59. When the charge levelled against a person is vague, there is on the face of it a denial of reasonable opportunity as no one can defend himself against an allegation which is shrouded in mystry. The manner in which notice was given and inquiry sought to be conducted do create an impression on my mind that the State Government was already pre-determined and its action under rule 68 was not *bona fide*.

(5) For the foregoing reasons, the writ petition is allowed with costs and the impugned notice on which the inquiry is to be conducted against the petitioner quashed. The petitioner is entitled to continue in office as President of Municipal Committee, Rampura Phul, till removed therefrom in accordance with law. The costs are assessed at Rs. 150/-.

B. S. G.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

SARBJIT SINGH ETC.,—*Petitioners.*

Versus

M/S Nankana Sahib Transport Company (Private) Limited, Ludhiana,—*Respondents.*

Civil Writ No. 3340 of 1971.

January 12, 1972.

Industrial Disputes Act (XIV of 1947)—Sections 17, 17-A and 20(3)—Industrial Tribunal—Whether has jurisdiction to entertain an application for setting aside an ex parte award—Time upto which such an application can be made—Stated—Commencement of the ex parte award not stayed during the pendency of the application—Period of 30 days after the publication of the award expiring—Jurisdiction of the Tribunal to decide the application—Whether taken away.

Held, that an Industrial Tribunal appointed by the State Government under the Industrial Disputes Act, 1947, has the jurisdiction to entertain an application for setting aside an *ex parte* award made by it. (Para 5)

Held, that the provisions contained in sections 17, 17-A and 20(3) of the Act make it clear that after an award is made by the Industrial Tribunal, it has to be published by the State Government and on publication it becomes final but it comes into force thirty days thereafter. The proceedings with regard to a reference are deemed to be concluded only on the day award becomes enforceable, that is, on the expiry of thirty days after publication. Till then the Industrial Tribunal or the Labour Court retains jurisdiction over the dispute referred to it for adjudication and upto that date any application in connection with the dispute can be made. Where application for setting aside an *ex parte* award is made within thirty days of the publication of the award, it is within time and can be entertained by the Tribunal. (Para 6)

Held, that when an application for setting aside an *ex parte* award is made to the Industrial Tribunal within thirty days of the publication of the award, the Industrial Tribunal has jurisdiction to entertain it. It is proper for the Industrial Tribunal to stay the commencement of the award but even if it is not done, the award becomes enforceable only after the decision of the application. The jurisdiction of the Tribunal has to be seen on the date the application is made. This jurisdiction cannot be said to have been taken away merely because the commencement of the *ex parte* award is not stayed and during the pendency of the application for setting it aside, the period of thirty days after the publication of the award has expired. (Para 7)

Petition under Articles 226/227 of the Constitution of India praying that an appropriate writ, order or direction be issued quashing the impugned order dated 26th October, 1970.

S. S. Mahajan and Ravi Nanda, Advocates for the petitioners.

Nemo for the respondents.

JUDGMENT

TULI, J.—(1) By notification, dated September 17, 1970, the Punjab Government referred the following dispute for adjudication to the Industrial Tribunal:—

> "Whether the termination of services of Sarbjit Singh and Jaswant Singh is justified and in order? If not, what relief/exact amount of compensation they are entitled to."

(2) The workmen put in their statement of claim in which it had been stated that the services of Sarbjit Singh and Jaswant

Singh had been terminated illegally and without any jurisdiction after holding an ex *parte* enquiry, that the Inquiry Officer was a biased person and the workmen had been victimised on account of trade union activities etc. It was prayed that they may be reinstated with full-back wages, as they had remained unemployed ever since their services were terminated. The Industrial Tribunal sent a notice to the respondent Management to appear before it on October 26, 1970, at Ludhiana and file its written statement. In spite of the fact that the notice had been served on the Management, nobody appeared on their behalf. The case was called first at 10.30 A.M. then at 11.40 A.M. and last of all at 2.30 P.M. after the entire work of the Industrial Tribunal had finished. The Tribunal took ex *parte* proceedings against the Management and after recording evidence made an award on November 16, 1970. The respondent-Management made an application to the Industrial Tribunal on January 4, 1971, praying for the setting aside of the *ex parte* award on the ground that Ranjit Singh Manager, who had been authorised to appear on behalf of the Management, was confined to bed and was unable to appear before the Tribunal. The Management had also authorised the Secretary of the Company, Kishan Singh, to appear before the Tribunal, but he also could not appear as he was suffering from vertigo and other illnesses. Medical certificates were produced in support of that assertion. This application was opposed by the workmen who pleaded that after making the award the Tribunal had become *functus officio* in respect of the reference and could not decide the application for the setting aside of the *ex parte* award. It was also pleaded that there was no sufficient cause shown by the respondent-Management for their absence on October 26, 1970, and it was not a fit case in which the *ex parte* award should be set aside. The Tribunal did not frame any issue, nor took evidence but passed an order setting aside the *ex parte* award and allowing the respondent-Management to put it their written statement on July 6, 1971, at Ludhiana. That order has been challanged by the workmen in this petition. Written statement has been filed by respondent No. 1 opposing the pleas stated in the writ petition.

(3) The first point for determination is whether the Industrial Tribunal had the jurisdiction to entertain the application for setting aside the *ex parte* award. On behalf of the petitioners it has been submitted that the Industrial Tribunal has no inherent power to direct a matter to be heard afresh after an order was passed. Reliance is placed on a judgment of a learned Single Judge of the

Calcutta High Court in *Gungaram Tea Company, Ltd.* v. *Second Labour Court and another* (1), wherein it was held as under :—

> "The Tribunal is a statutory authority. It has therefore, no inherent powers to direct a matter to be heard afresh after an order was recorded that evidence was closed. In this case it is abundantly clear that the Tribunal gave sufficient opportunity to both the respondent-workmen as also to the union to appear before it and present their case with regard to the application under Section 33(2) (b) of the Act. This opportunity was not availed of and there is no reason whatsoever why the Tribunal which is a statutory body should be allowed to hear a matter afresh when the statute by which the Tribunal was created does not expressly or by implication confer any such power upon it."

(4) The learned counsel has also relied on a judgment of a learned Single Judge of the Andhra Pradesh High Court in *Sarojini (R)* v. *Lakshmana Rao (B.) and another* (2), in which it was held as under:—

> "The only question that arises for consideration in this petition is whether the provisions of the Civil Procedure Code, in so far as they relate to the restoration of petitions filed under the Industrial Disputes Act, are applicable. It is pointed out by the learned counsel appearing for respondent 1 that a notice was issued regarding the application filed by respondent 1 claiming back-wages for the period in question and the petitioner had refused to take notice with the result that the Labour Court had no option but to grant a certificate determining the back-wages payable Rs. 1,820 .The application under order IX, rule 13, was made by the petitioner stating that he had no notice of the application and the Labour Court was under the impression that the petitioner had notice of the application made and hence restored it on terms. On a perusal of the record, it would appear that the petitioner had notice of the application and, therefore, his refusal to take notice should make no difference. There is nothing

(1) 1967-II L.L.J. 325.
(2) 1969-I L.L.J. 9.

in the provisions of the Act or the Rules made thereunder which enables the Labour Court to apply the provisions of Order IX, Civil Procedure Code. Rule 26 of the Andhra Pradesh Industrial Disputes Rules only enables Labour Courts or Tribunals to exercise the powers under the Civil Procedure Code, in respect of—

(a) discovery and inspection.

(b) granting adjournments; and

(c) reception of evidence taken on affidavit.

Other provisions of Civil Procedure Code are not applicable except in so far as they relate to matters specifically mentioned in the Act or rules. Regarding the scope of the powers vested in the Industrial Tribunal or Labour Court, the Labour Appellate Tribunal held in *Malayalam Plantations* case (3) that in the absence of a rule similar to rule 21(8) of the Industrial Disputes (Madras) Rules an Industrial Tribunal has no powers to set aside an *ex parte* order and that power cannot be implied. There is nothing in rule 26 of the rules to suggest that any such power to restore an *ex parte* order under Order IX is vested in an Industrial Tribunal or Labour Court."

A similar matter was raised in this Court as to the power of the Rent Controller under the Punjab Urban Rent Restriction Act 3 of 1949 to set aside an *ex parte* order passed by himself. It has to be remembered that the Rent Act also does not make Order IX of the Civil Procedure Code applicable to the proceedings before the Rent Controller. Section 16 of the Rent Act is in these terms—

"For the purposes of this Act, an Appellate Authority or a Controller appointed under the Act shall have the same powers of summoning and enforcing the attendance of witnesses and compelling the production of evidence as are vested in a Court under the Code of Civil Procedure, 1908."

It was, therefore, contended that, the power to set aside *ex parte* order not having been conferred by the Rent Act the Rent Controller could not have any inherent power to set aside such an order. In

(3) 1956-I L.L.J. 69.

Manohar Lal v. *Mohan Lal* (4), A. N. Bhandari, C.J., held that the Rent Controller had inherent power to set aside an *ex parte* order passed by himself. Before the learned Chief Justice three judgments of the Madras High Court and one judgment of the Nagpur High Court were cited in support of the proposition "that as the provisions of the Code of Civil Procedure do not apply to proceedings under the Rent Control Act, it would be a mistake to apply the principles of those provisions to the said proceedings." The Nagpur High Court had held that a Rent Controller can have no inherent power to set aside the *ex parte* order as this power has been excluded by clause 21(3) of the Rent Control Order, 1949, which provides that an order of the Rent Controller shall be final subject only to the decision of the Deputy Commissioner in appeal and that it would not be open to review. The learned Chief Justice found himself unable to endorse the views taken by those Courts and observed as under :—

> "A Rent Controller appointed under the Act of 1949 is either a Court or an administrative tribunal. If he is to be regarded as a Court, there can be no manner of doubt that he has full power to set aside an *ex parte* order passed by himself, for every Court has inherent powers to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction including the power to prevent abuses, oppression and injustice and the power to relieve a party in default, independently of statute. A Commissioner of a Division possesses an inherent power to restore to his file an appeal which he has decided *ex parte*, if he considers this to be necessary for the ends of justice (*D.N. Ray* v. *Nalin Behari Bose*) (5), a Special Judge under the Dekhan Agriculturists' Relief Act has inherent power to review an *ex parte* order made by him (*Ramchandra Narayan Kulkarni* v. *Draupadi Kom Narayan*) (6) and a Court has inherent power to restore an application in execution proceedings which has been dismissed in default notwithstanding the fact that the applicant had an alternative remedy open to him (*Mst. Acharji Bibi* v. *Shesh Sahai*) (7). Their Lordships of the Privy Council have expressed the view that quite apart from section 151 any Court might right fully consider itself to possess an inherent power to rectify a mistake which has been inadvertently made (*Raja Devi Bakhsh Singh* v. *Habib Shah*) (8)

(4) 1957 P.L.R. 38.

(5) 46 I.C. 621.

(6) I.L.R. 20 Bom. 281.

(7) A.I.R. 1939 Lah. 223.

(8) 19 I.C. 526.

Our own Court appears to have taken the view that although the provisions of Order 9, rule 13, and Order 41, rule 21, of the Code of Civil Procedure have not been made applicable to proceedings under the East Punjab Urban Rent Restriction Act, any tribunal or appellate authority has inherent power to set aside and review an order obtained by fraud and one which the tribunal passing it could not possibly have passed if the true facts had been brought to his notice (Civil Revision No. 442 of 1952).

But a Rent Controller cannot, in my opinion, be regarded as a civil Court although he has been entrusted with a number of functions which are analogous to those performed by judicial officers. He is only a *persona designata* who has been brought into existence for the specific purpose of performing certain functions savouring of a judicial character but which are in reality only *quasi* judicial (*Messers Pitman's Shorthand Academy* v. B. *Lila Ram and Sons*) (9). The fact that he exercises a discretion or judgment *quasi* judicial in its nature in the performance of his duties cannot bring him into the category of judicial officers. He can at best be regarded as a *quasi* judicial officer and the proceedings taken by him partake of the nature of a judicial proceeding. He has the same powers of summoning and enforcing the attendance of witnesses and compelling the production of evidence as are vested in a Court under the Code of Civil Procedure, and every order made by him under certain sections of the statute is required to be executed by a Civil Court as if it were a decree of that Court. He is under a statutory obligation to follow the procedure prescribed by law, but he is not bound to follow the technical rules of procedure which apply to trials in Court of law. He is expected to observe the elementary and fundamental principles of a judicial enquiry to comply with the rudimentary requirements of fair play and to safeguard the fundamental constitutional rights of the citizen. In the absence of an express provision in the statue or in a statutory rule, he is at liberty to devise his own procedure in ascertaining the facts on which he is to act or decide.

For the reasons I entertain no doubt in my mind that the Rent Controller has inherent power to set aside an *ex parte* order passed by himself."

(9) (1950) 52 P.L.R. 1.

In *Dwarka Devi and others* v. *Hans Raj* (10) Harbans Singh, J. as my Lord the Chief Justice then was, expressed the view that—

> "* * notwithstanding the fact that no specific powers in this respect are given to the Court, the inherent powers of the Courts under the Act to promote justice cannot be said to have been taken away."

(5) The position of an Industrial Tribunal is analogous to that of a Rent Controller in so far as both are appointed by the State Government under the respective Acts and they can devise their own procedure. Only certain provisions of the Code of Civil Procedure have been made applicable to them with regard to the summoning of witnesses and enforcing their attendance. Under the Industrial Disputes Act and the Rules framed thereunder, the power of inspection and discovery is also given to the Industrial Tribunal. In view of the judgments of this Court referred to above, I hold that the Industrial Tribunal has the power to entertain an application for setting aside an *ex parte* order.

(6) The next question that arises is what is the time up to which an application for setting aside the *ex parte* award can be made to the Industrial Tribunal. In order to decide this question, reference has to be made to section 17, 17-A and 20(3) of the Industrial Disputes Act, 1947. These sections in so far as they are relevant are reproduced below :—

> "17. *Publication of reports and awards.*—(1) Every report of a Board or Court together with any minute of dissent recorded therewith, every arbitration award every award of a Labour Court, Tribunal or National Tribunal shall, within a period of thirty days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit.
>
> (2) Subject to the provisions of section 17-A, the award published under sub-section (1) shall be final and shall not be called in question by any Court in any manner whatsoever.
>
> 17-A. *Commencement of the award.*—(1) An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication under section 17. * * * * * *.

(10) I.L.R. (1963) 2 Pb. 458.

20(3). Proceedings before an arbitrator under section 10-A or before a Labour Court, Tribunal or National Tribunal shall be deemed to have commenced on the date of the reference of the dispute for arbitration or adjudication, as the case may be, and such proceedings shall be deemed to have concluded on the date on which the award becomes enforceable under section 17-A."

From these provisions it is clear that after the award is made by the Industrial Tribunal, it has to be published by the State Government and on publication it becomes final but it comes into force thirty days thereafter. The proceedings with regard to a reference are deemed to be concluded only on the day the award becomes enforceable, that is, on the expiry of thirty days after publication. Till then the Industrial Tribunal or the Labour Court retains jurisdiction over the dispute referred to it for adjudication and up to that date any application in connection with the dspute can be made. In the instant case the *ex parte* award was published on December 11, 1970, and the application for setting aside the *ex parte* award was made on January 4, 1971, that is, within thirty days of the publication and was, therefore, rightly entertained by the Industrial Tribunal.

(7) The learned counsel for the petitioners then urged that the Tribunal did not stay the commencement of the award under section 17-A after the application for setting aside the *ex parte* award was made to it and during the pendency of the proceedings on that application the award became enforceable and, therefore, the jurisdiction of the Tribunal came to an end. I do not agree. When the application was made to the Tribunal on January 4, 1971, it had the jurisdiction to entertain it and decide it on merits. It would have been proper for the Tribunal to stay the commencement of the award but, even if it was not done, the award became unenforceable after it was set aside on the application made by the respondent-Management. The jurisdiction of the Tribunal had to be seen on the date the application was made to it and, as held above, in the instant case on January 4, 1971, when the application was made, the Tribunal had the jurisdiction. That jurisdiction cannot be said to have been taken away merely because the commencement of the *ex parte* award was not stayed and during the pendency of the application the period of 30 days after the publication of the award expired.

(8) The last submission of the learned counsel for the petitioners is that the Industrial Tribunal did not frame any issues nor gave the

parties an opportunity to lead evidence in support of their respective pleas. The impugned order of the Tribunal does not show that any opportunity was afforded to the petitioners to lead evidence to prove that the reasons stated by the respondent-Management for setting aside the *ex parte* award were false, as had been pleaded by them in answer to the application of the Management. It is no doubt true that the Industrial Tribunal can evolve its own procedure but it must be consistent with the rules of natural justice. The main point in the application argued before the Industrial Tribunal was with regard to the jurisdiction of the Tribunal to entertain and decide the application and while deciding that point in favour of the Management the learned Tribunal in a summary manner held that there was sufficient cause for the non-appearance of Ranjit Singh and Kishan Singh on behalf of the Management on October 26, 1970. I am of the view that the learned Tribunal should have afforded an opportunity of leading evidence to the parties in support of their respective pleas. That not having been done, the impugned order is liable to be set aside on that ground.

(9) For the reasons given above, I hold that the Industrial Tribunal had jurisdiction to entertain the application for setting aside the *ex parte* award made to it by the respondent-Management, but the decision made thereon was in violation of the principles of natural justice. This petition is accordingly accepted and the impugned order is quashed. The Industrial Tribunal is directed to re-decide the application after affording an opportunity of leading evidence to the parties concerned with regard to the sufficiency of cause for non-appearance of the representatives of the Management on October 26, 1970. As no one has appeared on behalf of the respondents, I make no order as to costs.

B.S.G.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

STATE BANK OF PATIALA.—*Petitioner.*

versus

UNION OF INDIA ETC.,—*Respondents.*

Civil Writ No. 3578 of 1971.

January 14, 1972.

Income Tax Act (XLIII of 1961)—Section 222—Second Schedule to the Act—Rule 11—Attachment of an assessee's property for recovery of income-tax—Objections to the attachment filed before Tax Recovery Officer—Suit