

properties left by the deceased which are the subject-matter of issues Nos. 5 and 6, raised on behalf of defendant No. 1.

Defendant No. 25 shall bear and pay his own costs. Costs of all other parties out of the estate, those of defendant No. 1 as between attorney and client.

Attorneys for plaintiff: *Little & Co.*

Attorneys for defendant No. 1: *Pereira, Fazalbhoy & Co.*

Attorneys for defendant No. 18: *Daphtary, Fereira & Co.*

Attorneys for defendant No. 25: *Doshi & Co.*

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Order accordingly.

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Before Mr. Justice Tendolkar.

THE MUNICIPAL CORPORATION OF GREATER BOMBAY AND ANOTHER, PETITIONERS *v.* K. C. SEN AND OTHERS, RESPONDENTS.*

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Bombay Industrial Relations Act (Bom. Act XI of 1946), s. 35, sch. 1 items 6, 10, 11 and 12—Jurisdiction of the Industrial Court to settle standing orders—Bombay Industrial Disputes (Appellate Tribunal) Act (XLVIII of 1950), s. 7—Adequate and Specific legal remedy by way of appeal available—Whether acting without jurisdiction or in excess of jurisdiction would be in violation of fundamental principles of justice—Petition for a writ of certiorari not maintainable.

Under s. 35 (1) of the Bombay Industrial Relations Act, the standing orders shall regulate the relations between the employer and the employee 'with regard to the industrial matters mentioned in sch. I'. The words "with regard to" in s. 35 are words of the widest significance; they are equivalent to the words "with respect to" in s. 100 of the Government of India Act, 1935, which have been held to be words of the widest import.

The model standing orders made by the Central Government under the provisions of s. 3 (2) of the Industrial Employment (Standing Orders) Act, 1946, or model standing orders under the Bombay Act, are not helpful in determining the scope of the standing orders under the Bombay Industrial Relations Act. Whatever may be the meaning of the words 'standing orders' in common parlance, the standing orders

* Mjsc. Appn. No. 24 of 1951.

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under the Bombay Act must be determined by reference to the Act itself. Standing orders under the Bombay Industrial Relations Act may, if the statute itself permits it, deal with matters of substantive rights and obligations between the employer and the employee.

Item No. 6 in schedule I deals with "leave, conditions, procedure and authority to grant". The entry "leave, conditions, etc." should not be read as 'conditions of leave'; but the word "conditions" which follows the word "leave" should be treated as one aspect of the general topic "leave" which includes within its compass all aspects of "leave" that may arise between an employer and employee.

Held, therefore, that standing orders relating to duration of leave and leave salary to be given to employees were within the scope of item No. 6 and the Industrial Court had jurisdiction to settle the standing orders determining the period of leave and leave salary to be paid to the employees.

Held, also that the Industrial Court had jurisdiction to settle the standing orders relating to notice of discharge, suspension pending enquiry and appeals under items 10, 11 and 12 of sch. I respectively.

Under s. 7 of the Industrial Disputes (Appellate Tribunal) Act, 1950, an appeal lies to the Appellate Tribunal from any "award or decision" of an Industrial Tribunal if the appeal involves any substantial question of law.

It was contended that in settling the standing orders the Industrial Court did not give a decision or award but passed an order and therefore no appeal lay from an order.

Held, that in legislation dealing with industrial matters such as the Industrial Employment (Standing Orders) Act, 1946, and in particular the Bombay Industrial Relations Act, 1946, the words award, decision and order were not used as mutually exclusive but the word "decision" would include "orders" and even an "award". The natural meaning of the word "decision" also is such as to include any order or even an award.

Held, therefore, that it was open to the petitioners to appeal against the order of the Industrial Tribunal settling the standing orders and as the petitioners had an adequate specific legal remedy by way of an appeal to the Appellate Tribunal which they did not avail of, a writ of *certiorari* would not be granted.

Khurshed Mody v. Rent Controller, Bombay,⁽¹⁾ followed.

Manibhai Patel v. Arbuthnot,⁽²⁾ referred to.

This was a petition filed by the Municipal Corporation of Greater Bombay for a writ of *certiorari* to quash some of the standing orders settled by the Industrial Court on the ground that the Industrial Court had no jurisdiction to settle the particular standing orders.

S. D. Vimadalal with A. C. Beynon, for the petitioners.

B. J. Diwan, for respondent No. 1.

⁽¹⁾ (1946) 48 Bom. L. R. 565.

⁽²⁾ (1946) 49 Bom. L. R. 454.

N. V. Phadke, for respondents Nos. 2 and 3.

TENDOLKAR J. This is a rule for a writ of *certiorari* against the Industrial Court, Bombay, to quash some portions of standing orders settled by that Court in respect of the Bombay Electric Supply and Transport Undertaking, which is now vested in the Municipal Corporation of Greater Bombay. It appears that on May 24, 1950, standing orders relating to the said Undertaking were settled by the Commissioner of Labour, under s. 35, sub-s. (2), of the Bombay Industrial Relations Act, 1946. Appeals were preferred under s. 36 of the said Act by the Best Workers Union and also by the General Manager of the Undertaking; and on November 18, 1950, the Industrial Court modified, added to and rescinded certain portions of the said standing orders and confirmed the rest. The grievance of the Municipal Corporation of Greater Bombay, in which the Best Undertaking now vests, is that several modifications, variations and additions made by the Industrial Court relate to substantive rights of the employees to certain benefits affecting the terms and conditions of their service and that these could not have been determined without there being an industrial dispute in relation thereto and that they are not fit matters for adjudication when standing orders are being settled. A list of the portions of the standing orders that are objected to is annexed as exh. D to the petition. They are six in number. Three of them relate to leave, (1) casual leave, (2) sick leave, and (3) privilege leave; and the complaint in regard to these items is that the period of leave to which the employees were to be entitled was altered in each case to the prejudice of the undertaking and in favour of the employees, and further in the case of casual leave the standing orders as finally settled by the Industrial Court provided that the employees shall be entitled to their full wages and allowances for any period of casual leave taken. It is the case of the Corporation that the Industrial Court had no jurisdiction either to determine the period of leave or to determine what wages should be paid for the period of casual leave, these being matters which could only be brought before the Industrial Court on an industrial dispute and not while settling standing orders.

The other three items objected to are standing orders relating to notice of discharge, suspension pending inquiry and appeals. With these three items which are also alleged to be outside the jurisdiction of the Industrial Court while settling standing orders, I will deal at the outset, because they are

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capable of being dealt with within a very short compass. Under s. 35, sub-s. (1), standing orders regulate the relations between an employer and employees "with regard to the Industrial matters mentioned in Schedule I"; and what I have to ascertain is whether the standing orders complained of fall within the purview of any of the items in sch. I. The standing order relating to notice of discharge as originally brought up by the employer for approval by the Commissioner of Labour provided for 14 days written notice on either side. That was approved by the Commissioner of Labour, but altered by the Industrial Court on appeal to 1 calendar month's notice. Now, this particular item falls within Item 10 of sch. I which according to the latest amendment reads as follows:—

"Termination of employment including notice to be given by employer and employee".

Quite obviously, therefore, the period of notice is within the plain words of the item and there is no substance in the contention that the Industrial Court had no jurisdiction to prescribe the period. The next item relates to suspension pending enquiry; and the objection is that the standing order as finally settled by the Industrial Court provides that an employee shall be entitled during the period of suspension to subsistence allowance and also if after an inquiry it is decided to take no action against an employee who was suspended, he shall be deemed to have been on duty and will be entitled to full wages and allowances and to all privileges for the period of suspension. Now, this particular item is covered by Item 11 in sch. I of the Bombay Industrial Relations Act. That item is

"punishment including warning, censure, fine, suspension or dismissal for misconduct, suspension pending inquiry into alleged misconduct and the acts or omissions which constitute misconduct."

Perhaps the objection was raised without having noticed the fact that the item as it originally stood in the schedule was altered on April 11, 1950, by the addition of the opening words "punishment.....suspension or." As the item now stands, there is, in my opinion, ample jurisdiction in the Industrial Court to settle standing orders relating to suspension pending inquiry which they have done. The last of these three items is the item relating to appeals. The draft standing order proposed that there should be a right of appeal against dismissal by the departmental head to the General Manager. This right was modified by the Industrial Court by giving a right of appeal to the officer immediately superior to the one who had imposed

the punishment. This item in the standing order is in my opinion fully covered by Item No. 12, in sch. I, which runs as follows:—

“Means of redress for employees against unfair treatment.”

That leaves me with the three items relating to leave; and what I have to determine is whether it is within the scope of standing orders provided for in the Bombay Industrial Relations Act, 1946, to prescribe the duration of leave and the leave salary that may be allowed. The decision of this question must depend upon the interpretation of s. 35 (1) of the Bombay Industrial Relations Act, 1946, read with the relevant item, viz. Item No. 6 in sch. I to that Act. I have already set out above the relevant words of s. 35 (1), which enact that the standing orders shall regulate the relations between the employer and employees “with regard to” the industrial matters mentioned in Schedule I.” Now, the words “with regard to” are, in my opinion, words of the widest significance. They are equivalent to the words “with respect to”, which have been used in s. 100 of the Government of India Act, 1935, which enacts that the powers of the Federal and Provincial Legislature shall be “with respect to the matters enumerated in the appropriate list in the Seventh Schedule. In dealing with those words the Federal Court in *Bhola Prasad v. The King Emperor*,⁽¹⁾ pointed out that the power to legislate “with respect to” intoxicating liquors could not well be expressed in wider terms. See judgment of Sir Maurice Gwyer C. J. at p. 25. Similarly the scope of the standing orders, in so far as they relate to the industrial matters mentioned in sch. I, could not have been well expressed in wider terms than by enacting that they shall be with regard to such industrial matters. The words “Industrial matter” have been defined in s. 3, sub-s. (18), of the Bombay Industrial Relations Act:

“‘Industrial matter’ means any matter relating to employment, work, wages, hours of work, privileges, rights or duties of employers or employees, or the mode, terms and conditions of employment.”

It is further stated to include several matters which I need not recite here. Keeping this definition in mind, one must next turn to the schedule to find the precise ambit and scope of standing orders. But before doing so, I must first deal with the contention that has been urged on behalf of the Corporation that the standing orders are by their very nature procedural

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⁽¹⁾ [1942] F. C. R. 17. 25.

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and cannot deal with matters of substantive rights and obligations between the employer and the employee. Now, it is true that the words "standing orders" as understood in common parlance relate to orders which are in the main procedural. But, none the less, when I have got to determine what falls within the scope of standing orders which are provided for by statutes, such as the Bombay Industrial Relations Act. I cannot give to the words "standing orders" necessarily the meaning which is attached to it in common parlance but must determine the scope of the standing orders by reference to the statute itself. When I determine what they in law can provide for, the name by which they are called is not a matter of substance nor can it alter their nature or content. It is next urged on behalf of the Corporation that under the very Act, model standing orders notified in the Official Gazette by the Provincial Government in respect of any industry shall apply to an undertaking until standing orders in respect of it are settled in accordance with the provisions of the Act. See s. 35, sub-s. (5). Under this provision, the Government of Bombay have promulgated model standing orders by Notification No. 22/48-II, dated September 18, 1948; and it is pointed out on behalf of the Corporation that these model standing orders which apply to certain specified industries do not contain either the periods of leave to which employees are entitled or the leave salaries to which they are entitled. In r. 25 of these model standing orders there is a provision that holidays with pay will be allowed in accordance with the Factory Act, 1944; but that is merely a statement of statute law as it exists and not the enactment that holidays with pay shall be of a particular duration. As against this, it is pointed out on behalf of the respondent that under model standing orders promulgated by the Central Government, there is a provision at least with regard to the period of casual leave. These standing orders are made by the Central Government under the provisions of s. 3, sub-s. (2), of the Industrial Employment (Standing Orders) Act, 1946, and are to be found in the *Gazette of India*, dated December 28, 1946, Part I, p. 1921. Rule 10 of the said order provides that

"a workman may be granted a casual leave of absence with or without pay not exceeding 10 days in the aggregate in a calendar year."

So that, undoubtedly, these standing orders prescribe the period of casual leave. But neither the presence of this period in these model standing orders, nor the absence of such a period in the model standing orders notified by the Bombay Government is

helpful to me in determining what the scope of the standing orders should be under the Bombay Industrial Relations Act. If these models are not within the scope of the standing orders contemplated by the respective Acts, they will to that extent be void. It is, therefore, in my opinion, quite fruitless to find out what matters have been included or excluded from the model standing orders promulgated either by the Local or the Central Government. Going back then to the relevant item in the schedule, viz. Item No. 6 "leave: conditions, procedure and authority to grant." I have to determine what is the scope and ambit of this item in the schedule. In the first instance, it appears to me that the industrial matter mentioned in this item is leave and not conditions, procedure and authority to grant, which cannot by themselves be considered to be industrial matters. To look at the matter from a slightly different approach, the question is whether the scope of the entry "leave" is in any way cut down by the words that follow it, viz. "conditions, procedure and authority to grant"; or whether the latter words are merely particular aspects of the item "leave" that have been enumerated and the item includes within its compass all aspects of "leave" that may arise as between an employer and an employee. Now, in determining this, it is useful in the first instance to refer to the corresponding item in the schedule to the Central Act, viz., Industrial Employment (Standing Orders) Act, 1946. That item is "conditions of procedure in applying for and authority which may grant leave and holidays." It is reasonable to assume that the Local Legislature which enacted the Bombay Industrial Relations Act long after the Central Act was enacted, had before it the Central Act; and indeed there is evidence in the First Schedule to the local Act itself to show that items in it were at least in some cases taken bodily from the Central Act. Thus for example, Item No. 1 in sch. I to the local Act is verbatim the same as the corresponding item in the Central Act. Why then did the Local Legislature alter the phraseology of Item 5 in the schedule to the Central Act and use a different phraseology in Item 6 of sch. I to the local Act? Instead of the words "conditions of leave" in the Central Act, we have the words "leave; conditions" in the local Act. It would, in my opinion, be reasonable to assume that the local Legislature intended that the entry in the First Schedule to the local Act should be different from the corresponding entry in the Central Act in substance; and, therefore, in my opinion, the entry in the Local Act "leave:

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conditions" should not be read as "conditions of leave"; but the word "conditions" which follows "leave" should be treated as one aspect of the general topic "leave", with which standing orders can deal in all its aspects. If that is the correct interpretation of this entry in the schedule, then quite obviously the duration of leave as well as leave salary are within the scope of this item in the schedule. But assuming that I am wrong in this construction and Item 6 in the First Schedule to the local Act is to be read as if it were conditions of leave, can it be said that conditions of leave do not include the duration of leave or leave salary. In my opinion, it cannot. If we were talking about "conditions of service," I do not think it could possibly be urged that they would not include the duration of service or the salary payable. Or again, if we were talking of "conditions of a leave," I do not think it could be urged that the duration of the leave would not be included in them. I do not see, therefore, why conditions of leave should not include the duration of leave or the leave salary to which an employee may be entitled. In my opinion, therefore, from whichever standpoint one peruses Item 6 in the schedule to the Bombay Industrial Relations Act, the item includes within its scope the duration of leave as well as leave salary. The Industrial Court was, therefore, in my opinion, competent to settle the standing orders as it did; and no question of excess of jurisdiction or want of jurisdiction arises.

It has also been urged that even assuming that there was a case of excess of jurisdiction or want of jurisdiction, the petitioners in this case have another adequate and specific legal remedy and therefore a writ of *certiorari* should to be a right of event be granted. The legal remedy is said to be a right of appeal under the provisions of the Industrial Disputes (Appellate Tribunal) Act, 1950. The petitioners deny that such a remedy was open to them. In other words they submit that they could not have appealed to the Appellate Tribunal in respect of the order of the Industrial Court which settled the standing orders in appeal. The question, therefore, for decision is whether there was or was not an appeal open to the petitioners against the order of the Industrial Tribunal complained of. Now, s. 7 of the Industrial Disputes (Appellate Tribunal) Act, 1950, provides:—

"...an appeal shall lie to the Appellate Tribunal from any award or decision of an industrial tribunal if—

(a) the appeal involves any substantial question of law;"

An Industrial Tribunal is defined in s. 2, sub-s. (c); and it is indisputable that the Industrial Court which has jurisdiction to settle the standing orders on appeal falls within sub-cl. (2) of that definition, which I need not reproduce. Nor is it disputed that a question of law arises in the present case. But what is urged is that what the Industrial Court did in settling the standing orders is not "an award or a decision," but is only "an order" and therefore no appeal lies. The contention is that in legislation dealing with industrial matters, the words award, decision and order have been used as mutually exclusive. I will, therefore, proceed to consider how far this contention is well founded. Firstly, under the Industrial Employment (Standing Orders) Act, 1946, s. 6 does provide that when standing orders are certified under s. 5, there shall be an appeal and "the appellate authority, whose decision shall be final, shall by order in writing confirm the Standing Orders, etc." The language used in this section would indicate that the words "decision" and "order" are not used as mutually exclusive; and that in any event the word "decision" is used as comprising an order whereby the appellate authority confirms, etc. the standing orders as originally certified.

Coming next to the Bombay Industrial Relations Act, 1946, we find in Chapter XII, which deals with Labour Courts, that under s. 78 (1) A a Labour Court has power to decide (a) certain disputes, (b) certain industrial disputes and (c) the legality of a strike, lock-out, closure, stoppage or any change. Whatever the Labour Court does under this power will obviously be a decision. Section 79 provides for proceedings before the Labour Court and s. 80 provides that they should terminate by a decision. Section 84, sub-s. (1) (a), provides that an appeal shall lie "against a decision of a Labour Court in respect of a matter falling under cl. (a) or (c) of paragraph A of sub-s. (1) of s. 78." Of course, under s. 78 (1) A (b) in the case of industrial disputes there would be an award and not a decision; although the words used in s. 78 with regard even to industrial disputes is that the Labour Court shall decide them. Then s. 86 provides for the finality of the decision, award or an order of the Labour Court. There is throughout the chapter no mention of any "order" or power to make an order. There may be an award or there may be a decision; and yet finality is given not only to the decision or the award but to a decision, award or an order. This again makes it plain to my mind that the words decision, award and order are not used as mutually exclusive. Turning next to chapter XIIA, which deals with Wage Boards,

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s. 86C provides that a reference may be made to a Wage Board "for decision" of any industrial matter or industrial disputes, relating to certain items in Sch. II. Sections 86D to 86F refer to decisions of a Wage Board and then s. 86G provides that an appeal shall lie to the Industrial Court against "an order or decision" of the Wage Board; and s.86H provides that "an order or decision" of the Wage Board shall be binding. Section 86I provides for a review of the order or decision and s. 86K provides for the finality of the order or decision. So that, although the Wage Board is supposed to do nothing else but to give a decision under s. 78, ss. 86G to K refer to the orders or decisions of the Wage Board indicating clearly that the Legislature did not distinguish between orders and decisions as such nor did they intend to use the two words as necessarily mutually exclusive.

Turning next to Chapter XIII of the Local Act dealing with the Court of Industrial Arbitration, s. 87 indicates that it shall be the duty of the Industrial Court to decide certain matters. Then s. 88 (1) provides that the Industrial Court in appeal may confirm modify, add to or rescind any order appealed against and may pass such orders therein as it deems fit. Then s. 95 (1) provides for a review of "a decision or award" of the Industrial Court and sub-s. (2) of that section provides for the finality of "an order, decision or award" of the Industrial Court. It is impossible on this review of the relevant sections of the local Act to hold that in industrial legislation the word "decision" has been used so as to exclude orders; and in any event this particular point appears to me to be directly covered by s. 87 (a), sub-s. (ii) of the local Act, which is as follow:—

"It shall be the duty of the Industrial Court—

".....(a) (ii) to decide appeals from the decision of the Commissioner of Labour under s. 36 or 39 and revision application under s. 37 regarding standing orders;"

This section refers in the first instance to what is done by the Commissioner of Labour under s. 35 in relation to standing orders as "a decision" and, secondly, to what is done by the Industrial Court under s. 36 on appeal against the Commissioner of Labour also as "a decision," although s. 36 sub-s. (3) provides that on appeal the Industrial Court may confirm, modify, add to or rescind all or any of such standing orders. What was done by the Industrial Court in the present case is, therefore, a decision within the plain language employed in

s. (a) (ii) of the Bombay Industrial Relations Act, 1946, and it cannot be taken out of the scope of the word "decision" in s. 7 of the Industrial Disputes (Appellate Tribunal) Act, 1950, by urging that what the Industrial Court did was to pass an order and not to give a decision. The natural meaning of the word "decision" also is such as to include any order or even an award. I am, therefore, of opinion that there was in this case an appeal available to the petitioner to the Appellate Tribunal established under the Industrial Disputes (Appellate Tribunal) Act, 1950.

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That being so, the question that arises next is whether the remedy so provided was an adequate and specific legal remedy which would preclude the petitioners from successfully asking for a writ of *certiorari*. In this connection, the respondents have relied upon a decision of a division bench of this Court consisting of Sir Leonard Stone C. J. and Mr. Justice Chagla, as he then was, in *Khurshed Mody v. Rent Controller, Bombay*.⁽¹⁾ In that case, there was a petition for a writ of *certiorari* against the Rent Controller on the ground that he had no jurisdiction to make an order which he had purported to make. Kania J., before whom the petition was presented, dismissed the petition on the ground that under the Bombay Rent Control Act, there was an appeal provided against the order of the Rent Controller and that it was a specific and adequate legal remedy and a writ of *certiorari* would not, therefore, lie. The division bench on appeal held that the Controller had in fact jurisdiction; but they proceeded to state that the learned trial Judge's view of the law that if there was a right of appeal no remedy by way of writ of *certiorari* would lie was not, in those wide terms, a correct enunciation of the true principle of law. Chagla J., who delivered the judgment of the bench, after reviewing the relevant cases, stated the view of the bench as under (p. 569):—

".....our view is that considering all the decisions which have been cited at the bar, the true position seems to be that if there is another suitable remedy as, for instance, a right of appeal, then the Court would be very loath to issue the high prerogative writ of *certiorari* unless it is satisfied that the Court or the officer against whom the writ is sought has acted in a manner which is contrary to the fundamental principles of justice."

⁽¹⁾ (1946) 48 Bom. L. R. 565.

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In a later case *Manibhai Patel v. Arbuthnot*⁽¹⁾ my learned brother Bhagwati J. referred to this part of the judgment of the division bench as *obiter dicta* and proceeded to make some observations which would throw doubt on the correctness of this decision (see pp. 461 to 464) but left it open for himself to decide in future what the correct position in law would be, if the question arose before him. Although no doubt it is perfectly true that the observations of the division bench in *Khurshed Mody v. Rent Controller, Bombay*, were *obiter*, for myself, I am content respectfully to follow them as good law; and I, therefore, hold that unless there is a violation of the fundamental principles of justice, the Court will be loath to issue a writ of *certiorari* if an appeal lies. Now, in the case before me, there is no allegation that there was any violation of any fundamental principles of justice. But what Mr. Vimadalal has urged before me is that the very fact that the Industrial Court proceeded to determine something which it had no jurisdiction to decide was a violation of a fundamental principle of justice. I do not think, it is possible to interpret the words "fundamental principle of justice" so as to make mere want of jurisdiction or excess of jurisdiction a violation of that principle. In the case of *Khurshed Mody v. Rent Controller, Bombay*, itself there was an allegation of want of jurisdiction in the Rent Controller and Kania J. in his judgment observed (p. 566):—

"In the present case the petitioner does not allege that there is a breach of any fundamental principle of justice. Her only contention is that the first respondent has exercised jurisdiction when he had none under the Rent Act....."

It would indicate that the learned Judge did not consider that an allegation of want of jurisdiction was by itself an allegation that there was breach of any fundamental principle of justice; and the division bench itself appears to have taken the same view. Chagla J. stated (p. 570):—

"In this particular case, there is no allegation that the Controller in making the order acted in any way which was contrary to the principles of fundamental justice."

I am, therefore, of opinion that even if I had taken the view on the merits that the Industrial Court had no jurisdiction to settle the standing orders in the manner it did, I would not have granted the writ of *certiorari* as the petitioners had an adequate and specific legal remedy which they did not choose

⁽¹⁾ (1946) 49 Bom. L. R. 454.

to avail themselves of. The result, therefore, is that the rule must be discharged and the petition dismissed with costs.

Attorneys for petitioners: *Crawford, Bailey & Co.*

Attorneys for respondents: *Little & Co.; Vakil, Dadabhoy & Bharucha.*

Petition dismissed.

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Before Mr. Justice Tendolkar.

ALLAUDIN ALLABUX AND OTHERS, PETITIONERS v. M. R. MEHER AND ANOTHER, RESPONDENTS.*

Administration of Evacuee Property Act (XXXI of 1950), ss. 7 and 40—Administration of Evacuee Property (Central) Rules 1950, form No. 1—“The persons interested”, meaning of—Notice to “persons interested”, mandatory—Failure to give notice vitiates proceedings—Proceedings contrary to fundamental principles of justice—Petition for writ of certiorari maintainable.

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The “persons interested” to whom a notice is required to be given under s. 7 (1) of the Administration of Evacuee Property Act, means persons who either claim to be interested or whom the Custodian considers to be interested; the two categories are separate, though not necessarily mutually exclusive. Therefore, a person who claims to be interested, even though the Custodian may not consider him to be interested, is entitled to a notice under s. 7 (1) of the Act. Where no person comes forward claiming to be interested, the Custodian would have to give notice to persons whom he considers to be interested. This class of persons necessarily includes persons having legal title to the property in question but is not restricted to such persons only and embraces all persons who have an interest in the property, howsoever limited.

The giving of a notice is a statutory requirement; it is not procedural only but is mandatory. In the absence of a notice to persons interested the declaration by the Custodian that the property is evacuee property is without jurisdiction and liable to be set aside.

Notice is to be given in such manner as may be prescribed by the rules made under the Act. If the manner in which notice should be given to interested person is not prescribed, or a suitable form of notice is not prescribed, the Custodian is nevertheless under an obligation to give a notice.

* O. C. J. Misc. Appln. No. 28 of 1951.