gujarat

III Vs. Western India Engineering Co. Ltd., and Brajnandan Sinha Vs. Jyoti Narain, the relevant provision of Tamil Nadu Act XXII of 1959 will

have to be looked into for determining whether, for purposes of the Limitation Act, 1963 Commissioner functions as a Court or not u/s 69 be is

empowered to hear appeals against certain orders which are mentioned therein and also act as an appellate authority u/s 53(5). He has a twin role

to perform under the provisions of the Act: (1) as the Administrative Head of the Department, he being a Corporate sole as provided u/s (11)

and(2) to bold enquiries as provided under Chapters V and VI of the Act, Section 110(1) enables him to bear appeals as nearly as may be, in

accordance with the procedure applicable under CPC to the trial of suits, or the hearing of the appeals as the case may be. It does not stop with

this but proceeds to direct that Indian Evidence Act, 1872 and Indian Oaths Act, 1873 shall apply to such enquiries and appeals. The orders

impugned are these which have been passed in proceedings under Chapters v. and VI of the Act, and hence, no reference is made to the power

exercised by him u/s 3(2) of the Act.

14. In analysing the power exercised by the Assistant Registrar a, in Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd.

and Another, it was found that he was conferred almost all the powers which an ordinary Civil Court of the land would have in summoning

witnesses, compelling production of documents, examining witnesses oath and coming to a conclusion on the evidence adduced and the arguments

submitted, and held as having resulted as, it a decree was pronounced by a Court of law. He conducts the proceedings with all paraphenalia of the

Court and the powers of an ordinary Civil Court of the land. u/s 48(7) the Registrar was conferred with the power of review and also with the

inherent jurisdiction specified in Section 151, Code of Civil Procedure. In Brajnandan Sinha Vs. Jyoti Narain, it was held that the Commissioner

appointed under the Public Servants Inquiries Act, 1850 was a mere fact finding officer and his opinion rendered lacked both finality and

authoritativeness, which are the essential tests of a judicial pronouncement. Whereas the decision rendred by the Commissioner under Tamil Nadu

Act, results in a finality and it is a quasi judicial order with reasons given by him in Shri Virindar Kumar Satyawadi Vs. The State of Punjab,

emphasis was laid on the parties being entitled as a matter of right to be heard in support of the it claims to adduce evidence in proof of it, which

feature is available before the Deputy Commissioner and the Commissioner. He is also obliged to decide the matter on a consideration of the

evidence adduced and in accordance with law, which is also one of the attributes prescribed under the said decision, to decide whether an

authority functions as a Court or not. Since the Returning Officer had no right to summon witnesses, compel production of documents and the

parties having no right to be heard as of right, it was held that no lie was involved before the Returning Officer. It was the absence of these rights,

which was taken into account to hold that he was not functioning as a Court. In Commissioner of Income Tax, Gujarat III Vs. Western India

Engineering Co. Ltd., on the ground that income tax Appellate Tribunal is not governed by the CPC and that it is not fettered with technical rule of

law of evidence, and that it is constituted not only of Judicial members but also by others, which is inconsistent with the character of a Court, it was

held that such Tribunals are not exercising the judicial powers of the State.

15. As for the Commissioner, he is enjoined under the Act itself to adhere by the CPC (sic) as may be and the provisions of the Indian Evidence

Act or Indian (sic)Act would apply.

16. As to who could function as a Commissioner, Section 9 contemplates that a Commissioner shall be appointed by transfer from Madras State

Higher Judiciary Service or Madras State Judicial Service or any other Service or by direct recruitment The Act thus contemplates that a judicial

Officer could function as a Commissioner, though it does not exclude the possibility of a non-Judicial Officer being appointed as Commissioner.

The Assistant Registrar of Cooperative Societies, In Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another, is

not a Judicial Office at all. Where as, under Tamil Nadu Act, a provision has been made for a Judicial Officer being appointed as Commissioner.

As held in The Central Talkies Ltd., Kanpur Vs. Dwarka Prasad, it is not an individual, who has been named, but the designated authority under

the Act being appointed to entertain appeals he cannot be termed as a persona designate.

17. In T.K. Santhanagopala Chettiar and Others Vs. Thimmi M. Seetharama Chettiar and Others, wherein, the power exercised by the

Commissioner under Chapter III came up for consideration. The powers exercised by him under Chapters v. and VI, were not directly in issue. In

S. Ramamurthi Vs. V. Rangachari and Others, it was held that he exercises, the widest powers including the power of remand.

18. Further, the significant feature is found in Section 110(3) which confers on him, the protection under Judicial Officers Protection Act, 1850.

The sole section in this Act gives protection not only to a Judge, Magistrate, Justice of Peace, but also to Collector or other persons acting

judicially shall be liable to be sued, in any Civil Court for any act done or ordered to be done by hint in the discharge of his judicial duty. When the

protection is available to any person acting judicially, and when the Legislature itself in unmistakable term states that in holding enquires and

appeals, he shall be deemed to be a person acting judicially within the meaning of Judicial Officers protection Act, 1850, no conceivable contention

could be entertained to hold that, he is not functioning in a judicial manner while deciding the appeals. It may not be conclusive, but is indicative of

legislative intent. Apart from to the nature, of powers exercised should be looked into, to find out whether the necessary attributes exist or not.

19. The requisites laid down in Cooper v. Wilson (1937) 2 K.B. 309 which have been relied upon by the Supreme Court in Thakur Jugal Kishore

Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another, and Brajnandan Sinha Vs. Jyoti Narain, if present, by themselves would constitution authority to be functioning as a Court, though not a Court which would come within the ambit of Civil Courts Act. What was decided

in these decisions was to held that, for purposes of the Contempt of Courts Act, the Assistant Registrar was functioning as a Court. It should not

be taken, that he has been constituted to be a Civil Court, as provided under the relevant Civil Courts Act or held to be a Court of Justice. This

added feature which is found in respect of the Commissioner u/s 110(3), was not engrafted in that Act, for the Assistant Registrar, but yet, it was

held that he functions as a Court. Section 116(1)(2)(iii) of Tamil Nadu Act is as follows

116(1). The Government may, by notification, make rules to carry out the purpose of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for:

(iii) the powers of the Government, the Commissioner a Deputy Commissioner, (or an Assistant Commissioner, to hold inquiries, to summon and

examine witnesses and to compel the production of documents.

The rules framed are called as Holding as Inquiries Rules (hereinafter referred to as Rules). There are 2 rules framed of which Rules 5, 11, 15 and

17 to 20 are extracted below, which are opposite.

5. Final orders made in such proceeding shall be communicated to the parties or their pleaders, if any, by post.

11. A person summoned either to give evidence or to produce a document shall, along with the summons, be given such batta and travelling

allowance with the rate fixed in the Civil Rules of Practice framed under the CPC by the High Court of Judicature at Madras.

15. The appropriate authority may at any stage of an enquiry recall any witness who has been examined and may put such questions to him, as the

appropriate authority may think fit.

17. All persons, who appear in response to the notice issued or published in proceedings under Sections 63, 64, 65, 66, 67, 69, 71 and 72 shall,

within the time fixed in the notice or within such further time as may be granted, file written statements containing their objections or suggestions

The Deputy Commissioner or the Commissioner, as the cast may be, may, however, permit any person, who has not filed a written statement to make representations at the time of inquiry.

18. Any party to the proceedings shall have a right to appear in person or by pleader to adduce oral and documentary evidence and to apply for

summoning witness or documents.

19. The Deputy Commissioner or the Commissioner, as the case may be, shall record the oral evidence of witnesses in his own handwriting.

20. The provisions of the CPC and the Civil Rules of Practice and Circular Orders shall apply, as far as practicable, to appearance of pleader and

to affidavits, production of documents, examination of witnesses, taking of oral evidence, proof by affidavits, filing of exhibits, issue of

commissions, return of documents, not admitted in evidence and other connected matters, and the inquiry shall be made, as far as practicable, in

the manner laid down in the said code for the trial of suits.

One other, feature peculiar in this Act is that, u/s 113, Government by notification direct any appeal pending before Commissioner to be disposed

of by a Judicial Officer not below the rank of a Subordinate Judge and his decision to be deemed as passed by Commissioner. This is also

indicative of the appellate powers exercised in a judicial manner with all the trappings and attributes of a Civil Court.

20. Yet another submission made is that, merely because an authority is not person designate, it does not as held in E.K. Venkaimarbon Vs.

Dakshinamoorthy, without any do Section 5 would apply. If not a persona designate, an authority can be a tribunal or quasi-judicial authority and

need not necessarily be only a Court. This contention is acceptable, since the aspect is to whether an authority is a Court or not can be decided

only by analysing how and to what extent he is enabled to function in deciding disputes and claims.

21. Hence, on an analysis made of the manner in which he disposes of appeals, and what have been provided specifically under the Act, the

following art the essential features made out:

(1) Parties are allowed to be heard in person or Counsel. (Rule 18)

(2) If facts are disputed, parties can adduce oral or documentary evidence (Rule 18)

(3) Witnesses can be summoned, if need be. (Rule 18)

(4) He can compel documents to be produced (Rule 18),

(5) He bears arguments both on facts and on law and renders findings like a Court on issues or points for consideration framed. (Rule 20)

(6) He can administer oath under the Indian Oaths Act [Section 110 (2)]

(7) Provisions of the Indian Evidence Act are applicable [Section 110 (2)]

(8) He must bear appeals as nearly as may be, in accordance with CPC and Civil Rules of Practice is applicable to the trial of suits (Rule 20)

(9) He has to decide the disputes judicially, which is recognised under the Act, and that is the reason why he is given protection under Judicial

Officers Protection Act, 1850 [Section 110 (3)]

(10) He functions to decide finally and authoritatively the ''lis'' which arises between parties and

(11) He can award costs.

22. When these features are present, the Commissioner in disposing of appeals, acts judicially though a quasi-judicial functionary, and hence, for

purposes of Limitation Act, he will be a Court, though certainly he is not a Court of Justice and will not be a Court within the meaning of Civil

Courts Act.

23. The next point to be considered is, whether Section 5 of the Limitation Act would be applicable. Once a finding is arrived at that he is a Court

for the purposes of Limitation Act, there is no conceivable difficulty in holding that Section 5 could be invoked by him while entertaining appeals

alone, and he can grant relief, provided sufficient cause is shown. In the event of holding that be is not a Court, to what extent the provisions of the

Limitation Act could be availed of, is considered hereunder in the fight of arguments advanced on this aspect.

Section 29(2) of 63 Act envisages that, if any special or local law prescribes a different period of limitation from what is prescribed in the schedule

to the Act, then the special period contemplated would alone be applicable, and that, unless the special enactment expressly excludes the

applicability of Section 4 to 24, they would automatically be applicable with reference to special periods contemplated under the special or local

law. This aspect has been held clinchingly in Mangu Ram Vs. Municipal Corporation of Delhi, to the following effect:

... Section 29, Sub-section (2) Clause (b) of the Indian Limitation Act, 1908 specifically excluded the applicability of Section 3 and the ratio of the

decision in Kaushalya Rani Vs. Gopal Singh, can, therefore, have no application in cases governed by the Limitation Act, 1963, since that decision

proceeded on the hypothesis that the applicability of Section 5 was excluded by reason of Section 29(2)(b) of the Indian Limitation Act, 1908.

Since under the Limitation Act, 1963, Section 5 is specifically made applicable by Section 29 Sub-section (2), it can be availed of for the purpose

of extending the period of limitation prescribed by a special or local law, if the applicant can show that he had sufficient cause for not presenting the

application within the period of limitation. It is only if the special or local law expressly excludes the applicability of Section 5, that it would stand

displaced...

24. The sole difficulty which repeatedly arises in extending the benefits u/s 5 of the Act is due to the presence of the word Court in Section 5. If

only this word bad not been used, it would have enabled any forum to which, under a special law, an appeal or an application is filed belatedly,

being entertained, provided there is reasonable ground for excusing the delay. The beneficial result which would flow out of Section 5 is now

hampered, because of the presence of the word Court, which cannot be overlooked. This led to construing, whether the powers exercised by an

authority is that of a Court or it is only a Tribunal or personal designation, etc. There could be no two views, about delay excused if sufficient cause

is shown. The valuable right of a person to seek for relief, by way of an appeal or an application, should not be lost or denied, because of

circumstances beyond his control. If only the word Court is deleted in this section, the intendment as Parliament fin recasting Section 29 would be

fully achieved. The word Court is found in Sections 4, 5, 12(4), 13, 14(1), 17 and 21.

25. As to how far Section 5 could be invoked, before different forums, the following decisions have been relied upon: In Hukumdev Narain Yadav

Vs. Lalit Narain Mishra, it was held that the applicability of Sections 4 to 24 to a special enactment has to be Judged by looking at the scheme, of

the special law and the nature, of the remedies provided therein, and not only, by looking at, the provisions of the Limitation Act. If the special enactment is a code by itself which does not admit the application of the provisions of the Limitation Act mentioned in Section 29(2), then there is

no scope for applying Sections 4 to 24 of 63 Act. The earlier view that only if there is express exclusion of anyone, of Sections 4 to 24, then alone

the particular section, would not be applicable is no longer sustainable in the light of this decision. Earlier in K. Venkateswara Rao and Another Vs.

Bekkam Narasimha Reddi and Others, dealing with Representation of the People Act, 1951, it was held that even though 1963 Act does not

apply to an election petition, provisions like Sections 9 and 10 of General Clauses Act, 1897 which are in pari materia with Sections 12(1) and 4

of the Limitation, Act would apply to such a petition. The applicability of Section 4 of the Limitation Act, to the provisions of Representation of the

People Act, 1951 was held as applicable in D.P. Mishra Vs. Kamal Narayan Sharma and Another, , The Kerala State Electricity Board,

Trivandrum Vs. T.P. Kunhaliumma, deal with a case wherein District Judge functions u/s 16(3) of Telegraph Act, in the capacity of a Court, and

hence Article 137 of 1963 Act would alone apply.

26. The other aspect is, to what extent, a special provision made, would exclude the invocation of Sections 4 to 24, by virtue of Section 29(2). In

dealing with the time limit for renewal of permits, under Motor Vehicles Act, it was held that Section 5 would not be applicable, because Regional

Transport Officer is given a discretion to entertain an application for renewal of a permit; even where it is beyond time though not more than 15

days. This was construed as providing a special period destructive of Section 5. The point as to whether R.T.O. functions as a Court or not did

not come up for consideration. In Jamsetjee Jeejeebhoy and Others Vs. Bapurao Krishnaji Bhonsale and Another, it was decided that there was

no provision in Bombay City (Inam and Special Tenures) Abolition Rules (1972) to exclude Sections 4 to 24, and hence a petition to excuse the

delay u/s 5 would be applicable. A Divisional Bench of the same Court in Vashaji Gheta v. State of Maharashtra 69 B.L.R. 598 held that, likewise

under Bombay Sales Tax Act, 1946, there being no express exclusion, Section 5 application can be filed.

27. The point evolved by relying upon these decisions is that, unless there is express exclusion by referring to any of the Sections 4 to 24, they

would be applicable. This contention can no longer be sustained, in view of the decision rendered in Hukumdev Narain Yadav Vs. Lalit Narain

Mishra, wherein it was held that, it would suffice to look into the scheme of the special law and the nature of remedy provided, and if the intention

of the Legislature is made out that it is a complete code by itself, then the provisions of the Limitation Act would necessarily be excluded.

Section 115 of Tamil Nadu Act, is to the following effect:

In computing the period of limitation prescribed under this Act for any proceedings, suit, appeal or application for revision against any order or

decree passed under this Act, the time requisite for obtaining a certified copy of such order or decree shall be excluded.

It is identical to Section 12(2) of 63 Act. By referring to this section, it is claimed that when a special provision is found dealing with limitation, all

the sections from 4 to 24 cannot be invoked even, if the Commissioner is to be treated as a Court. This is a contention in extremism, because

Section 115 can in no sense be understood as to embrace all the aspects covered by those sections. The only one Sub-section that would stand

excluded, is Section 12(2) of 63 Act. There is no express reference made in the Act far excluding anyone of those provisions. Looking into the

section in Tamil Nadu Act, to find out whether the scheme and toe nature, of the Act is such as to exclude the applicability of Limitation Act, unlike

the Representation of the People Act, this Act cannot be termed as a code by itself providing for everyone of those contingencies which are

available under Sections 4 to 24 of the Limitation Act. Hence, an attempt made that even if Commissioner is a Court, none of the provisions of

Sections 4 to 24 of 163 Act would be available, has to be rejected.

28. Before concluding, reliance was placed on The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur, by the

Respondent, to contend that the Court has no Jurisdiction to engraft or imply anything which is not congenial to or consistent to the express intent

of the Legislature. In dealing with the applicability of Limitation Act to Uttar Pradesh Sales Tax Act, it is impressed by Supreme Court that, if the

provisions made in a special enactment, is against extending the period of limitation beyond what had been intended as a firm period under the Act,

the Courts are bound to consider the scheme and the language engaged in the enactment and decide irrespective of the consequences being

undoubtedly oppressive or suffered. When the Legislature being aware of the Limitation Act had not chosen to incorporate such benefits under a

special or local enactment, the will of the Legislature being the Supreme Law of the land Judicial power is not to be exercised for giving effect to

the will of the Judges and it is not for them to think of what principle of justice and equity should prevail when the will of the Legislature or in other

words, the will of the law has to prevail. The primary function of a Court of law being jus dicere and not jus dare, every effort should be taken to

analyse what is the real intendment of the enactment.

29. Considering the provisions of Tamil Nadu Act and on what has been stated above that except Section 115, which is similar to Section 12(2) of

63 Act, there being no other provision or scheme of the Act envisaging exclusion of the applicability of Sections 4 to 24.applying the principles and

precautions spelt out by Supreme Court, it is held that Section 5 would apply, when Commissioner exercises appellate powers.

30. It was contended on behalf of some of the Petitioners that even if the Commissioner is not a Court and Section 5 would not he applicable, till

he would have the inherent power and excuse delay, if no justice, equity and good conscience, there were good reasons for it, and for this

purposes, reliance was placed on E.K. Venkaimarbon Vs. Dakshinamoorthy, and Raj Chopra v. Shanno Devi AIR 981 Del 18 If such an

approach is to be made, then there is no need even to look at the existence or otherwise of the Limitation Act and as to whether the special or

local Act itself provides for excusing the delay or not. In the light of what has been held in The Commissioner of Sales Tax, U.P., Lucknow Vs.

Parson Tools and Plants, Kanpur, the Court has to trace the power within the ambit of the Acts and not on grounds of equity and good co-

science. The writ petition is therefore dismissed. First Respondent is directed to pay costs of Rs. 250 to Petitioner, only in this writ petition

because of the statement in counter affidavit that the petition was dismissed, whereas, in fact it has been allowed.

Writ Petition Nos. 2452, 3433, 3752, 3850, 3937, 4062, 4632, 4636, 4667, 4671, 4706, 4794 and 4983 of 1979, 318, 1285, 1528, 1867,

6003, 6362, 6482 and 6813 of 1980, 1404 and 2223 of 1981.

31. Points taken herein being identical as Writ Petition No. 1381 of 1979, these writ petitions are allowed with costs in each petition.

