that in this regulation testamentary power to dispose of pension and gratuity is fully assumed. There is hardly any principle which would justify this Court to say that the Rules framed should be so construed as to exclude such a power of testamentary disposition of a subscriber with regard to provident fund.

(28) Mr. Kapur has invited our attention to Exhibit R.W. 5/A of 10th December, 1959, wherein the officer had named his parents amongst the persons who were to receive pensionary benefits. He has also asked to take account of the letter dated 10th March, 1967, (Exhibit R.W. 3/1) of the Ministry of Defence addressed to the Controller of Defence Accounts (Pensions) in which a special family pension to the widow at the rate of Rs. 160 per mensem has been granted and the death gratuity of Rs. 2,670 has been fixed. It is submitted by him that the amount of gratuity actually came to be fixed in this letter and he was not in a position to submit before the learned Judge that this specified sum should be made a subject of probate. We think, there is force in Mr. Kapur's argument especially in view of the observation of Grover, J., towards the end of his judgment that:—

> "Gratuity could not form part of the assets of the deceased and Mr. Kapur has been unable to show anything to the contrary.".

(29) We would, therefore, allow the appeal of Jodh Singh only to the extent that the sum of Rs. 2,670 as gratuity should be included in the list of assets for which probate is to be granted in favour of Jodh Singh, L.P.A. No. 389 of 1967 would be allowed only to this extent. We would make no order as to costs of this appeal as well.

MEHAR SINGH, C.J.—I agree.

R.N.M.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

M/S ELITE ENGINEERING AND GENERAL WORKS,—*Petitioner*

versus

LABOUR COURT, JULLUNDUR AND ANOTHER,—*Respondents*

Civil Writ No. 1466 of 1967.

May 2, 1968.

Constitution of India (1950) *Article 226—Refusal of an Industrial Tribunal to grant adjournment—Such order—Whether can be interfered with by the High Court.*

Held, that an Industrial Tribunal is not bound by all the technicalities of civil Courts, but because its functions and duties are very much like those of a body discharging judicial functions, the procedure adopted by it had nevertheless to be of the same pattern as followed by the civil Courts. No doubt the grant or refusal of an adjournment is purely within the discretion of the Tribunal, yet, it is not correct that whenever the Tribunal refuses adjournment in a case, under no circumstances can it be interfered with. There can be a case where there may be justification for interfering with such an order under Article 226 of the Constitution. (Paras 7 and 8)

Petition under Article 226 of the Constitution of India, praying that a writ of certiorari, or any other appropriate writ, order or direction be issued, quashing the order dated 3rd June, 1967 to proceed ex parte, Award dated June, 1967 published on 30th June, 1967 and the order dated 7th July, 1967 refusing to set aside the ex parte proceeding.

G. C. MITTAL, ADVOCATE, for the Petitioner.

A. C. HOSHIARPURI, ADVOCATE, for No. 2 Respondent.

JUDGMENT

PANDIT, J.—This is a petition under Article 226 of the Constitution filed by M/s Elite Engineering and General Works, Batala, district Gurdaspur, challenging the legality of the award dated 3rd June, 1967, passed by the Labour Court, Jullundur, respondent No. 1.

(2) According to the petitioners the workmen of their establishment, who have been impleaded as respondent No. 2, raised a dispute with them and the Punjab Government referred the same to respondent No. 1 by its order dated 12th January, 1967. After the filing of the written statement and the framing of issues, respondent No. 1 fixed 2nd May, 1967, as the first date for the parties' evidence. On that day, both the parties did not appear and sent telegrams, with the result that the case was adjourned to 3rd of June, 1967, for their evidence. On 3rd of May, 1967, the petitioner applied for summoning one Shri Harish Kumar, Manager Swastika Foundry, Batala, as a witness, alongwith certain records. Respondent No. 1 allowed the production of that witness and the petitioner, therefore, deposited the diet money and the process fee, etc., as required under the rules, for the appearance of the witness on 3rd of June, 1967. Shri M. L. Saini, Labour Law Adviser and who was practising at Amritsar, was the authorised representative of the petitioner and he was conducting the case on their behalf at

Jullundur. On 2nd of June, 1967, Shri Saini fell ill and, consequently, he sent a telegram to respondent No. 1 on the same day for the adjournment of the case. The doctor had advised him complete rest and he was, therefore, not in a position to attend the Court on 3rd of June, 1967. The said telegram was received by respondent No. 1 before the hearing of the case. On 3rd of June, 1967, the case was, however, taken by respondent No. 1 and in spite of the telegram of Shri Saini for its adjournment on account of his illness, *ex parte* proceedings were taken against the petitioner, and respondent No. 1 not only recorded the evidence produced by respondent No. 2, but also gave the award that very day in the absence of the petitioner, without giving any date for arguments even. Shri Saini honestly believed that the case must have been adjourned as requested by him, but since he had not received an intimation about the adjournment from respondent No. 1, he sent an application dated 9th of June, 1967, for being informed about the next date fixed in the case. Later on, the Petitioner came to know from the representative of respondent No. 2 that on 3rd of June, 1967, *ex parte* proceedings had been taken against them. An application dated 26th of June, 1967, was, therefore, filed before respondent No. 1 for setting aside the *ex parte* proceedings. From the reply dated 7th of July, 1967 given by respondent No. 1, the petitioner knew that the award was given on 3rd of June, 1967, and published in the Gazette on 30th of June, 1967. The application for setting aside the *ex parte* proceedings was, however, rejected by respondent No. 1 on the ground that he had become functus officio after giving the award and had, therefore, no jurisdiction to re-open the case at that stage. That led to the filing of the present writ petition on 27th of July, 1967.

(3) While proceeding *ex parte* against the petitioner on 3rd of June, 1967, respondent No. 1 passed the following order:—

> "No one on behalf of the management is present today. This case is fixed for parties evidence for today. A telegram has been received from Shri M. L. Saini, representative of the management, from Amritsar, saying that he was suffering from fever, and that the case may be adjourned. Shri Sulakhan Singh, representative of the workmen, strongly opposes the adjournment. He further emphatically asserts that the telegram is false and that the management is adopting dilatory tactics to harass the workmen. Previously this case was fixed for parties

evidence on 2nd May, 1967. On that date too, the management's representative and sent a telegram seeking adjournment on the ground that he was sick, and he was duly accommodated. No medical certificate has been received from the management's representative in support of his sickness. If he is really sick and could not attend the court, there is no reason as to why the employer or some other representative of his should not have attended the court, and either conducted the proceedings or asked for an adjournment. No explanation for the non-attendence of the employer or his witnesses is thus forthcoming. I am satisfied, in the circumstances, that the management is deliberately prolonging and delaying the proceedings with a view to harass the workmen and gain undue advantage over them. I do not think this is a fit case for adjourning the case as desired by the management's representative. In the circumstances, I proceed against the management under rule 22 of the Industrial Disputes (Punjab) Rules, 1958, which *inter alia* provides that if any party to a proceeding before a Labour Court fails to attend or to be represented, the Labour Court may proceed as if he had duly attended or had been represented. The workmen's witnesses are present and their evidence should be recorded."

(4) Learned counsel for the petitioner submitted that in passing the above-mentioned order, respondent No. 1 had acted in a most arbitrary manner and had adopted a procedure which ran counter to the well-established rules of natural justice and the same had resulted in great injustice to his client.

(5) It is apparent from the award dated 3rd of June, 1967, given by respondent No. 1 that on 2nd of May, 1967, which was the date for the parties' evidence, no proceedings could take place as both the representatives of the management and the concerned workmen had sent telegrams alleging that they were sick and could not attend the court. The case was, therefore, adjourned to 3rd of June, 1967, for the parties' evidence. On 2nd of June, 1967, i.e., one day before the date fixed in the case, Shri M. L. Saini who was conducting the case on behalf of the petitioner, fell ill and he, therefore, sent a telegram to respondent No. 1 for the adjournment of the case. It is note-worthy that the petitioner had summoned one witness, Harish Kumar on 3rd of May, 1967, for 3rd of June, 1967. The diet money and the process fee had been duly deposited in that connection, 3rd

of June, 1967, had been specifically fixed for the parties' evidence and not for hearing arguments or for final orders. Even if, respondent No. 1 was not inclined to given an adjournment on account of the illness of Shri Saini, the case had to be adjourned for the evidence of Harish Kumar witness who had not turned up on that date. The petitioner had put in the process fee and the diet money and had done all that was in his power to summon this witness. A date had to be given for his evidence and the case could not be finally disposed of on 3rd of June, 1967. This apart, respondent No. 1 should have indicated to the parties the date on which he would hear the arguments in the case and give final orders. No such indication was given in the instant case. It is somewhat surprising that on the very first hearing, i.e., 3rd of June, 1967, which was fixed for the evidence of the parties, respondent No. 1 not only closed the case of the petitioner, but recorded the evidence produced by respondent No. 2 and gave an *ex parte* award on that very day. No injustice or prejudice would have been caused to respondent No. 2, if one adjournment had been given to the petitioner on account of the illness of their representative, Shri Saini. Respondent No. 2 would have been compensated by awarding costs. There was no question of any harassment to respondent No. 2, because if they had succeeded they would have got their back wages without working and doing anything. They had put in their appearance for the first time on that very date and it is not a case where they had been attending the court on a number of hearings and the petitioner was asking for adjournment every time. On the first date of hearing. It was on the joint request of both the parties that the case was adjourned to 3rd of June, 1967, for the parties' evidence. It was virtually for the first time that the petitioner was wanting an adjournment on 3rd of June, 1967, on account of the illness of Shri Saini. By making the *ex parte* award in favour of respondent No. 2, great injustice, in my opinion, has occurred to the peitioner.

(6) The first ground taken by respondent No. 1 for rejecting the prayer of the petitioner for the adiournment of the case was that on 2nd of May, 1967, the management's representative had sent a telegram seeking adjournment on the ground that he was sick and he was duly accommodated. As I have already said, it is clear from the impugned award itself that on that date, no proceedings could take place as both the parties could not attend the Court, because they were sick. It was, therefore, on the joint request of both the parties that the case was adjourned to 3rd of June, 1967, for the

parties' evidence. Petitioner alone was not responsible for this adjournment. The second ground mentioned by respondent No. 1 was that no medical certificate had been received from the management's representative in support of his sickness. Shri Saini was a labour law adviser and was practising at Amritsar. He was a responsible person and I am told that he had taken his degree in law. Under these circumstances, his statement should have been believed by respondent No. 1, even if he had not sent a medical certificate in proof of his illness. Besides, if Shri Saini had fallen ill suddenly on the 2nd of June, 1967, even if he had sent the medical certificate by ordinary post, it might not have reached the Court in time on 3rd of June, 1967. The third reason given by respondent No. 1 was that if Shri Saini was really sick and could not attend the Court, there was no reason as to why the employer or some other representative of his could not have attended the Court and either conducted the proceedings or asked for an adjournment. In making that observation, respondent No. 1 should not have ignored the fact that Shri Saini was practising at Amritsar, while the petitioner was functioning at Batala. Under these circumstances, it was not quite easy for Shri Saini, who was ill, to contact his clients at Batala and then ask them to appear at Jullundur before respondent No. 1 in time on 3rd of June, 1967, for making a personal request for the adjournment of the case. Respondent No. 1 has further remarked in his order that the management was deliberately prolonging and delaying the proceedings with a view to harass the workmen and gain undue advantage over them. It is not easily understandable as to how in the circumstances of this case, it could be said that the management was deliberately prolonging and delaying the proceedings. There was no question of harassing the workmen, because they had put in appearance only on one occasion, namely, the 3rd of June, 1967. Again, it could not be said that the management was trying to gain some undue advantage over the workmen, because, as I have already said, if the latter had succeeded, they would have got their back wages.

(7) There is no doubt that an Industrial Tribunal is not bound by all the technicalities of civil courts, but because its functions and duties are very much like those of a body discharging judicial functions, the procedure adopted by it had nevertheless to be of the same pattern as followed by the civil courts. While mentioning the circumstances under which an application for leave to appeal against the order of an Industrial Tribunal should be entertained by the Supreme Court, it has, in *The Bharat Bank Ltd., Delhi* v.

The Employees of the Bharat Bank, Ltd., Delhi and the Bharat Bank Employees Union (1), observed thus :—

> "When it chooses to interfere in the exercise of these extra-ordinary powers, it does so because the Tribunal has either exceeded its jurisdiction or has approached the questions referred to it in a manner which is likely to result in injustice or has adopted a procedure which runs counter to the well established rules of natural justice; in other words, if it has denied a hearing to a party or has refused to record his evidence or has acted in any other manner, in an arbitrary or despotic fashion."

(8) It may be mentioned that the learned counsel for the respondent argued that the grant or refusal of an adjournment was a matter which was purely within the discretion of the labour court and this court, in proceedings under Article 226 of the Constitution, could not interfere with that discretion. In that connection, he relied on the Supreme Court decision in *Dabur (Dr. S. K. Burman) (Private) Ltd., Deoghar* v. *Their Workmen* (2), wherein it was said: "The question whether an adjournment should or should not be granted was in the discretion of the labour court". But, it is pertinent to point out that the Supreme Court had not laid down as an abstract proposition of law that whenever the labour court refused adjournment in a case, then under no circumstances could its order be interfered with, because in that very authority, the Court further observed: "Even the order by which the labour court rejected that application for adjournment is not before us and, consequently, it cannot be held that the labour court committed any such error in rejecting the application for adjournment and proceeding *ex parte* as would justify interference by this Court". That clearly shows that there can be a case where there may be justification for interference with such an order under Article 226 of the Constitution.

(9) In my view, in the circumstances of this, there was no justification for respondent No. 1 to proceed *ex parte* against the petitioner on 3rd of June, 1967, and decide the entire case on that very day in their absence without hearing them at all. I am satisfied

(1) A.I.R. 1950 S.C. 188.
(2) (1967) 11 Labour Law Journal 863.

that the principles of natural justice have been violated in the instance case. I am, therefore, of the opinion that in proceeding *ex parte* against the petitioner and giving the impugned award, respondent No 1 had acted in an arbitrary manner which had resulted in injustice to the petitioner. The impugned award, consequently, deserves to be set aside.

(10) I would, therefore, allow this petition, quash the award dated 3rd June, 1967, given by respondent No. 1 and direct him to proceed further with the case in accordance with law from the stage prior to 3rd of June, 1967. There will, however, be no order as to costs.

R.N.M.

CIVIL MISCELLANEOUS

Before D. K. Mahajan and Prem Chand Pandit, JJ.

M/S NIAMAT RAI MILKH RAJ AHUJA,—*Petitioner*

versus

STATE OF PUNJAB AND ANOTHER,—*Respondents*

Civil Writ No. 1171 of 1968.

May 17, 1968

Punjab General Sales Tax Act (XLVI of 1948)—S. 5(3)—as amended by Punjab General Sales Tax (Amendment and Validation) Act (VII of 1967)—Whether ultra vires *Articles 303 or 14 of the Constitution—Section—Whether violates section 15 of the Central Sales Tax Act (LXXIV of 1966)—Infirmities and lacuna in the Act pointed out by the Supreme Court—Whether removed by the Amending Act—"Last purchase by a dealer liable to pay tax under the Act"—Meaning of—Interpretation of Statutes—Legislature—Whether can validate laws declared invalid.*

Held, that Articles 303 of the Constitution of India is specifically limited to the entries concerning trade and commerce and does not touch the laws made under other entries. Taxation is treaed as a distinct matter for the purposes of lagislative competence. Section 5(3) of the Punjab General Sales Tax Act, as amended with retrospective effect from 1st October, 1958 is not violative of the said Article. Nor is this section *ultra vires* Articles 14 of the Constitution as there is no discrimination in the case of declared goods.

(Paras 9, 14 and 18)