

(1954) 10 BOM CK 0001

In the Bombay High Court

Case No : Special Civil Application No. 2209 of 1954

Pandyan Insurance Co. Ltd.

APPELLANT

Vs

K.J. Khambatta and Others

RESPONDENT

Date of Decision : 08-10-1954

Acts Referred:

Constitution of India, 1950 — Article 136, 227
Income Tax Assessment Act, 1936 — Section 41
Merchant Shipping Act, 1894 — Section 471
Merchant Shipping Act, 1923 — Section 229, 229(4), 246, 246(3), 247(3)
Presidency Towns Insolvency Act, 1909 — Section 36
Provincial Insolvency Act, 1920 — Section 59A

Citation : AIR 1955 Bom 241 : (1955) 57 BOMLR 186 : (1955) CriLJ 1039 :
(1955) ILR (Bom) 443

Hon'ble Judges : Chagla, C.J.;Shah, J

Bench : Division Bench

Advocate : K.A. Somjee, instructed by Crawford Bayley and Co, for the Appellant; M.P. Amin, General, D.P. Sethna and S.D. Vimadalal, instructed by Payne and Co., for the Respondent

Judgement

Chagla, C.J.—This is an application by the Pandyan Insurance. Company for a writ under Article 227 to correct a decision given by the Chief Presidency Magistrate who is investigating into the loss of S.S. Janaki which took place on 13-3-1954. The order complained of is refusing the petitioners and 34 other insurance companies to be made parties to these proceedings. The facts briefly are that on 13-3-1954, S.S. Janaki sailed outward from Bombay "laden with cargo, and the ship had hardly left the harbour when she took successive/lists first to starboard and then to port and suddenly capsized a few miles of Kanheri Island, becoming a total loss. The casualty consisted of seven lives including that of the master and the mate and one passenger and with the loss of all the cargo which was on board.

The cargo was insured with the petitioner Insurance Company and also the other insurance companies, a list of which is annexed to the petition. The cargo was

insured for a sum exceeding Rs. 12,38,000. Claims were submitted by the shippers and the consignees of this cargo and these claims have been paid by the insurance companies. Now, the Government has ordered under the provisions of the relevant statute, to which we shall presently refer, an investigation into the loss of this ship. The petitioners say that they offer to the trading community the benefits of marine insurance on the basic presumption that due diligence is employed by ship owners to make their ships seaworthy and safe for the reception and carriage of cargo before sending them to sea, and their contention is that the fullest investigation should be held to decide what were the causes which led to the total loss of this ship and they claim this full investigation in order that the confidence of insurers and of the public in Indian shipping should not be shaken.

The petitioners say that the insurance companies have made detailed investigation and inquiry into the cause and circumstance attending the loss of the ship, that they have gathered vital information and evidence to establish that the ship was overloaded at the time of her departure from Bombay, and further that the cargo on the ship was so faultily stowed as to deprive the ship of stability and that she was in an unseaworthy condition within the meaning of the Indian Merchant Shipping Act, The learned Chief Presidency Magistrate, along with three assessors who are respondents Nos. 2, 3 and 4, commenced holding the formal investigation on the loss of the S.S. Janaki on 28-9-1954. An application was made by the petitioners (to be made a party to these proceedings so that they would be in a position to lead evidence and also to cross-examine the witnesses.

On 28-9-1954, the learned Chief Presidency Magistrate made the order complained of by which he rejected the application of the insurance companies, and it is against this order that this petition is" presented.

2. Now/ Mr. Vimadalal who appears for the Malabar Steamship Company, to which company this ship belonged, takes a preliminary objection to our entertaining this petition, and the preliminary objection is that the investigation that is being held by the learned Chief Presidency Magistrate is not a judicial investigation, that the tribunal set up under the Act is a purely administrative tribunal, and that under Article 227 our jurisdiction does not extend to correct decisions given by administrative tribunals. Turning first to the provisions of the Constitution, Article 227 confers very wide powers upon the High Court of supervision and superintendence, and Clause (1) of that article provides:

"Every High Court shall have superintendence over all Courts and tribunals throughout the territories in relation to which it exercises, jurisdiction".

It will be immediately noticed that the powers of superintendence of the High Court are not confined to Courts, they also extend to tribunals, and apart from any authority it seems to us clear that the reason why power of superintendence was given to the High Court over tribunals was that" wherever there is a body

which exercises judicial functions or which is obliged by law to act judicially, the High Court should be in a position to control the exercise of judicial power by that tribunal. The High Court is not concerned or interested with administrative tribunals. They are governed by questions of policy. They are not bound to decide questions only on evidence; they can travel outside the record; they can take into consideration extraneous factors.

But when you have a tribunal which is obliged by law to act judicially, then the High Court can control its judicial action, and if it errs in discharging its judicial function, the High Court can set the tribunal right and bring it back to the proper judicial channel. It is with this background that one must look at Article 227. If the intention of the Constitution makers was that the High Court should only exercise jurisdiction over Courts strictly so called, the expression "Court" had already-been so widely construed by various High Courts in India that it was unnecessary for the Constitution makers to confer jurisdiction upon the High Court over tribunals. But the intention of the Constitution makers was clear that the jurisdiction of the-High Court should be very wide, and wherever the High Court found a tribunal exercising judicial functions, the High Court could control that tribunal if in exercising those judicial functions it erred or went wrong.

3. Now, Mr. Vimadalal says that before a tribunal can be considered to be judicial or quasi-judicial, it must be set up under legal authority and it must apply a judicial process to decide disputes between two or more contending parties and its decision" or determination must be as to their rights and its decision must be executable and enforceable. Mr. Vimadalal has particularly emphasised what he thinks to be the two important attributes of not only a judicial but a quasi-judicial tribunal. According to him, unless the tribunal can (SIC) the rights of parties and unless the deices"(SIC) tribunal has a binding effect in the (SIC) decision is enforceable or) executable (SIC) cannot be a quasi-judicial tribunal. As we shall presently point out, those are not the essential attributes of a quasi-judicial tribunal.

In my opinion, and the authorities amply bear out this statement of the law, the real, essential and vital attribute of a quasi-judicial tribunal is that there should be a duty cast upon it to " act judicially. If the law which sets it up compels it to act judicially, then it immediately brings itself within the powers of superintendence of the High Court.

4. Now, before we look at the authorities, it is necessary to look at the scheme of the Act which sets up this tribunal, and the Act itself furnishes, in my opinion, clear indications that the tribunal that was being set up was not an administrative tribunal but was a judicial or a quasi-judicial tribunal. The relevant Act is the Indian Merchant Shipping Act, No, XXI of 1923, and we are concerned with Part VI which deals with special shipping inquiries and Courts, Section 246 defines what a shipping casualty is for the purpose of inquiries and investigations under this Part, and Clause (a) defines a shipping casualty as when on or near the coasts of the Provinces, any ship is lost, abandoned, stranded or materially

damaged, and (b) any loss of life ensues by reason of any casualty happening to, or on board of, any ship on or near those coasts.

Both these conditions are satisfied in this case and therefore it is clear that within the meaning of Section 246 a shipping casualty occurred when the ship Jan aid capsized on 13-3-1954. Section 247 provides for an officer of the Central Government receiving credible information that a shipping casualty has occurred forthwith reporting in writing the information to the Central Government, and also to the Provincial Government, and it also confers the power on him to make a preliminary inquiry into the casualty. Sub-section (3) of Section 247 provides that

"An "officer making a preliminary inquiry, shall send a report thereof to the Central Government and shall send a copy thereof to the Provincial Government."

Section 248 provides:

"The officer appointed under Sub-section (3) of Section 246, whether he has made a preliminary inquiry or not, may, and where the Central Government so directs, shall, make an application to a Court empowered u/s 249, requesting it to make a formal investigation into any shipping casualty; and the Court shall thereupon make such investigation."

It is under this section that the application was made to the Chief Presidency Magistrate for a formal investigation. Section 249 defines what the Court is, and the Court empowered to make "this formal investigation is either of Magistrates of the First Class or any Presidency Magistrate. Section 250 gives the power to the Court to inquire into any charge of in competency or misconduct arising, in the course of the investigation, against any master, mate or engineer, as well as into any charge of a wrongful act or default on his part causing, the shipping casualty, and Sub-section (2) provides for a copy of the report being furnished to a person against whom a charge is to be investigated. Section 251 deals with the power of the Central Government to ask the Court to inquire into cases of misconduct otherwise than in the course of a formal investigation into a shipping casualty.

Section 252 treats the master, mate or engineer against whom there is any charge as an accused person and directs that full opportunity should be given to him to make his defence. ". Section 253 which is an important section, provides:

"For the purpose of any investigation under this Part, the Court making the investigation, so far as relates to compelling the attendance and examination of witnesses and the production of documents and the regulation of the proceedings, shall have the same powers as are exercisable by that Court in the exercise of its criminal jurisdiction."

Section 254 provides for assessors who have to sit with the Chief Presidency Magistrate for, this formal investigation. Section 255 gives the power to the Court to arrest witnesses, enter any vessel, and to seize or detain vessels. Section 256

confers power on the Court to commit for trial any person who is found to have committed an offence in the course of the investigation, Section 257 provides:

"The Court shall, in the case of all investigations under this Part, transmit to the Central Government a full report of the conclusions at which it has arrived, together with the evidence and shall also send a copy thereof to the Provincial Government"

Section 258 saves the power of the Court to cancel or suspend certificates granted under any of the Acts, or the power to remove a master of a ship conferred by Section 471 of the Merchant Shipping Act, 1894. Section 259 provides that when a Court cancels or suspends any such certificate, the Central Government may grant a certificate of a lower grade. Section 260 deals with the power of the Central Government to suspend or cancel certificates in certain cases. Section 262 provides that the Central Government has to report the cancellation or suspension of any certificate. Section 263 confers the power on the Central Government to revoke the cancellation or suspension of the certificate. Section 264 deals with the power of the Court to cancel or suspend any certificate granted to a master, mate or engineer by the Central Government, and this the Court can do while holding a formal investigation into a shipping casualty under this Part if the Court finds that the loss, stranding or abandonment of, or damage to, any ship, or loss of life, has been caused by the wrongful act or default of such master, mate or engineer, or it can do independently by holding an investigation under this Part into the conduct of the master, mate or engineer if the Court finds- that he is incompetent or has been guilty of any gross act of drunkenness, tyranny or other misconduct.

Sub-section (2) of Section 264 provides:

"At the conclusion of the investigation, or as soon afterwards as possible, the Court shall state in open sitting the decision to which it may have come with respect to the cancellation or suspension of any certificate."

"Sub-section" (3) provides:

".Where the Court cancels or suspends a certificate, the Court shall forward it to the Central Government together with the report which it is required by this Part to transmit to it."

Sub-section (4) requires that a copy of the report or statement of the case on which the investigation or inquiry has been ordered, has to be furnished to the person whose certificate is sought to be cancelled or suspended. A reference might also be made to Section 229 which, provides for a person who sends or attempts to send a ship" to sea from any part in the Provinces in such an unseaworthy state that the life of any person is likely to be thereby endangered; and sub-s. (4) of this section is important and it provides:

"No prosecution under this section shall be instituted except by, or with the consent of the Central Government."

5. Now, there are three important features of this formal investigation. The first is that the investigation can only be held by a First Class Magistrate or a Presidency Magistrate. The second important feature is that the Legislature itself, although this is by no means conclusive, calls the tribunal which it has appointed a Court. The third is that Section 253 provides that the Court's procedure shall be regulated by the provisions of the Criminal Procedure Code. Mr. Vimadalal's contention is that all that the Chief Presidency Magistrate does is to submit a report to the Central Government; the Central Government may or may not take action" on it. The report does not consist of any binding decisions, nor is the report in any way enforceable or executable. Further, Mr. Vimadalal says that there is no "this" before the Chief Presidency Magistrate, there are no two parties, nor is there any contest which the Chief Presidency Magistrate decides.

Now, the most important aspect of this investigation is that the learned Chief Presidency Magistrate in "holding this investigation is bound to act judicially. The suggestion of Mr. Vimadalal that he is not so bound is entirely untenable and cannot be supported by the provisions of the Act, It is clear that the learned Chief Presidency Magistrate must follow the judicial procedure in arriving at his conclusions. It is clear that he can only find facts on the evidence led before him. It is clear that he cannot travel outside the record, in order to come to his conclusion, and in recording evidence and in giving his findings he must act as any Judge of any Court would act. The judicial process in contradistinction to the administrative process is well known and well understood, and a Judge acting judicially is limited by the record of the case and by his inability to take up any other attitude except a dispassionate and detached attitude.

Ministers and administrators do not suffer from those disabilities, and therefore whatever the result of the authorities may be which we shall presently look at, it is clear that the learned Chief Presidency Magistrate who is a responsible judicial officer of this State has been selected to hold this investigation because he has to make the investigation as a judicial officer exercising judicial functions and approaching the matter in a judicial manner, It is not also quite correct that there is no controversy or no contest which the learned Chief Presidency Magistrate has to determine. We take it that when the Central Government wants a formal investigation to be held, there must be some "prima facie" case that the loss of the ship was not due to pure misadventure. There is the report of the officer before the Central Government, there are materials before the Central Government, and the Central Government feels that here is a casualty which requires an investigation.

Therefore, in a sense there is a contest and the contest is between the view that the loss of the ship was a pure accident and the view that the loss was brought about by negligence or misconduct. It is also not true to say that the rights of any party are not affected by the decision of this tribunal. To the extent that the learned Chief Presidency Magistrate has the power to cancel or suspend certificates, there can be no doubt that the rights of persons holding those

certificates are affected. But Mr, Vimadalal says that that is a severable function of this tribunal, and to the extent that the investigation is being held into a shipping casualty the decision of the learned Chief. Presidency Magistrate which is merely a report cannot possibly affect the rights of any parties, We disagree.

When an important tribunal set up under this Act, after careful investigation, after taking evidence, after consulting the assessors, comes to the conclusion that the loss was due to negligence or misconduct of any particular officer or of the shipping company, that decision must affect the rights of "the parties against whom the decision is given. It is a very serious thing, for installance in this very case, if the learned Chief Presidency Magistrate were to hold that the Malabar Steamship Company was guilty of putting on the sea an unseaworthy ship or overloading it with cargo. Is it suggested that that determination by the learned Chief Presidency Magistrate on a full inquiry, after taking all the evidence, does not affect respondent No. 6 at all? It must be borne in mind that it would be open to the Central Government to launch a prosecution u/s 229 and there cannot be much doubt that the decision of the Central Government to launch a prosecution or not would depend largely upon the report of the learned Chief Presidency Magistrate who holds this inquiry.

It may be true that the learned Chief Presidency Magistrate does not determine the rights of any party, lint it would not be true to say that the learned Chief Presidency Magistrate's decision does not affect the rights of anyone at all. Therefore, eves if we were to accept that the attribute? which Mr. Vimadalal says are necessary to be possessed by a tribunal before it can be called a judicial tribunal, in my opinion in a sense those attributes are present, but as we shall presently point out, it is not necessary that all those attributes should be present in order to confer jurisdiction upon the High Court under Article 227. One attribute, as already pointed out, is sufficient and that is the attribute of a legal obligation to act judicially.

6. Now, various cases were cited at the Bar. It is sufficient in my opinion to deal with two important decisions of the Supreme Court reported to the same volume, and the various judgments delivered by the learned Judges of that Court clearly and emphatically bring out the real attribute of a tribunal which is made subject to the jurisdiction of the High Court under Article 227.

7. The first decision is a decision reported in -- The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi, . In that case what the Supreme Court was considering was whether it was a tribunal for the purpose of Article 136 so that the Supreme Court could entertain an application for leave to appeal from a decision of that tribunal. It is unnecessary to emphasise the fact that the expression "tribunal" in Article 136 is used in the same sense as in Article 227. If the Supreme Court has a right to entertain an application for leave to appeal from a tribunal under Article 138, the High Court would equally have power of superintendence over that tribunal under Article 227. In that case the Supreme Court held that the

Industrial Tribunal constituted under the Industrial Disputes Act, 1947, was a tribunal within the meaning of Article 136, and Kania C.J. who delivered a very short judgment agreeing with the judgments of Fazl Ali J., Mahajan J. and Mukherjea J. says (p. 189) :

"while the powers of the Industrial Tribunal in, some respects are different from those of an ordinary civil Court and it has jurisdiction and powers to give reliefs which a civil Court administering the law of the land does not possess in the discharge of its duties, it is essentially working as a judicial body."

and the learned Chief Justice goes on to say (p. 189):

"the fact that its determination has to be followed by an order of the Government which makes the award binding, or that in cases where Government is a party the legislature is permitted to revise the decision, or that the Government is empowered to fix the period of the operation of the award do not, to my mind, alter the nature and character of the functions of the Tribunal."

Therefore, what the learned Chief Justice was emphasising was that the Industrial Tribunal was working as a judicial body and that to him was the paramount consideration in coming to the conclusion that it was a tribunal within the meaning of Article 136. Then turning to the judgment of Fazl Ali J., at p. 191 the learned Judge refers with approval to the case of -- "Rex v. Electricity Commrs: London Electricity Joint Committee Co. (1920), Ex Parte", (1924) 1 KB 171 and he cites with approval the principle which governs English Courts in the issue of a writ of "certiorari", and the question that arose in that case was whether the Electricity Commissioners were a tribunal against whom a writ could be issued, and the judgment quoted at p. 191 is to the following effect (p. 208):

"in the provision that the final decision of the Commissioners is not to be operative until it has been approved by the two Houses of Parliament I find nothing inconsistent with the view that in arriving at that decision the Commissioners themselves are to act judicially and within the limits prescribed by Act of Parliament, and that the Courts have power to keep them within those limits."

Therefore, if a tribunal is set up which has got to act judicially and its powers are circumscribed by an Act, it is for the higher Court to see both that the tribunal acts judicially and within the ambit of those powers. Then turning to the judgment of Mahajan J. which, with respect, is more emphatic, the learned Judge points out (p. 194):

". I see no cogent reasons to limit the plain words of the statute and to place a narrow interpretation on words of widest amplitude used therein."

And "the words of the . statute he was considering were "Courts and tribunals" used in Article 136. At pp. 194-195 the learned Judge says:

". It must be presumed that the draftsmen of the Constitution knew well the fact

that there were a number of tribunals constituted in this country previous to the coming into force of the Constitution which were performing certain administrative, quasi-judicial or domestic functions, that some of them had even the trappings of a Court but in spite of those trappings could not be given that description. It "must also be presumed that the Constitution-makers were aware of the fact that the highest Courts in this country had held that all tribunals that discharged judicial functions fell within" in the definition of the expression "Court". If by the use of the word "tribunal" in Article 136 the intention was to give it the same meaning as "Court", then it was redundant and unnecessary to import it in the article because, by whatever name described, such a tribunal would fall within the definition of the word "Court".

And at p. 195 the learned Judge says:

"The intention of the Constitution by the use of the word "tribunal" in the article seems to have been to include within the scope of Article 136 tribunals adorned with similar trappings as a Court but strictly not coming within that definition,"

And at p. 195 the learned Judge points out:

"A true judicial decision presupposes an existing dispute between two or more parties, and then involves four requisites: (1) The presentation ... 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 the 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 argument by the parties, and (4) a decision which disposes of the whole matter by a finding upon the facts in dispute and application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law."

Now, the first two requisites are necessary even for a "quasi"-judicial tribunal, but the third and fourth requisites are not necessary.

8. The next decision, reported in the same volume, is -- Province of Bombay Vs. Kusaldas S. Advani and Others, and the question there was whether an order made under the Land Requisition Act requisitioning property was an administrative order or a judicial or a "quasi"-judicial order. This Court had taken the view that it was a "quasi"-judicial order. That view was not accepted by the Supreme Court and the Supreme Court came to the conclusion that it was an administrative order. At p. 224 the learned Chief Justice accepts the test laid down by Lord Justice- Atkin in the case of the "Electricity Commrs. (B)" to which reference has already been made, viz,

"Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially) act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

Now it will be noticed that the learned Lord Justice Atkin does not lay down that the tribunal should determine the rights of subjects. What the learned Lord Justice with the precision for which he was noted says is that the tribunal must determine questions affecting the rights of subjects, and he also emphasises the important attribute of the tribunal which is subject to the jurisdiction of the King's Bench Division that it must have the duty to act judicially. The learned Chief Justice at p. 220 after reviewing the authorities, sums up the position in one sentence:

"...It stems to me that the true position is that when the law under which the authority is making a decision, itself requires a judicial approach, the decision will be quasi-judicial. Prescribed forms of procedure are not necessary to make an inquiry judicial, provided in coming to the decision the well-recognised principles of approach are required to" be followed,"

Das J. at p. 257 says :

"..the real test which distinguishes a quasi-judicial act from an administrative act is the third , item in Atkin L. J.'s definition, namely, the duty to act judicially."

And at p.. 260 he makes the position even clearer when Jie says:

"In other words, while the presence of two parties besides the deciding authority will "prim a" "facie" and in the absence of any other factor impose upon the authority the duty to act judicially, the absence of two such parties is not decisive in taking the act of the authority out of the category of quasi-judicial act if the authority is nevertheless required by the statute to act judicially."

9. Therefore, these two decisions in my opinion make it perfectly clear that the real question that has got to be decided in order to determine which a tribunal comes within the jurisdiction of the High Court under Article 227 is whether the statute which sets up that tribunal imposes upon it the duty to act judicially. If that duty is cast upon the tribunal, then the High Court can and will exercise its jurisdiction under Article 227.

10. Mr. Vimadalal has referred to two recent decisions of the Calcutta High Court and the Madras High Court. In my opinion, with very great respect to the learned Judges who decided those cases, they have not appreciated what the Supreme Court has in my opinion clearly laid down in the two cases referred to above. -In the Calcutta" case -- Haripada Dutta Vs. Ananta Mandal, Chakravartj J. and Mookerjee J. were taking the view that a tribunal, can only be judicial or "quasi"-judicial and come within the purview of Article "227, it is set up by the State for deciding rights between contending parties in accordance with rules having the force to law, and, doing so, not by taking executive action but by determining a question. Now, it the learned Judges meant by deciding rights that the decision should have a binding effect and can be enforced-and executed, with respect, I am unable to accept that view, because although in the case before us the decision merely results in a report, the finding of facts which are embodied in

that report does determine questions which affect the rights of parties.

We would go further that even if the decision of the learned Chief Presidency Magistrate does not decide any question which affects the rights of parties, the mere fact that the duty is cast upon him to act judicially is sufficient in the view of the Supreme Court. This view of the Calcutta High Court was followed by the Madras High Court in -- In Re: Annamalai Mudaliar, .

11. NOW, there are two decisions of the Privy Council on which very strong reliance was placed by Mr. Vimadalal and we might look at them just in"passing. One is --"O" Connor v. Waldron", 1935 AC 76. The only question that the Privy Council was called upon to consider in that case was whether judicial privilege extended to the Commissioner appointed under the Combines Investigation Act, and what the Privy Council said Was that such privilege can only extend to bodies having attributes similar to those of a Court, of Justice. It is difficult to understand how this decision can have any bearing on the question whether this tribunal which the Privy Council was considering would or would not be within the jurisdiction of the High Court for the purpose of issuing a writ of certiorari.

12. The second decision is -- "Shell Co. of Australia v. Federal Commr. of Taxation", 1931 AC 275. There the Privy Council was considering the Constitution Act of the Commonwealth of Australia, and the Privy Council held that the Board of Review created by Section 41 -of the (Federal) Income Tax Assessment Act to review the decisions of the Commissioner of Taxation, and whose members are -- to hold office for seven years, is not a Court exercising the judicial power of the Commonwealth within the meaning of Section 71 of the Constitution of Australia, but was an administrative tribunal. What is emphasised by Mr. Vimadalal is that the Privy Council held that this body was an administrative tribunal although it was discharging judicial functions. But, again, what we are concerned with is not whether a certain tribunal satisfies the meaning of Section 71 of the Constitution of Australia or whether a tribunal is an administrative tribunal or a judicial tribunal.

Even an administrative tribunal, if it is bound in law to act judicially, would come within the purview of Article 227, and we apprehend it would) also come within the purview of the King's Bench Division in England for the purpose of issuing a writ of certiorari..

13. That this is clearly so is well illustrated by a very recent case reported in -- "R. v. Manchester Legal Aid Committee: Ex parte R. A. Brand & Co. Ltd.", (1952) 2 QB 413. The trustee of a bankrupt applied for"a legal aid certificate to continue the bankrupt's claim against a limited company. The Legal Aid Committee gave a certificate for legal aid to the trustee and the limited company against whom the claim was to be enforced applied for an order of certiorari against the Committee, and the question that arose was whether the Legal Aid Committee was a tribunal against which the Queen's Bench Division could issue a writ of certiorari, and Parker J. holding that it had jurisdiction points out at p. 428 :

"The true view, as it seems to us, is that the duty to act judicially may arise in widely different circumstances which it would be impossible, and, indeed, inadvisable, to attempt to define exhaustively. Where the decision is that of a court, then, unless, as in the case, for instance, of justices granting excise licences, it is acting in a purely ministerial capacity, it is clearly under a duty to act judicially. When, on the other hand, the decision is that of an administrative body and is actuated in whole or in part by questions of policy, the duty to act judicially may arise in the course of arriving at that decision. Thus, if in order to arrive at the decision, the body concerned had to consider proposals and objections and consider evidence, then there is the duty to act judicially in the course of that inquiry."

And the view taken was that even if an administrative body is under a duty to act judicially, then there would be jurisdiction to issue a writ of certiorari, and at p. 431 the learned Judge concedes that the Legal Aid Committee is an administrative body in the sense that it is responsible for administering the Act," but he points out that it is quite unconcerned with questions of policy, and then the learned Judge goes on to say that the Committee cannot refuse legal aid because the fund is becoming depleted or because they think that certain forms of action be discouraged. It has to decide the matter solely on the facts of the particular case, solely on the evidence before it and apart from any extraneous considerations. In other words, it must act judicially and not judiciously.

These very words can be applied to the functions of the learned Chief Presidency Magistrate in this investigation that he is holding. He has to decide the matter solely on the facts of the particular case, solely on the evidence before him, and apart, from any extraneous considerations, and he has also to act judicially and not judiciously.

14. Therefore, in my opinion, it is clear on these authorities that the tribunal set up under the Merchant Shipping Act is a judicial or a quasi-judicial tribunal which would attract the application of Article 227 and in respect of which the jurisdiction of the High Court can be invoked under that article.

15. Turning to the merits, unfortunately no rules have been framed in India under the Indian Merchant Shipping Act with regard to this investigation. We are even doubtful whether any such rules can be framed, because" there is no section which provides for the framing of the rules in respect of inquiries under Part VI of the Act. In England the Act specifically provides by Section 479 that the Lord Chancellor may make general rules for carrying into effect the enactments relating to formal investigations, and the Lord Chancellor has framed what are known as the Shipping Casualties, Appeals, and Re-hearing Rules, 1923, and R. 4 provides that:

"The Board of Trade, the owner, the master, and any certificated officer or other person upon whom a notice of investigation has been served, shall be deemed to be parties to the proceedings."

And R. 5 provides:

"Any other person may, by leave of the Judge, appear, and any person who appears under this Rule shall thereupon become a party to the proceedings."

So Rule. 4 provides for those parties who have to be present at the investigation, and R. 5 leaves it to the discretion of the presiding Judge whether some party other than the one referred to in R. 4 should, or should not be made a party to the proceedings. Now, although no rules are framed, certain instructions are issued by the Central Government. It is clear that these instructions have no statutory effect and cannot possibly bind the learned Chief Presidency Magistrate who is conducting this investigation. But it is significant to note that instruction 4 with regard to formal investigations is almost identical with Rules 4 and 5 of the English Rules to which, reference has been made, and instruction 4 is:

"The officer on whose application the investigation is undertaken and any person upon whom a notice of investigation has been served, should be deemed to be parties of the proceedings and any other person may be permitted by the Court to appear at the investigation and become a party to the proceedings."

Now, what the learned Chief Presidency Magistrate did was he looked at these instructions and, as we read his order, he came to the conclusion that he had no jurisdiction to make the insurance companies parties to these proceedings. In the first place, these instructions were not binding upon him. It was open to him to regulate the proceedings, according to well established rules of judicial proceedings and those rules are that if a person is a necessary party or a proper party, it is left to the discretion of the Court to make him a party to the proceedings. But assuming that he thought these instructions were binding upon him, even so instruction 4 gave him the widest discretion to decide whether the insurance companies were parties to the proceedings or not.

With respect to the learned Chief Presidency Magistrate, who is both a very responsible and a very conscientious officer, we find it rather difficult to understand how he came to the conclusion that the insurance companies could not be permitted to appear in these proceedings. If we had looked upon this order as the exercise of discretion by the learned Chief Presidency Magistrate, unless we were satisfied that the discretion was exercised arbitrarily or capriciously, we would not have interfered under Article 227. If the law confers discretion upon an officer or upon a tribunal, it is for that officer or, that tribunal to exercise its discretion. It is not for the High Court to exercise the discretion for him. In the case of a discretion it is very rarely and under great limitations that the High Court interferes, but as we said before we do not look upon the order of the learned Chief Presidency Magistrate as the exercise of his discretion.

Having taken the view that he could not permit "the insurance companies to appear, he goes on, as it were, to give a solatium to the insurance companies and says that

"If the insurance companies are in possession of valuable evidence, they can suggest the names of the witnesses to the learned advocate for the Union of India, and he may, if he thinks necessary, summon them as witnesses on behalf of the State. But we do not permit him to appear, so as to take part in and cross-examine witnesses. There is, of course, no objection to Mr. D'Silva or anybody else watching the proceedings, if he wants to do so."

16. Now, one or two relevant facts may be stated. In this very case the learned Chief Presidency Magistrate has permitted the New Dholera Shipping and Trading Co., who are stevedores, to be made parties to these proceedings, and there are precedents to which Mr. Somjee has drawn our attention in this very Court where consignees of cargoes have been made parties. See for instance Barcelona's "Inquiry which was held on 9-6-1952. Mr. Somjee has also drawn our attention to the English practice which seems to show that stevedores and shippers of cargoes are made parties in inquiries held to shipping casualties. Therefore, if the learned Chief Presidency Magistrate had decided to make the insurance companies, who are in the shoes of the owners of the cargo, parties to these proceedings, he would not have acted without precedent.

17. Now, there can be no doubt that the insurance companies, from what is stated in the petition, are in possession of most valuable information. There can be no doubt that the learned Chief Presidency Magistrate and the assessors must be interested in getting this vital information before the Court. We take it that the one sole object with which, the tribunal is actuated is to elicit the truth. The tragedy of the ship sinking in extra-, ordinary circumstances is a very serious, tragedy which affects the future of Indian Merchant Shipping, and it is absolutely necessary in the interest of the Union and in the interest of the public that the truth and the real truth should be ascertained. Therefore, ultimately it is for the Chief Presidency Magistrate to decide which is the best way of getting that truth.

There are two aspects to this question. The view, at least tentatively, held by the learned Chief Presidency Magistrate is that truth can be elicited by the insurance companies putting all the materials before Union of India through its counsel, by suggesting to the counsel for the Union what questions should be put in cross-examination, and also suggesting to the Union of India what witnesses should be called. The other aspect is that the inquiry can never be satisfactorily conducted if the party which has the information--and vital information--is prevented from calling its own witnesses, examining those witnesses in its own way, and cross-examining the witnesses called on behalf of the Union or the other party, in order to elicit the truth as it envisages the truth.

We do not wish in any way to fetter the discretion" of the learned Chief Presidency Magistrate. It will be for him to decide whether he could really get at the truth by the rather circuitous method of getting the learned advocate of" the insurance companies to give instructions to the advocate for the Union. Again, it will be for him to decide whether he may not prefer the more direct and satisfactory method of permitting the insurance companies to put all the

evidence before the Court as a party and to function as a party. The Advocate General, who has appeared on behalf of the Union, has taken up a very fair attitude. He says that the Union to India is as much anxious as the insurance companies to get at the truth and it will welcome every assistance from the insurance companies, but if--the insurance companies apply to the learned Chief Presidency Magistrate again to be made parties, the Union will not object to that application.

18. Therefore, we must set aside the order of" the learned Chief Presidency Magistrate and send the matter back to him to dispose of this application in the light of this judgment and to exercise his discretion as he thinks best. SIIA J:

19. I agree. Under Article 227 of the Constitution this Court has superintendence over all Courts, and tribunals throughout the territories in relation to which it exercises jurisdiction, and the question that arises in this case is whether the Chief Presidency Magistrate, who is required under .Part VI of the Indian Merchant Shipping Act, 1923, to hold a formal investigation into the loss of S.S. Janaki oil an application made u/s 248, is a "tribunal" within the meaning of that article. Mr, Vimadalal who appears on behalf of respondent No. 6 contended that even though the Chief Presidency Magistrate normally exercises judicial functions, and the authority which is called upon to make the formal inquiry u/s 249 is called a Court, the Chief Presidency Magistrate when holding a format investigation into a shipping casualty must be regarded as a purely administrative authority set up only to investigate into the causes of the shipping casualty and to collect evidence in that behalf. . Mr. Vimadalal contended that the Chief Presidency Magistrate, holding a formal investigation, if not a Court, and he cannot be called a tribunal within the meaning of Article 227, and therefore the Court has no jurisdiction to rectify the order passed by the Chief Presidency Magistrate. Mr. Vimadalal submitted that in a formal investigation there is no "lis" or dispute and that the Chief Presidency Magistrate in making the formal investigation is under no duty to act judicially and that he is not authorised to give a final decision which is conclusive of any matter under investigation.

20. Now, whether the Chief Presidency Magistrate exercising authority under Part VI of the Indian Merchant Shipping Act can be regarded as a tribunal must be ascertained from the provisions of the Act. Section 246 defines a shipping casualty.

When it appears that there has occurred a shipping casualty, a report is required to be made by the officer designated in that behalf by the Central Government to that Government as well as the Provincial Government. The officer may, and if so required by the Central Government shall make aft application to a Magistrate competent to bold an inquiry u/s 249 to hold a formal investigation into any shipping casualty. When an application is made to the Court designated under Part VI, (that Court being a Magistrate of the First Class specially empowered in that behalf or a Presidency Magistrate), the Court must hold a formal investigation into the shipping casualty, and it may in the course of the

investigation inquire into a charge of in-competency or misconduct arising in the course of the investigation against any master, mate or engineer as well as into any charge of wrongful act or default causing the shipping casualty. The Court after making an inquiry may cancel or suspend the certificate of any master, mate or engineer. Provision is made in Section 250(2), 264(4), 252, 253 and 234 as to the procedure to be followed by the Court in holding that investigation. If the Court holds an inquiry into the misconduct against a master, mate or engineer, it is required to furnish a copy of the report or statement of the case upon which the investigation has been directed to the person against whom misconduct or wrongful act or default or in-competency is alleged. Similarly a copy of the report of the statement on which the investigation or inquiry has been ordered must be furnished- to the holder of a certificate granted by the Central Government under the Act before the Court can cancel or suspend the certificate. Section 252 requires the Court to give the officer concerned full opportunity of making a defence either in person or otherwise. Section 253 confers upon the Court the same powers relating to compelling attendance of witnesses, production of documents and regulation of proceedings, as are exercisable by the Court in the exercise of its criminal jurisdiction. By Section 254 the Court of inquiry has to empanel with it in "making the investigation assessors some of whom shall be conversant with maritime affairs and others shall be conversant with either maritime or mercantile affairs. Provision is made for arrest of witnesses and causing detention of vessels and for committing for trial before the proper Court any person who appears to have committed within the jurisdiction of a Court in India an offence punishable under the law in force, and for binding over any witnesses to give evidence, and for all these purposes the powers of a criminal Court may be exercised. The assessors must attend all proceedings of the Court and the opinion of the assessors must be given in writing in open Court, but the powers of the Court are exercisable by the presiding authority alone. The Court holding a formal investigation into a shipping casualty or holding an investigation into the conduct of a master, mate or engineer, may cancel or suspend the certificate granted by the Central Government on proof of facts mentioned in Section 264 (I). The Court by Section 257 is required on the termination of the inquiry to make a report to the Central Government as to the conclusion arrived at together with the evidence.

21. Evidently the Court exercising power under Chapter VI is acting by virtue of the statute.. It is in other words exercising the power of the State,, and that is undisputed. But it is contended that the power exercised is not the judicial power of the State; it is merely executive authority of the State. It is clear from the "provisions contained in Chapter VI that the Court is required by the Act to ascertain on evidence whether there has been a shipping casualty and whether any master, mate or engineer has been guilty of in-competency, misconduct or wrongful act or default which justifies the Court in ordering suspension or cancellation of the certificate issued to him, Provision has been made for the procedure to be followed in the formal investigation of a shipping casualty, or an

investigation into charges of misconduct. Power to compel attendance of witnesses and for compelling persons who appear to be guilty of offences punishable under the law to remain present before a competent Court for trial in respect of that offence is also conferred. Provision is also made for assessors to be empanelled for assisting the Court. Undoubtedly the proceedings are taken for holding an investigation, and in its very nature the formal investigation into a shipping casualty cannot. and does not assume the form of a claim against a party for ascertaining his civil liability for loss of a ship or cargo or for loss of life. But the format investigation required to be made is as to a shipping casualty as defined in Section 246, and in that investigation it is open to the person who is the owner of the ship or the officer concerned to explain the causes of the shipping casualty if any. It would also be open to the master, mate or engineer to show that there has not been any incompetency, misconduct or wrongful act or default which would justify imposition of punishment. Obviously, there is in the investigation a "dispute", on which evidence is required to be recorded. Procedure is provided for hearing the person against whom allegations are made and evidence is given and the Court is required to record its final conclusions on that enquiry and even to impose punishment. When procedure is provided for holding the inquiry and for hearing evidence and in the manner provided by the Criminal Procedure Code, it is difficult to accept the contention that in holding investigation the Court is not required to act judicially. If the detailed provisions which I have summarised earlier are to have any meaning, an obligation to act judicially is clearly implicit therein. The Court holding the inquiry cannot collect evidence by itself, it cannot ignore evidence led before it in arriving at a conclusion, nor can it base its conclusions on considerations either of policy or of expediency. The Court has to follow the prescribed procedure, has to examine the witnesses tendered or called before it, has to consider any explanation given by the officer against whom a charge is made, and ultimately the Court has to come to a conclusion on the evidence after an appraisal thereof, and not on extraneous matters. I am unable therefore to agree that there is no duty imposed upon the Court to act judicially. It is true that in respect of a shipping casualty strictly so called and divorced from an inquiry relating to a charge of incompetency or misconduct against an officer of a ship, no final decision "which by its own force adjudicates rights between contending parties" can be given by the Court. The Court holding a formal investigation has only to report its conclusions to the Central Government, and the Central Government may thereafter take such action on the report as it deems proper, But the fact that there is no jurisdiction to record a final decision in respect of a shipping casualty strictly so called does not in my judgment make the formal investigation any the less an investigation by a tribunal-charged with duty to act judicially.

22. There are several reported decisions in which the question has been discussed as to what is a judicial tribunal and what is a quasi-judicial tribunal, and a majority of the decisions have adopted the classification which was made in the decision reported in -- "Cooper v. Wilson", (1937) 2 KB 309. In the

judgment of Scott L. J. in that cast; it is observed at the foot of p. 340 : .

"A true judicial decision presupposes an existing dispute between two or more parties, and then involves four requisites; (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 the 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 argument by the parties; and (4) a decision which disposes 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 A quasi-judicial decision equally presupposes an existing dispute between two or more parties and involves (1) and (2), but does not necessarily involve (3) and never involves (4) The place of (4) is in fact taken by administrative action, the character of which is deter-mined by the Minister"s free choice."

According to those observations what distinguishes a quasi-judicial tribunal from a judicial tribunal is the absence in the former of a decision which disposes of the whole matter by a finding upon (he facts" in dispute and the application of the law of the kind to the facts so found. In the present ease in so far as there is an investigation into a shipping casualty only, no final decision binding upon the parties by its own force would be arrived at. But even if there is no final decision, the. Formal investigation must be regarded a quasi-judicial inquiry the ultimate decision resting upon the Central Government. The sole ground of incapacity in the tribunal to finally adjudicate upon a matter under enquiry before it cannot justify the view that the enquiry is purely administrative. In the Insolvency Acts provision is made for examination of witnesses for collection of information regarding an insolvent"s property (Vide Section 36, Presidency Towns Insolvency Act and Section 59A, Provincial Insolvency Act), but it cannot be said that because no final decision is recorded by the officer to whom the power is delegated in those proceedings, he is not acting judicially and is acting in anadministrative-capacity.

23. Even assuming for the sake of argument that the Court exercising authority under Part. VI is an administrative tribunal, as I have pointed out earlier the Court is required to act judicially. Being required to act judicially, even if it be regarded an administrative tribunal, it would still be a tribunal with in the meaning of Article 227 of the Constitution and subject to the jurisdiction of this Court to correction. I may repeat that in making this inquiry the Court cannot ignore the prescribed procedure and cannot ignore the evidence which is led before it, nor the defence which may be made. Nor is the Court entitled in making its report in the formal investigation before it to arrive at a conclusion on considerations of policy or expediency. Even if the Court be regarded as functioning as an administrative tribunal, the duty to act judicially is clearly imposed. The distinction between a quasi-judicial tribunal and a purely

administrative tribunal is happily expressed in a recent judgment in (1952) 2QB 413 (HJ, by Parker J.:

"But the decision of the tribunal is to be judicial and not judicious. If it is judicial then it is a tribunal or a quasi-judicial tribunal. If it is merely judicious it would be regarded as a wholly administrative tribunal."

Respondent No. 6 to pay the costs of the petition. No order as to costs of the Union of India.

24. Order accordingly.