of the other legal representatives the proviso has been introduced". The case was accordingly remanded to the Tribunal to enable the father to bring on record all the Legal Representatives of the deceased as respondents and to prosecute the claim petition in a representative capacity.

(6) It is, thus, incumbent that where the application for compensation has not been made by all the legal representatives of the deceased, the application made must be on behalf of or for the benefit of all the legal representatives of the deceased. It is equally an imperative requirement that all the legal representatives of the deceased must be impleaded as parties whether as co-petitioners or respondents. If these conditions are not complied with, the petition cannot proceed. It follows, therefore, that where all the legal representatives of the deceased have not been impleaded as parties, to the claim, an opportunity must be afforded to the claimants to implead the legal representatives, not so impleaded and until and unless this is done, proceeding in the claim application should not be allowed to continue.

(7) The Award of the Tribunal is hereby set aside and the case is remanded to the Tribunal to afford to the claimants an opportunity to implead the widow—Shashi Bala, as a respondent and to thereafter decide the claim afresh in accordance with law.

(8) This appeal is accordingly accepted and the parties are directed to appear before the Tribunal on May 1, 1984. There will, however, be no order as to costs.

H.S.B .

Before S. S. Sandhawalia, C.J., and M. M. Punchhi, J.

SOHAN LAL,—*Petitioner.*

versus

THE STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 1403 *of* 1980.

April 23, 1981.

Punjab Town Improvement Act (4 *of* 1922)—*Sections* 58, 59, 60, 62, 63 *and* 65—*Land Acquisition Act* (*I of* 1984)—*Section* 18—*Land*

acquired by an Improvement Trust for a development scheme—Award of the Collector assessing compensation—Matter of enhancement of compensation referred to the Tribunal under section 59—President of the Tribunal giving an award enhancing compensation—Absence of one or both the assessors at the time of rendering the award—Whether vitiate the same—Landowners participating in the proceedings before the Tribunal—Objection regarding absence of assessors not raised at any stage of the proceedings—Such objection—Whether could be allowed to be raised for the first time in the High Court.

Held, that a close and indepth examination of the relevant sections of the Punjab Town Improvement Act, 1922 is a clear pointer to the Legislative intent that the pivot of the Tribunal is its President whilst its two assessors are wholly ancillary. Whilst the participation of the assessors in the proceedings may be desirable, their presence is in no way mandatory or crucial to its proceedings . However, this conclusion is not derived from a single or solitary provision of the Act but from a variety of them which when viewed as a schematic whole clearly indicates that the absence of the two assessors even at the time of rendering the award was not designed to be fatal to the proceedings. The Legislature designedly and purposely used the word "assessors" and this has considerable significance. These persons are not members *stricto sensu* of the tribunal but assessors to the President. They are meant essentially to aid and assist the Court or Tribunal. They are not in essence the Court or the Tribunal itself but subservient limbs thereof whose function is obviously secondary and advisory in nature. Though the assessors are to assist the President, the Statute nowhere prescribes that either both the assessors or one or the other of them should always be present at the hearings of the Tribunal. All the requisite procedural powers of the Court are in terms vested in the President of the Tribunal alone and not in the President with reference to the assessors. Even the most material and vital questions of law, title and procedure are not only to be decided by the President solely but can be tried and pronounced upon in the total absence of the assessors which indicates that they are no integral part of the decision making process herein. Thus, it is held that if neither of the assessors is present or opines on the issues of the measurement of land, of the amount of compensation or costs, then the award rendered by the President alone would suffer from no infirmity worth the name.

(Paras 5, 7, 9, 10, 15 and 18).

Held, that where the landowners kept participating in the proceedings before the Tribunal and did not raise their little finger against the alleged absence of the two assessors of the Tribunal, it would not lie in their mouth to raise such an objection for the first time in the High Court. It is, manifest that they not merely sat on

the fence during the proceedings but in fact had actively participated therein, and, therefore, by their conduct must be deemed to have expressly waived off any such infirmity.

(Para 19).

(*A Division Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia and Hon'ble Mr. Justice M. M. Punchhi referred the case to the learned Single Judge on 23rd April,* 1981, *after rendering its decision on two material legal issues, which necessitated their consideration by a division bench for decision on merits of each case. The learned Single Judge Hon'ble Mr. Justice M. M. Punchhi finally decided the case on 2nd April,* 1984).

Writ Petition under Article 226 *of the Constitution of India praying that* :—

(a) *record of the case be sent for;*

(b) a writ of certiorari *be issued quashing the judgment dated* 21*st December,* 1979, *copy Annexure P.* 5 *passed by the President, Improvement Trust, Ambala, respondent No.* 2 *and this Hon'ble Court may be pleased to assess the*

(c) *any other appropriate writ, order or direction which this Hon'ble Court may deem fit in the circumstances of the case be issued;*

(d) *service of the advance copies of the writ petition on the respondents be dispensed with;*

(e) *costs of the petition be allowed to the petitioner.*

It is further prayed that during the pendency of the writ petition, 1/3*rd amount of compensation awarded by the Tribunal be not paid to Kishan Singh respondent No.* 5 *in the present writ petition.*

P. S. Jain, Sr. Advocate with V. M. Jain, Advocate, *for the Petitioner.*

U. D. Gaur, A.G., Haryana, S. K. Aggarwal, Advocate, *for Respondent No.* 5.

JUDGMENT

S. S. Sandhawalia, C.J.—

(1) Whether the mere absence of one or both the assessors at the time of rendering the award by the President of the Tribunal under

section 65 of the Punjab Town Improvement Act, 1922, would vitiate the same is the significant question which forms the common link in these six connected civil writ petitions admitted to a hearing by the Division Bench.

(2) Since the question aforesaid is pristinely legal, and we do not propose herein to delve into the merits of each case it suffices to make a reference albeit briefly to the facts in C.W. 1403/1980. The petitioner was the owner of some land situated in Ambala City which was acquired by the respondent-Improvement Trust for the development Scheme No. 12. Consequently thereto the Collector rendered his award in which he assessed compensation at the rate of Rs. 10 per square yard. The petitioner and others whose land had been similarly acquired made applications under section 59 of the Punjab Town Improvement Act (herein called the Act) read with section 18 of the Land Acquisition Act for referring the matter to the Tribunal constituted under the Act for enhancement of the compensation awarded. These applications were resisted by the Trust and on the pleadings of the parties the Tribunal framed the necessary issues on the 17th of January, 1978. It deserves passing mention that similar applications made by other persons whose lands had been acquired for Scheme No. 12 as also for Scheme No. 5 were also before the Tribunal and all the applications were consolidated for trial and the entire evidence was recorded in the case of the petitioner. After duly recording the evidence the President of the Tribunal rendered a detailed award on the 21st of December, 1979 whereby he enhanced the compensation for the land acquired for Scheme No. 12 to Rs. 14 instead of Rs. 10 and similarly for Scheme No. 5 to Rs. 17 instead of Rs. 13 awarded by the Collector. The petitioner *inter alia* challenged the aforesaid award of the Tribunal on the ground that the two assessors to the President did not participate in the trial of the references at all and, therefore, the entire proceedings and in particular the award rendered by the President of the Tribunal stands wholly vitiated.

(3) Though the pleadings on the point are slightly ambivalent it was the admitted case of the parties before us that in the present case two learned Advocates Mr. V. K. Gupta and Mr. Sukhnandan Singh had been named as assessors to the President of the Tribunal under section 60 of the Act. Nor was it in any dispute that notices were duly sent and served on both of them by the President of the Tribunal but none of them chose to participate in the proceedings

at any stage. It is further the common case that there is no provision in the Act or the rules which compels the attendance of the assessors at the hearing of the Tribunal.

(4) Relying basically on section 58 and sub-section (1) of section 60, Mr. Jain on behalf of the petitioner, contended that the Tribunal herein shall consist of the President and two assessors. Therefrom it was sought to be deduced that the final award under section 65 must also be rendered by all the three persons constituting the Tribunal and in any case, so far as finding under section 65(1) (a) are concerned, these must be of the body as a whole. Consequently, it was contended that in the present case the award having been admittedly rendered by the President alone the same suffered from an inherent lack of jurisdiction and was, therefore, either *non- est* or at least vitiated beyond repair.

(5) On the first flush and *de hors* the material statutory provisions of the Act, the aforesaid contention had an initial modicum of plausibility. However, a close and indepth examination of the sections of the Act relevant to the point seem to be a clear pointer to the legislative intent that the pivot of the Tribunal is its President while its two assessors are wholly ancillary. Whilst the participation of the assessors in the proceedings may be desirable, their presence is in no way mandatory or crucial to its proceedings. However, this conclusion is not derived from a single or solitary provision of the Act but from a variety of them which when viewed as a schematic whole clearly indicates that the absence of the two assessors even at the time of rendering the award was not designed to be fatal to the proceedings.

(6) Now what first meets the eye in this context are the provisions of sections 58 and 60 with regard to the constitution of the Tribunal. The former provision lays down that for the purpose of performing the functions of the court, in reference to the acquisition of land for the Trust under the Land Acquisition Act, 1894, a Tribunal shall be constituted. The relevant part of section 60 to which reference is necessary is as follows :—

"60. (1) The tribunal shall consist of a president and two assessors.

(2) The President of the tribunal shall be a person,—

(a) who is qualified for appointment as a Judge of the High Court of Punjab and Haryana ; or

(b) who has held the office of a Collector for a period of ten years; or

(c) who is serving or has served as a District Magistrate."

(7) Now a close look on sub-section (1) would show that it is not that the Tribunal consists of three members of equal rank, of whom one may be President. If that were to be so, this would have been an added string to the bow of the petitioner. Instead, it specifically mentions that it would consist of a President and two assessors. In the wake of what follows, I am inclined to take the view that the legislature designedly and purposely used the word "assessors" and this has considerable, if not conclusive, significance. To repeat, these persons are not members *stricto sensu* of the Tribunal but assessors to the President. Their real status is thus clearly specified in the afore-quoted sub-sections (1) and (2) as also sub-section (3) of section 60, though in the later provisions for ease of reference the word "member" has been used interchangeably for the two assessors as well. This in my view would, however, not militate against the basic fact that the word "assessors" is a term well-known to legal art. They are meant essentially to aid and assist the court or Tribunal. They are not in essence the court or the Tribunal itself but subservient limbs thereof whose function is obviously secondary and advisory in nature. In Webster's Third New International Dictionary, the following meanings have been assigned to the word "assessor" :—

"assistant, judge's assistant, (to sit beside, assist in the office of judge); one appointed or elected to assist a judge or magistrate: especially one with special knowledge of the subject to be decided."

Then, again, in Bouvier's Law Dictionary, an "assessor" has been defined "as a person skilled in law, selected to advise the judges of the inferior courts." In Black's Law Dictionary, an "assessor" is stated to mean:—

"A person learned in some particular science of industry, who sits with the judge on the trial of a cause requiring such special knowledge and gives his advice.

> In England it is the practice in admiralty business to call in assessors, in cases involving questions of navigation or seamanship. They are called 'nautical assessors' (q.v.), and are always Brethren of the Trinity House."

It would be plain from the above that the legislature has advisedly used the word "assessors" as against the President of the Tribunal to highlight their secondary status.

(8) This sharp distinction between the President and the two assessors is further evident from the fact that the statute carefully provides for the minimum qualifications of the President. It is expressly laid down that one so appointed shall be a person qualified for appointment as a Judge of the High Court of Punjab and Haryana. In the alternative, clauses (b) and (c) to sub-section (2) of section 60 prescribe the basic administrative experience of such person to be one who has either held the office of a Collector for a period of 10 years or is serving or has served as a District Magistrate. It would thus be evident that the President can only be a person having a minimum judicial or administrative qualifications. In sharp contract thereto, the same statute does not make the least mention of any qualificatory clause so far as the assessors are concerned. Indeed, sub-section (3) would indicate that the two assessors could be appointed without having any educational or judicial qualifications whatsoever. One of them would emanate from an authority no higher than the municipal committee of the particular town for which the Tribunal is to function since the statute has prescribed such a municipal committee to be the appointing authority. The sharp contrast, therefore, betwixt the President of the Tribunal on the one hand and the two assessors on the other is in a way manifest at the very threshold.

(9) What next calls for notice is the fact that though the assessors are to assist the President, the statute no where prescribes that either both the assessors or one or the other of them should always be present at the hearings of the Tribunal. If it were the intent of the statute that the President cannot function at all for specified purposes unless invariably assisted by two or at least one of the assessors, then normally (though not necessarily) the legislature in its wisdom would have provided for the minimum quorum of the Tribunal. Admittedly, this has not been done. Indeed, far from it being so, the statute, as would be evident hereafter, in fact

visualises in terms the absence of not only one but even of both the assessors and expressly clothes the proceedings in their absence with total validity. A more exhaustive discussion on this aspect falls in the context of the provisions of section 65 of the Act.

(10) Again section 59 of the Act seeks to equate the Tribunal thereunder to the functions of the Court under the Land Acquisition Act, 1894, on which its proceedings are to be basically modelled. It deserves highlighting that under the Land Acquisition Act, the acquisition court is the Court of the principal original civil jurisdiction in the district. The Land Acquisition Act, the provisions of which in substance are to apply with modifications, admittedly does not visualise any acquisition court necessarily function with the aid of assessors. At the very inception of the proceedings of the Tribunal in a particular case, section 59(c) of the Act would come into play and its provisions call for notice *in extenso*:—

> "59. For the purpose of acquiring land under the Land Acquisition Act, 1894, for the trust—
>
> (a) ** ** ** **
>
> (b) ** ** ** **
>
> (c) the president of the tribunal shall have power to summon and enforce the attendance of witnesses, and to compel the production of documents, by the same means and (so far as may be) in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908;"

It is plain from the above that all the requisite procedural powers of the court are in terms vested in the President of the Tribunal alone and not in the President with reference to the assessors. This again is a pointer to the fact that the assessors are in the nature of subsidiary assistants rather than being an integral part of the Tribunal itself. The result, therefore, is that the material powers of summoning and enforcing the attendance of witnesses, the compelling and production of documents with all the mandatory force of the provisions of the Civil Procedure Code is rested with the President of the Tribunal *de hors* the two assessors.

(11) Reference in this context is also called to the provisions of sections 62 and 63. Therefrom it is manifest that the administrative head of the staff and functions of the Tribunal is the President thereof to the total exclusion of the two assessors. The power to determine the staff, etc. for carrying on the business of the Tribunal, the amount of salary payable thereto and the power of appointment, removal and dismissal have all been vested in the President. Similarly, the remuneration, etc. to be paid to the staff as also to the two assessors are enjoined to be paid by the Trust to the President who further distributes the same. This also highlights the further administrative prominence of the President whilst the two assessors do not at all figure in this field and indeed the President is also the disbursing authority for them.

(12) The next significant thing which deserves both perhaps repetition and reiteration is that there is no provision in the Act which even remotely can compel the attendance of both or any one of the assesors at the hearing of the Tribunal. Reference to section 61 would show that one of the modes of payment to the assessors is by way of fees. Whether in a particular case, an assessor would accept the fees, or may generally wish to attend, is not prescribed in the provisions. The President and for that matter any other authority has no power to summon or compel the attendance of either of the two assessors. The present case is significant in a way because it highlights the fact that despite full notice neither of the two assessors had chosen to associate himself with the proceedings at any stage though they were admittedly long drawn out for a period of 2-3 years. Patently, therefore, the law does not make it obligatory on the assessors to attend nor does it provide for any penalty for their non-appearance at the hearings. Therefore, it is difficult to visualise the assessors as an integral part of the Tribunal where they are neither under a legal obligation to attend nor any adverse consequences flow from their non-attendance. It is difficult to conceive that the legislature wished to countenance a situation where an assessor or assessors, by their mere non-participation, should render the whole proceedings for determining compensation *non est.*

(13) However, it is the provisions of section 65(1) (b) and subsection (2) thereof which are the clearest pointers to the true position of the assessors to the President of the Tribunal. To appreciate this

aspect, section 65 may first be read:—

"65. (1) For the purpose of determining the award made by the tribunal under the Land Acquisition Act, 1894—

(a) if there is any disagreement as to the measurement of land, or to the amount of compensation or costs to be allowed, the opinion of the majority of the members of the tribunal shall prevail;

(b) notwithstanding anything contained in the foregoing clause, the decision on all questions of law and title and procedure shall rest solely with the president of the tribunal, and such questions may be tried and decided by the president in the absence of assessors unless the president considers their presence necessary.

(2) Notwithstanding any other provisions of this Act, the president of the tribunal may record the evidence on any matter in the absence of assessors unless he considers their presence necessary.

(3) Every award of the tribunal, and every order made by the tribunal for the payment of money, shall be enforced by a Court of Small Causes, or if there be no such Court, by the Senior sub-judge within the local limits of whose jurisdiction it was made as if it were a decree of that Court."

(14) Adverting first to sub-section (2) aforesaid, it calls for pointed notice that the President of the Tribunal is entitled to conduct the proceedings alone in the absence of the assessors unless he considers their presence necessary. In practical effect, therefore, it would be within the discretion of the President to record the whole of the evidence in any compensation matter, however, material its import may be in the absence of the assessors. This sub-section was inserted by the Amending Act (Haryana Act, 35 of 1974). Now the intent of this amendment appears to be plain. If the whole of the evidence or a substantial part thereof can be recorded in the total absence of both the assessors, it would clearly indicate that they are not an integral part of the Tribunal whose function is basically judicial. It is axiomatic that a judicial or a quasi judicial body, which has to decide a matter upon evidence, would normally (though not invariably) have it recorded in its presence. In fact,

in the larger judicial perspective, it has been repeatedly said that the trial court having the benefit of observing the witnesses in the box is in an inevitably superior position by virtue of this particular fact. In any case, the recording of evidence by a judicial Tribunal is a part of its function and where the law itself provides that the assessors can be wholly absent therefrom, then by implied intendment it would follow that they are equally not deemed to be the integral part of such a Tribunal.

(15) Yet again, the aforesaid sub-section (2) does not stand in isolation. It has obviously to be read with the even more significant provisions of the preceding clause (b) of sub-section (1) thereof. This in essence provides that on all material questions during the course of the trial, the decision of the President is final or indeed to put it more precisely, such a decision rests solely with him to the exclusion of both the assessors. This is so expressly with regard to all questions of law arising before the Tribunal, on all questions of title which may call for determination and on all questions of procedure, however, material those may be. The use of the word "solely" and the total exclusion of assessors from its meaningful field is thus obvious. Even if the matter rested at that, there may have been some room for arguments on behalf of the petitioners, but the aforesaid clause (b) further provides that all these vital questions may be tried and determined by the President alone in the absence of both the assessors unless the President considers their presence necessary. Thus, even the most material and vital questions of law, title and procedure are not only to be decided by the President solely but can be tried and pronounced upon in the total absence of the assessors which indicates that they are no integral part of the decision making process herein. It would appear that the legislature advisedly excluded the assessors from the vital and material aspect of the case and had made their presence wholly dependent on the discretion of the President.

(16) As I said earlier, it is not on the basis of a solitary provision or an isolated aspect that the issue herein has to be viewed. It is on the larger schematic perspective and with the background of the totality of the relevant provisions that one has to advert to and construe the provisions of section 65(1)(a). It is laid down that in the event of a disagreement as to the measurement of land, to the amount of compensation or costs, the majority opinion shall prevail. To my mind, the event of disagreement is material for the construction of this provision. Disagreement would naturally postulate the

presence of the assessors and their rendering an opinion which may be contrary to another. If they are neither present nor opine on the issues, no question of any disagreement arises nor the necessity of the pre-eminence of majority opinion. Therefore, section 65(1) (a) pre-supposes the presence and the opining process of the assessors. In case neither of these two things co-exist clause (a) would hardly come into play. Again, apart from this what if the assessors, as in the present case, have never associated themselves at any stage of the proceedings? What if they have never heard the evidence at all, nor even remained present when the meaningful issues of law, title, and procedure were decided; nor have the benefit of hearing the case of either side when presented by way of arguments before the Tribunal ? It is in the light of these possibilities that this provision has to be construed. The total impact that follows therefrom as also from the earlier provisions noticed in this context, is that if clause (a) has any meaning and can possibly have a reasonable application, it is only on the assumption that at the time of rendering the award the assessors are, in fact, present and have an opinion to offer which differs with that of the President or each other, resulting in a disagreement. If they are neither present nor have any opinion on the material issues of measurement of land or the amount of compensation or costs, then these provisions cannot have any inter-play. It appears to me that the only reasonable way of reading clause (a) of sub-section 65(1) is that this would apply only in the situation where the assessors are actually present and choose to opine for the purpose of determining the award. Their actual presence and participation in the decision making process is, therefore, implicit in the provisions. Significant in this context is the fact that even here the statute does not provide for the eventuality of only one of the assessors being present and choosing to differ with the President.

(17) One must equally recall the well-known maxim of interpretation that a provision must be interpreted in a manner which makes the statute workable. If it were to be held that the award cannot be rendered unless and until both the assessors are present with the President and further record their opinions thereon, then the very rendering of the award may become hamstrung and moribund. As already noticed, the Act makes no provision of compelling and enforcing the attendance of the assessors even at the last and final stage of determining the award under section 65(1) (a). One can, therefore, visualise a whole long drawn litigation for compensation, materially affecting the citizens, lying static and incapable of decision because one or other of the assessors does not choose

to attend or to opine in the rendering of the award. Such a construction may, in fact, make the very working of all the provisions for awarding compensation to the citizens wholly ineffective and in any case subject to the peculiar idiosyncrasy of individual assessors. It is, therefore, both reasonable and necessary to read the words "if present" into the provisions of clause (a) of section 65(1) of the Act.

(18) To conclude I would, therefore hold that if neither of the assessors is present or opines on the issues of the measurement of land, of the amount of compensation or costs, then the award rendered by the President alone would suffer from no infirmity worth the name. The answer to the question posed at the outset has, therefore, to be rendered in the negative.

(19) Now apart from the above, we are equally impressed by the firm stand of the learned Advocate General, Haryana, to the effect that at no stage whatsoever over a long drawn out trial extending over 2-3 years did the petitioner raise his little finger against the alleged absence of the two assessors of the Tribunal. This was so throughout the stages of recording evidence and the determination of questions of procedure, title and issues of law. Even if it may be said that these could lawfully be conducted in the absence of the two assessors, it had to be conceded on the part of the petitioner that at least at the stage of the final arguments before the President on the issues of measurement of land, of the amount of compensation or costs, an objection could be forthwith and forcefully raised about the absence of the assessors. Admittedly, not a hint of any such objection was ever raised. It is, therefore, manifest that the petitioner herein had not merely sat on the fence during the proceedings but in fact had actively invited a decision by the President of the Tribunal sitting alone. It, therefore, does not and should not lie in the mouth of the petitioner now to raise an objection of the present nature. Assuming entirely for the sake of argument (without even remotely holding so) that at the stage of rendering the award the presence and the participation of the assessors is necessary, the petitioner by his conduct must be deemed to have expresly waived off any such infirmity therein. There is a long line of precedents on this aspect and it suffices to quote the following observations of their Lordships in *Messrs Pannalal Biniraj and others* v. *Union of India and others* (1):—

> "There is moreover another feature which is common to both these groups and it is that none of the petitioners raised

(1) A.I.R. 1957 S.C. 397.

any objection to their cases being transferred in the manner stated above and in fact submitted to the jurisdiction of the Income-tax Officers to whom their cases had been transferred. It was only after our decision in Bidi Supply Co., v. The Union of India, (2) was pronounced on 20th March, 1956, that these petitioners woke up and asserted their alleged rights, the Amritsar group on 20th April, 1956, and the Raichur group on 5th November 1956. If they acquiesced in the jurisdiction of the Income-tax Officers to whom their cases were transferred, they were certainly not entitled to invoke the jurisdiction of this Court under Article 32. It is well settled that such conduct of the petitioners would disentitle them to any relief at the hands of this Court."

(20) To the same effect and in some cases even more conclusively are the observations in *Manak Lal, Advocate* v. *Dr. Prem Chand Singhvi and others* (3). *The Punjab University, Chandigarh* v. *Vijay Singh Lamba etc.*, (4); *Jagatjit Cotton Textile Mills Ltd., Phagwara* v. *Industrial Tribunal, Patiala and others*, (5); *Davinder Singh and another* v. *Deputy Secretary-cum-Settlement Comssioner, Rural, Rehabilitation Department, Punjab and others* (6); *Attar Singh and others* v. *State of Haryana and others*, (7); *Ram Nath* v. *Ramesh and others*, (8); *O.A.O.K. Latchmanan Chattiar* v. *Commissioner Corporation of Madras and another*, (9); *and M/s. K. Nagamunaiah Chetty and P. Guriyiah by Partner* v. *State Transport Authority, Andhra Pradesh, Hyderabad by its Secretary and others*, (10).

(21) In view of the above, we must also uphold the objection of the respondent-State that in all these cases the petitioners cannot now be allowed for the first time to raise the objection of the absence of the assesors for the purposes of section 65(1) (a) because

(2) 1956 S.C.R. 267.
(3) A.I.R. 1957 S.C. 425.
(4) A.I.R. 1976 S.C. 1441.
(5) A.I.R. 1959 Pb. 389.
(6) I.L.R. (1964)1 Punjab 905.
(7) 1973 P.L.J. 90.
(8) A.I.R. 1973 Pb. and H. 33.
(9) A.I.R. 1927 Madras 130.
(10) 1961(1) Crl. L.J. 619.

they have actively participated in the proceedings and had invited a decision by the President of the Tribunal which in material parts run in their favour as well.

(22) With the rendering of aforesaid decision on the two material legal issues, which had necessitated their consideration by the Division Bench, we would accede to the common prayer of the learned counsel for the parties that these cases be now sent to a learned Single Judge for a decision on the merits of each case. It is ordered accordingly. There will be no order as to costs.

N.K.S.

Before M. M. Punchhi, J.

STATE OF PUNJAB AND ANOTHER,—*Petitioners.*

versus

SURAT SINGH AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 122 *of* 1984.

April 23, 1984.

Industrial Disputes Act (XIV of 1947)—Sections 10(1)(c) *and* 11-*A—Conductor accused of having defrauded the employer of some money—Employer Holding a fair and proper enquiry and terminating his services—Labour Court finding the punishment too harsh and directing reinstatement with fifty percent back wages—Labour Court—Whether justified in putting the workman back to the same employment involving handling of money.*

Held, that under section 11-A of the Industrial Disputes Act, 1947, the Labour Court has the power to alter the punishment but only in those cases where the punishment is so harsh so as to suggest victimization. Where the Labour Court found the workman to have indulged in fraud, his reinstatement in the same post where he could reindulge in the same weakness could not be ordered. If the punishment had to be mitigated, it being harsh so as to suggest victimization, it could be brought down to other milder forms but this did not mean that necessarily the workman had to be put to the same job or, for that matter, a job in all