

(1986) 12 BOM CK 0020
In the Bombay High Court
Case No : O.S. Appeal No. 450 of 1979

State of Maharashtra

APPELLANT

Vs

Labour Law Practitioners's Association

RESPONDENT

Date of Decision : 09-12-1986

Acts Referred:

Bombay General Clauses Act, 1904 — Section 3(15)
Bombay Industrial Relations Act, 1946 — Section 9(2)
Constitution of India, 1950 — Article 234, 236
General Clauses Act, 1897 — Section 3(17)
Industrial Disputes Act, 1947 — Section 7(3)
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 6

Citation : (1988) 2 BomCR 16 : (1987) 89 BOMLR 120 : (1987) 54 FLR 732 : (1987) MhLj 191

Hon'ble Judges : S.P. Bharucha, J;S.N. Variava, J

Bench : Division Bench

Advocate : N.H. Gursahani and B.E. Patil, for the Appellant; F.N. Kaka, Shekhar Naphade, F.D. Damania, A.M. Kapadia and M.S. Naik for respondent Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Bharucha, J.—The Labour Court in the State of Maharashtra are constituted under the provisions of the Industrial Disputes Act. 1947, the Bombay Industrial Relations Act, 1946 and the Maharashtra recognition of Trade Union and Prevention of Unfair Labour Practices Act 1971.

2. The relevant provision in the Industrial Disputes Act is contained in section 7. Sub-section (1) of section 7 authorises the State Government (the appellant) to constitute one or more Labour Court for the adjudication of Industrial disputes relating to any matter specified in the Second Schedule to that Act sub-section (2) of section 7 provides that the Labour Court shall consist of one person to be appointed by the appropriate Government. The original sub-section (3) of section

7 provided the qualifications of that person viz., that (a) he is or had been a Judge of a High Court, or (b) had, for a period of not less than three years been a District Judge or an Additional District Judge; or (c) had held the office of Chairman or other member of the Labour Appellate Tribunal constituted under the Industrial Disputes Act for a period of not less than 2 year; or (d) had held any judicial office in India for not less than 7 years; or (e) had been the presiding officer of a Labour Court constituted under any Provincial Act or State Act for not less than 5 years. By the Industrial Disputes (Maharashtra Amendment) Act, 1947, section 7 was amended and sub-clauses (d-1)(d-2) and (d-3) were added. They read thus :

"(d-1) he has practised as an Advocate or attorney for not less than seven years in the High Court, or any Court subordinate thereto, or any Industrial Court or Tribunal or Labour Court, constituted under any law for the time being in force; or

(d-2) he holds a degree in law of a University established by law in any part of India and is holding or has held an office not lower in rank than that of Deputy Registrar of any such Industrial Court or Tribunal for not less than five years; or

(d-3) he holds a degree in law of University established by law in any part of India and is holding or has held an office not lower in rank than that of Assistant Commissioner of Labour under the State Government for not less than five years. "

3. Section 9 of the Bombay Industrial Relations Act constitutes Labour Court for the purpose of deciding the disputes set out in section 78 of that Act. Under the provisions of section 9 thereof the State Government was required to appoint persons having the prescribed qualifications to preside over the Labour Court. The proviso to section 9 laid down that no person should be so appointed unless he possessed the qualifications laid down under Article 234 of the Constitution for being eligible to enter the judicial service in the State. Sub-section (2) of section 9 was amended by Maharashtra Act No. XLVII of 1977 dated October 24, 1977. The amended sub-section reads thus :

"A person shall not be qualified for appointment as the presiding officer of a Labour Court, unless.

(a) he has held any judicial office in India for not less than five years or.

(b) he has practised as an Advocate or Attorney for not less than seven years in the High Court or any Court subordinate there-to, or in any Industrial Court, Tribunal or Labour Court constituted under any law for the time being in force; or.

(c) he holds a degree in law of a University established by law in any part of India and is holding or has held an office not lower in rank than that of Deputy Registrar of any such Industrial Court or of Tribunal, or Assistant Commissioner of Labour under the State Government, in both cases for not less than five years."

The proviso, it will be noticed, was deleted. u/s 85 the Industrial Court exercises

superintendence over the Labour Court.

4. Section 6 of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act empowers the State Government to constitute one or more Labour Courts and appoint persons thereto having the prescribed qualifications. The proviso to section 6 lays down that no person shall be so appointed unless he possesses the qualifications prescribed under Article 234 of the Constitution for being eligible to enter the judicial service in the State. There has been no amendment to section 6 of the M.R.T.U. and P.U.L.P. Act.

5. By a notification dated March 8, 1979 the State Government appointed respondents 3 and 4 as judges of the Labour Court at Pune and Sholapur. Respondents 3 and 4 are law graduates and were at the relevant time in the service of the State Government as Assistant Commissioners of Labour.

6. On March 17, 1979 this petition was filed by an association whose members practise in or are otherwise concerned with Industrial Courts and Tribunals and Labour Courts in the State. The petition sought the setting aside of the notification appointing respondents 3 and 4 as Judges of the Labour Court. It sought a declaration that the amended provisions of the Industrial Disputes Act and the B.I.R. Act referred to above were void as being contrary to the provisions of Article 234 of the Constitution. It also sought a direction to the State Government to comply with the provisions of Article 234 when appointing judges the Labour Court.

7. The impugned notification was stayed pending the disposal of the writ petition.

8. The writ petition was heard and decided by Pendse J., on June 12, 1979. He held that there was no case for striking down the aforementioned amendments to the Industrial Disputes Act and the B.I.R. Act. He held that the Labour Court performed judicial function, that posts in the Labour Court were Civil judicial post and that the posts were inferior to that of the District Judge so that Article 234 was attracted. Accordingly he quashed the appointments of respondents 3 and 4 and directed the State Government to comply with the provisions of Article 234 in the matter of appointment of judges of the Labour Court.

9. That the Labour Court performs judicial functions is not disputed, as it cannot be, by Mr. Gursahani, learned Counsel for the State Government. The Court adjudicates upon disputes that would, were it not for the Industrial Disputes Act, the B.I.R. and the M.R.T.U. and P.U.L.P. Act, fall within the jurisdiction of the ordinary Civil Courts, although the ordinary Civil Courts would not be able to grant all the reliefs that are contemplated by these Acts. The Labour Court thus adjudicates upon disputes that are civil in nature.

10. Article 234 finds place in Chapter 6 of Part VI of the constitution. Chapter 6 is entitled "Subordinate Courts". Article 234 deals with the recruitment of persons other than district judges to the judicial service. It reads thus :

234. "Appointments of persons other than district judges to the judicial service of

a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State."

Article 235 deals with control over subordinate Court and reads thus :

235. "The control over district Court and courts subordinate there to including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law."

Article 236 defines the expression " district judge" and "Judicial service" and reads thus :

236. "In this Chapter---

(a) the expression "district Judge" includes Judge of a City Civil Court additional district Judge, joint district Judge, assistant district Judge, Chief Judge of Small Causes Court, Chief presidency Magistrate, additional chief presidency Magistrate sessions Judge, additional sessions Judge and assistant sessions judge;"

(b) the expression "judicial service" means a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge."

12. At this stage it is convenient to quote the identical definition of "district judge" that appears in section 3(17) of the General Clauses Act, 1897, and section 3(15) of the Bombay General Clauses Act, 1904. It reads thus :

" "District Judge" shall mean the Judge of a principal Civil Court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction."

13. The learned Single Judge found force in the submission made on behalf of the association that the Industrial Court constituted under in Industrial Disputes Act and the B.I.R. Act was a principal Civil Court of Original Civil Jurisdiction and, as such, its Presiding Officer was a district Judge for the purpose of Article 236. The learned Single Judge noted that the definition of district judge in Article 236(a) was not exhaustive but inclusive. He held that the Industrial Court was a Civil Court exercising original civil jurisdiction and as such the person presiding over it could well be termed as a district Judge in view of the definition under the General Clauses Act. The learned Single Judge accepted the submission that Article 236(a) was very wide and covered every principal Civil Court; it was not restricted only to the hierarchy of the Civil Courts. That the Chief Presidency

Magistrate and the Sessions Judge were included in the definition of the district judge indicated that a very wide interpretation had to be given to the expression.

14. Mr. Gursahani, learned Counsel for the State Government, laid great emphasis upon the fact that the learned Single Judge's judgment had been found unacceptable by a Division Bench of the Allahabad High Court in *M/s. Poysha Industrial Company Ltd. v. State of U.P.*, 1985 Lab. I.C. 1683. Article 234 was, in this decision, considered in its application to the Labour Court. The learned Judges of the Allahabad High Court, placing reliance upon the judgments of the Supreme Court in *Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others*, *Chandra Mohan v. The State of U.P.*, AIR 1966 S.C. 1987 and *Statesman (Private) Ltd. Vs. H.R. Deb and Others*, came to the conclusion that reference to the provisions contained in Chapter 6 of Part VI of the Constitution was out of place for the purposes of the appointment of the presiding officer of Labour Court. In regard to the judgement of the learned Single Judge, it was observed that he had over looked the crucial fact that Chapter 6 of Part VI was confined in its operation to the regular civil and criminal Courts under the hierarchy of Courts. The learned Single Judge had "glossed over" the inherent scheme of the chapter that members of the judicial service were required to be subordinates of the district Judge. The view he had taken ran counter to the dictum in the *Hari Nagar Sugar Mill's* case (supra) that Articles 233 to 237 operate with respect to the ordinary Courts of civil judicature, the decision in *Chandra Mohan's* case (supra) on the interpretation of the word "judicial service" in Article 236, viz., that the judicial service consisted of the hierarchy of judicial officers starting from the lowest and ending with the District Judge and the emphasis given therein to the expressions "expressly" and "intended" in the definition of the judicial service. The learned Single Judge's attention did not appear to have been drawn to the decision in the *Statesman's* case (supra). In sum, the view expressed by the learned Single Judge that the provisions contained in Article 234 were attracted to the appointment of the presiding officer of the Labour Courts was "diametrically opposed" to the aforementioned decisions of the Supreme Court.

15. We must at the outset, note the observations of the Supreme Court in paragraph 20 of *Chandra Mohan's* case (ibid). Their Lordships observed that it was unreasonable to attribute to the makers of the Constitutions, who had so carefully provided for the independence of the judiciary, an intention to destroy the same by an indirect method what could, they asked rhetorically, be more deleterious to the good name of the judiciary than to permit recruitment at the level of district judges from the executive department ? *Chandra Mohan's* was a case in which the real conflict rested on the question whether persons from services other than the judicial service in could be appointed district judges. In this context the expression "the service " in Clause (2) of Article 233 of the Constitution came to be considered and it was held that the expression "exclusively" and "intended" used therein emphasised the fact that the judicial service consisted only of persons intended to fill up the posts of district judges

and other civil judicial posts and that it was the exclusive service of judicial officers; it was only the service pertaining to the Courts.

16. It does not appear to us that this judgment assists either side in the controversy before us, except in regard to the importance of the independence of the judiciary.

17. In *Hari Nagar Sugar Mill's case* (ibid) the nature of the function performed by the Central Government u/s 111(3) of the Companies Act, 1956, as it then stood, was in question. Was it, when exercising appellate powers in regard to the refusal to transfer shares, a Tribunal exercising judicial functions subject to the appellate jurisdiction of the Supreme Court under Article 136 of the Constitution? Only the judgement of Hidayatullah, J., in this matter is relevant to the controversy before us. He observed that all Tribunals are not Courts though all Courts are Tribunals. The word Court was used to designate these Tribunals which were set up in an organised State for the administration of justice. By the administration of justice was meant the exercise of the judicial power of the State to maintain and uphold right and to punish wrongs. Whenever there was an infringement of a right or an inquiry, the courts were there to restore in *vinculum juris* which was disturbed. When rights were infringed or invaded, the aggrieved party could commence a proceeding before the ordinary Civil Courts. These courts, which were instrumentalities of Government, were invested with the judicial power of the State, and their authority was derived from the Constitution or some Act of legislature constituting them. Their number was ordinarily fixed and they were ordinarily permanent. They could try any suit or cause within their jurisdiction. Their numbers might be increased or decreased, but they were almost always permanent. They went under the compendious name of courts of civil judicature. The Central Government did not come within this class. With the growth of civilisation and the problems of modern life, a large number of administrative Tribunals had come into existence. These Tribunals had the authority of law to pronounce upon valuable rights; they acted in a judicial manner and even on evidence on oath, but they were not part of the ordinary Court of civil judicature. They shared the exercise of the judicial power of the State, but they were brought into existence to implement some administrative policy or determine controversies arising out of some administrative law. They were very similar to Courts, but were not Courts. When the Constitution spoke of courts, *inter alia*, in article 234 it contemplated the courts of civil judicature but not Tribunals other than such courts. By courts was meant the courts of Civil judicature and by Tribunals those bodies of men who are appointed to decide controversies arising under certain special law. A Court in the strict sense was a Tribunal which was a part of the ordinary hierarchy of courts of judicature maintained by the State under its constitution to exercise the judicial power of the State. These courts performed all the judicial function of the State except those that were excluded by law from their jurisdiction. Courts and Tribunals acted judicially in both sense, and in the term Court were included the ordinary and permanent Tribunals and in the term Tribunal were included all others which were

not so included. Where Government embarked upon a curial function and proceeded to exercise judicial power and decided disputes, it was legitimate to regard the officer who dealt with the matter and even Government itself as a Tribunal. The word Tribunal was a word of wide import, and the words Court and Tribunal embraced within them the exercise of judicial power in all its forms. The decision of the Central Government u/s 111(3) of the Companies Act, therefore, fell within the power of this Court under Article 136.

18. At this stage we may note only that the Tribunal in question in the Harinagar Sugar Mill's case was the Central Government u/s 111(3) of the Companies Act, exercising appellate powers, in regard to the refusal to transfer shares. As will hereafter be shown, the Labour Court substantially meets the requirements set out by Hidayatullah, j., to be treated as a part of the ordinary hierarchy of Courts.

19. In the case of Statesman (Pvt.) Ltd. *ibid* the Supreme Court was concerned with the validity of the appointment of the respondent as a Labour Court Judge. He was found to have served as a Magistrate for 19 years and his appointment was upheld. In this context it was observed that the scheme of Chapter 6 of Part 6 of the Constitution had its own effect on the meaning of the expressions "judicial office" and "judicial service". The use of the same expressions in any other enactment not in *pari materia* could have no bearing upon the Industrial Disputes Act. The expressions bore in the Constitution the meaning which the context dictated. What is relevant to the issue before us is the observation of Hidayatullah, C.J. , speaking for the Court, that the intension of the legislature in framing section 7 of the Industrial Disputes Act really was that men who could be described as independent and with sufficient judicial experience must be selected as Labour Court Judges. The mention of High Court Judges and District Judges in the section indicated that, ordinarily, judicial officers from the civil judiciary must be selected. The appointment of person from the ranks of the civil judiciary carried with it an assurance which was unique. The functions of a Labour Court were of great public importance and quasi-civil in nature. Men of experience on the civil side of the law were most suitable.

20. Our attention was drawn to the judgment of the Supreme Court in *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi*, The Supreme Court by a majority held that the functions and duties of the Industrial Tribunal were very much like those of a body discharging judicial functions although it was not a Court. Under Art. 136 of the Constitution the Supreme Court had the jurisdiction to entertain an application for leave to appeal from the industrial Tribunal's decision. Kania, C.J. having considered all the provisions of the Industrial Disputes Act, found that the Industrial Tribunal was discharging functions very near those of a Court, although it was not a Court in the "technical sense" of the word. Fazal Ali, J., also expressing the majority view, said that there could be no doubt that the Industrial Tribunal had all the trappings of a Court and performed functions which could not but be regarded as judicial. Mahajan, J., also expressing the majority

view, pointed out that the word "Court originally meant the king's palace but subsequently acquired the meaning of a place where justice was administered, and /or the persons who administered it. To be a Court , the person or persons who constituted it must be entrusted with judicial functions, that is, of deciding litigated questions according to law. Before a person or persons could be said to constitute a Court it had to be held that they derived their powers from the State and were exercising the judicial powers of the State. The words "judicial power " meant the power which every sovereign authority must necessity have to decide controversies between its subjects, or between itself and its subjects whether the rights related to life, liberty or property. The exercise of the power did not commence until some Tribunal which had power to give a binding and authoritative decision was called upon to take action. It was conceded that the Tribunal constituted under the Industrial Disputes Act exercised "quasi judicial powers". This phrase implied that a certain content of the judicial power of the State was vested in the Tribunal and it was called upon to exercise it. A variety of administrative Tribunals and domestic Tribunals were known to exists in India as well as abroad but the real question to decide in each case was as to the extent of judicial power of the State exercised by them. The expression "adjudication", implied that the Tribunal was to act as a judge of a the dispute. In other words, it sat as a Court of justice and not as an administrator. Analysing the powers of the Industrial Tribunal, Mahajan, J., held that it was difficult to conceive that it performed any function other than that of a judicial nature. It had the first three requisites and characteristics of a Court and a considerable element of the fourth. The learned Judge was referring to the decision in *Cooper v. Wilson*, 1937(2) KB 309 and quoted the relevant passage. It reads thus : (at p. 195):-

"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 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. 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 determined by the Minister's free choice."

21. Concluding, Maharajan, J., held that the Industrial Tribunal had all the necessary attributes of a Court of justice. It had no other function except that of adjudicating on a dispute. By reason of the nature of the dispute that it had to adjudicate the law gave it wider powers than were possessed by ordinary Court of law, but powers of such a nature did not affect the question that it was

exercising judicial power. Statutes like the Relief of Indebtedness Act or the Encumbered Estates Act had conferred powers on courts which were not ordinarily known to law and which affected contractual rights. That circumstance did not make them anything else but Tribunals exercising the judicial power of the State though in a degree different from the ordinary Courts and to an extent which was also different from that enjoyed by an ordinary Courts and of law. They might be described as quasi-judicial bodies "because they are out of the hierarchy of the ordinary judicial system."

22. What was said of the Industrial Tribunal in the Bharat Bank's case (supra) would in full measure apply to the Labour Court.

23. A full Bench of this Court considered the question of the application of Art. 227 as it then read. It provided by sub-article (1) that the High Court would have superintendence over all courts subject to its appellate jurisdiction. Sub-article (5) stated that nothing in the Article should be construed as giving to the High Court any jurisdiction to question any judgment of any inferior Court which was not otherwise subject to appeal or revision. The full Bench noted that neither the expression "Court " nor the expression "Tribunal" had been defined in the Constitution and that it was well settled that all Courts were Tribunals but all Tribunals were not Courts. Referring to the observations of Hidayatullah, J, quoted above in the Harinagar Sugar Mill's case (supra), the Full Bench stated that some Tribunals would be basically Court, i.e. courts in their normal connotation, while some others would not be Courts and, therefore, it could not be said that Parliament wanted to exclude all Tribunals from the purview of the High Court's superintendence under the amended Article 227 but it could be said that Parliament intended to exclude only such Tribunals as were not basically courts. It was obvious that this result would follow if the expression courts was understood and regarded in its ordinary meaning of its accepted normal connotation, namely, an adjudication body which performed the judicial function of rendering definitive judgments having finality and authoritativeness to bind the parties litigating their right before it and that too in exercise of the sovereign judicial power transferred to it by the State. Any Tribunal or authority possessing these attributes would be a Court. Having regard to the phraseology of the amended Article 227, the Full Bench held that it covered all Courts, meaning thereby all regular civil and criminal courts constituted under the hierarchy of Courts subject to its appellate or revisional jurisdiction and extended to Tribunals, bodies of authorities, whatever be their label, provided two conditions were satisfied : (a) such Tribunal, body or authority was basically a Court, i.e., it performed the judicial function of rendering definitive judgments having finality and authoritativeness to bind the parties litigating their rights before it in exercise of sovereign judicial power transferred to it by the State and (b) such Tribunal, body or authority was subject to the High Court's appellate or revisional jurisdiction.

24. The Full Bench of the Gujarat High Court in Shaikh Mohammedbhikhan

Hussainbhai v. The Manager, Chandrabhanu Cinema, 1988 Lab. I.C. 1749 considered the application of the Contempt of Court Act to Labour Courts and Industrial Tribunals. After analysing the relevant provisions of the Industrial Disputes Act, the Court stated that these provisions clearly indicated that Labour Courts and Industrial Tribunals satisfied all the four tests for qualifying them to be elevated to the status of Court as contemplated by the Contempt of Courts Act, 1971. They acted as judicial authorities being invested with the judicial power of the State enabling them to resolve the disputes between the parties and settling the lis between them. They were invested with the judicial power of the State. All the essential procedural provision for the functioning of the judicial authorities was made available to them. The decision they gave was not only final and binding between the parties, upon the successors heirs and assigns of the employers and upon workmen who subsequently joined.

25. Tested upon the touch-stone of these decisions, the Labour Court is invested with the judicial power of the State. It derives its authority from statutes. It is ordinarily permanent. Its number is ordinarily fixed. It adjudicates upon disputes between parties and delivers binding judgments. It has all the trappings of a Court. It does not implement administrative policy or determine controversies arising out of administrative law.

26. The definition of District Judge in Article 236(a) is an inclusive one and covers a large field. It expressly includes a Judge of a City Civil Court, an additional district judge, a joint district Judge, an assistant district judge, the chief judge of a Small Causes Court, the chief presidency magistrate, a sessions judge, an additional sessions judge and an assistant sessions judge. It includes every conceivable functionary of similar status in what was ordinarily regarded as the hierarchy of courts but is still only inclusive in nature. This suggests that the framers of the Constitution contemplated the inclusion within the definition of district Judge of functionaries outside what was ordinarily regarded as the hierarchy of the courts.

27. The constitutional definition must be read with that in the General Clauses Act. The district judge is there defined as the judge of a principal Civil Court of original jurisdiction.

28. The Labour Court has been held in the various decisions aforementioned to be a Court. The Labour Court adjudicates upon disputes which are essentially of a civil nature. The Labour Court's functions were held as far back as 1968 to be "quasi-civil" in nature. This must apply to the Industrial Court. The Industrial Court has original jurisdiction under the statute. It is also a principle Court, exercises supervision over the Labour Court (section 85, B.I.R. Act.), and hears appeals from decisions of the Labour Court (section 84, B.I.R. Act.). Accordingly, a member of the Industrial Court may well be said to be a district judge. The Industrial Court and the Labour Court constitute a hierarchy or system of courts, the latter being inferior to the former. The posts of Labour Court judges would, being thus inferior to the post of the district judge, i.e., the Industrial Court

Judge, form part of the judicial service as defined in Article 236(b).

29. Turning then to Article 234 the appointments of persons to the judicial service of the State must be made in accordance with the rules in that behalf after consultation with the State Public Service Commission and with the State High Court. The appointments of judges to the Labour Court must, therefore, be made under the provisions of Article 234.

30. Mr. Kaka, learned Counsel for the association, urged that there was a growing tendency to by-pass the Public Service Commission and the High Court in making appointment to posts which through they were purely judicial, were treated as administrative by the State Government. While it was open to the regulature to create special Courts or Tribunals to deal with particular classes of disputes which could otherwise have fallen within the competence of the Civil Courts, the executive could not, in appointing the personnel to man the special Courts and Tribunals, ignore the provisions of Article 234. By so doing, the independence of the special Courts and Tribunals would be impaired and the confidence of the people in them and in the judiciary as a whole would be shaken.

31. As the facts of this very case show, Mr. Kaka's apprehensions are well founded. While special Court or Tribunals may be a speedy method of bringing justice to the citizen, speed cannot be made at the cost of the quality of the special Court or Tribunal and its independence.

32. The highest courts in the land have over the years emphasised that the Labour Court performed functions of great public importance; that men of independence and sufficient judicial experience must be selected to man it; and that, ordinarily, the selection should be from among judicial officers from the civil judiciary. Despite these observations, the Industrial Disputes Act and the B.I.R. Act have been amended to permit the appointment of the Labour Court of officers in the employment of the State Government whose single qualification for the tasks they are to perform being a degree in law. To ensure that such appointments go through without demur by the State Public Commission or the High Court, the amendment to the B.I.R. Act removes the reference to Article 234 that hitherto existed. Amendments effected, respondents 3 and 4, Assistant Commissioners of Labour in the State Government's employ, were appointed Labour Court judges by the impugned notification.

33. The constitutional requirement of an independent judiciary must apply to all institutions that administer justice. It requires the application of Article 234 to the appointment of Labour Court judges.

34. It was pointed out by Mr. Gursahani, learned Counsel for the State Government, that the B.I.R. Act had required the appointment of Labour Court judges who possessed the qualifications laid down under Article 234 and that by the amendment this requirement had been removed. He submitted, therefore, that Article 234 now had no application to the appointment of Labour Court judges. We are unable to appreciate the argument. An Article of the Constitution

does not depend for its application upon some statute. It applies in circumstances set out in it or elsewhere in the Constitution, regardless of any other statute. The fact that the B.I.R. Act originally contemplated the application of Article 234 and now does not mean that Art. 234 has ceased to apply. If Article 234 applies to the appointment of Labour Court Judges, as we have held it to do, it applies regardless of the fact that the B.I.R. Act now stands amended to delete the reference to it.

35. It may be noted in passing that a similar amendment to the M.R.T.U and P.U.L.P. Act has not been effected so that Act still requires that the same Labour Court Judge shall possess the qualifications prescribed under Article 234 for being eligible to enter the judicial service in the State.

36. Mr. Gursahani, pointed out that the learned Single Judge had not struck down the amendments in the Industrial Disputes Act and the B.I.R. Act. In his submission, the provisions of Chapter 6 of Part VI of the Constitution would not, therefore, be applicable. That the amendments still stand on the statute book makes no difference at all to whether or not Article 234 applies, and that is what we are concerned with.

37. In the result, we agree with the learned Single Judge and dismiss the appeal.

38. No order as to costs.