them to elect only one person by a particular date. Since the Committee did not do so as desired by the Government by the appointed date, it appointed respondent No. 4 by notification, dated 23rd June, 1965, acting under section 4(4) of the Act. The Committee was rightly insisting that it had a right to elect three persons and not only one as trustees. The Government had taken a wrong view of the law. It was, therefore, not justified in taking action under section 4(4) of the Town Improvement Act on the failure of the Municipal Committee to elect one person by the date fixed. The election of respondent No. 4, therefore, is also, in my opinion, not valid. The notification, dated 23rd June, 1965, consequently, deserves to be quashed.

The result is that the writ petition succeeds, the impugned notification, dated 23rd June, 1965, is quashed and a writ of *mandamus* is issued to the State of Punjab, respondent No. 1, directing them to permit the petitioner-Committee to elect three members as trustees of respondent No. 6 under section 4(3) of the Town Improvement Act in place of respondents 2 to 4 who have no legal right to hold the office of trustees. There will, however, be no order as to costs.

B.R.T.

CIVIL MISCELLANEOUS

Before Inder Dev Dua and R. S. Narula, JJ.

SURINDER SINGH AND ANOTHER,—Petitioners

versus

THE STATE OF PUNJAB, AND OTHERS,—*Respondents*

Civil Writ No. 1636 of 1963.

March 14, 1966.

Ex parte *order—Power to set aside—Whether inheres in every judicial or a quasi-judicial Tribunal—Maxim* actus curiae naminem gravabi—*Mistake of Court—Whether can be rectified—Pepsu Tenancy and Agricultural Lands Act (XIII of* 1955)—*S. 32-P—Pepsu Lands Commission constituted under—Whether has inherent powers to set aside* ex parte *order in suitable cases.*

Held, that the power to set aside an *ex parte* order made to the prejudice of a party by a judicial or a quasi-judicial Tribunal without hearing him cannot be

equated with the power of review such as is contemplated in and provided by section 114 and Order 47, Code of Civil Procedure. But such a power may well be assumed to inhere in every Tribunal or authority which has to judicially determine anything affecting the rights of the contesting parties before it. This power, which from one point of view, may also partake of the character of a duty or an obligation designed to serve the ends of justice, inheres in such a Tribunal or authority because it is rooted in the fundamental rules of natural justice which require that every party should be heard before an order to his prejudice is made and also that no act of Court should harm a litigant for no fault of his. If a person is harmed by a mistake of the Court, he is entitled to be restored to the position he would have occupied but for that mistake. This principle is summed up in the maxim *actus curiae naminem gravabit.*

Held, that the Pepsu Lands Commission constituted under the Pepsu Tenancy and Agricultural Lands Act, 1955, must, therefore, for reasons similar to those governing the Courts, be held to possess such inherent power to set aside the *ex parte* orders made by it. Of course, in common with the Courts, the exercise of this power rests with the Commission, though it is open to the parties to bring the infirmity to its notice. But being controlled and guided by judicial discretion, this power can neither be exercised nor declined arbitrarily or capriciously. Law reports teem with judicial decisions in which Courts have, to serve the ends of justice, set aside under inherent power *ex parte* orders, not covered by other express provisions of the Code. Those decisions are helpful only by way of illustrations and it is neither possible nor practicable to formulate a fixed or rigid rule to serve as a straight jacket in all conceivable contingencies, unrelated to circumstances and time. It is the disciplined judicial sense of the Court or the Tribunal gripped by rules of reason and justice on which primarily depends the satisfactory working of the recognised, though not iron-clad, rules of natural justice in each given case.

Case referred by the Hon'ble Mr. Justice Inder Dev Dua, on the 17th December, 1965, to a Division Bench for the decision of an important question of law involved in the case. The case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice Inder Dev Dua and the Hon'ble Mr. Justice R. S. Narula on the 14th March, 1966.

Petition under Articles 226/227 of the Constitution of India, praying that a writ in the nature of certiorari, mandamus, *or any other appropriate writ, order or direction be issued quashing the order of respondent No. 4, dated the 25th of June, 1962.*

ACHHRA SINGH AND I. S. KAREWAL, ADVOCATES, for the Petitioners.

J. N. KAUSHAL, ADVOCATE-GENERAL WITH M. R. AGNIHOTRI, ADVOCATE, for the Respondents.

ORDER OF REFERENCE

DUA, J.—In this application under Articles 226 and 227 of the Constitution, the petitioners, who are brothers, claim to hold land in village Kila Hakiman, tehsil Malerkotla, district Sangrur. In accordance with the provisions of section 32-B of the Pepsu Tenancy and Agricultural Lands Act, 1954 (hereinafter called the Act), the petitioners claimed exemption from ceiling as laid down in Chapter IV-A of the Act of 10 standard acres of land each as orchards by means of two separate claim petitions. The proceedings of both the claims were consolidated in November, 1960 by the Pepsu Land Commission, Chandigarh. The matter, however, came up before the said Commission on 7th April, 1961, when the petitioners were expected to produce their evidence. The petitioners suddenly fell ill on that date, with the result that they sent a telegram to the Commission to postpone their case and to inform them of the next date of hearing. This telegram, it appears, reached the Commission late and in the meantime, the Commission passed an order without hearing the petitioners. Petitioner No. 2 Gurinder Singh, after waiting for some time came to know of the Commission's recommendation and applied for reconsideration of its report. This was done on 27th July, 1961. The Commission did not take any action on this application till 7th September, 1961, when again, an application was submitted by petitioner No. 2. This was rejected by the Commission on 25th June, 1962. The petitioners then took the matter on revision under section 32-D(4) of the Act on 12th October, 1962. This revision was presented to the Revenue Minister, but was heard by the Financial Commissioner, Development and disallowed on 30th April, 1963. According to the petitioners' averments, the orchard in question was actually planted in the entire area at a huge cost in 1957-58, but on accounts of floods in those years and in 1959, the area became water-logged, with the result that very few plants survived.

In these proceedings, the main grievance pressed before me relates to the failure on the part of the Pepsu Land Commission to give proper hearing to the petitioners. On behalf of the respondents, it has been urged that after sending the telegram in April, 1961, the petitioners took a very long time to pursue their remedy. The revision, according to the counsel for the respondents, was not competent and, therefore, both on account of belated nature of the present writ petition and want of diligence shown by the petitioners

in pursuing their case with the Land Commission, the writ petition, it is urged, should be disallowed without going into the merits.

The revision, it may be pointed out, was disposed of by the Financial Commissioner after notice to both sides on 30th April, 1963. The writ petition was presented in this Court in September, 1963. *Prima facie,* this delay may not appear to be fatal. The fact that the learned Financial Commissioner actually entertained the revision would also seem to me to be quite relevant in not penalising the petitioners for having taken resort to that relief. The order of the Pepsu Land Commission, dated 25th June, 1962, disposing of the petitioners' application after giving them an opportunity of adducing evidence, proceeds mainly on the ground that there is no power vested in the Commission to reopen the proceedings after long time had elapsed. This, according to the learned counsel for the petitioners, is not a correct legal approach because power to recall *ex parte* orders is inherent in every judicial or quasi-judicial Tribunal which decides controversies affecting rights of parties. If the petitioners were unable to come on the date of hearing on account of illness and the Commission had expressed its opinion *ex parte*, and the telegram conveying the petitioners' illness reached the Commission afterwards, then the dictates of justice demanded reopening of the matter and submission of a further report by the Commission to the Government.

From the bar no precedent has been brought to my notice, but in view of the fact that the question is of some importance and this petition has been pending in this Court since September, 1963, I consider it desirable that this point be disposed of finally by a larger Bench.

Paper may accordingly be laid before my Lord the Chief Justice for passing suitable orders under clause (xx) read with proviso (b), Rule 1, Chapter 3-B, High Court Rules and Orders, Volume V.

ORDER OF DIVISION BENCH

The judgment of the court was delivered by—

DUA, J.—The facts giving rise to this writ petition are stated in my referring order, dated 17th December, 1965, and, therefore, need not be restated again. That order may, however, be read as a part of this order.

The learned counsel for the petitioners has today cited in support of his submission a Single Bench decision of this Court by Bhandari, C. J. in *Manohar Lal* v. *Mohan Lal* (1), in which it is laid down that the Rent Controller under the East Punjab Urban Rent Restriction Act (3 of 1949) has inherent power to set aside an *ex parte* order passed by himself. He has also relied on a Bench decision of the Madhya Pradesh High Court in *Sunderlal Mannalal* v. *Nandramdas Dwarkadas* (2). In that case, the Election Tribunal trying an election petition under the Representation of the People Act (1951), was held to possess inherent power to restore a petition dismissed in default *ex debito justitiae* when sufficient cause has been made out.

On behalf of the respondents, the learned Advocate-General has drawn our attention to a Bench decision of the Patna High Court in *Patna Electric Supply Workers Union* v. *A. Hassan* (3). The Court in that case was concerned with the Industrial Employment (Standing Orders) Act 20 of 1946 and it was observed that within the four corners of the Act, no specific provision is to be found empowering an Appellate Authority to correct the mistakes in the Standing Orders finally certified by it under section 6(1) of the Act before the expiry of six months from the date on which the Standing Orders or the last modifications thereof came into operation, except in the manner provided in section 10 of that Act that is, except on agreement between the employer and the workmen. The Appellate Authority, according to the decision in the reported case, being an authority of limited jurisdiction and a creation of the Act must be confined to the exercise of such functions and powers as are actually conferred on it. The rule that every Court, in the absence of express provision to the contrary, must be deemed to possess the inherent power in its very constitution, all such powers, as are necessary to do the right and to undo a wrong in the case of administration of justice, which applies to all Courts, cannot apply to an Appellate Authority under that Act. Relying on these observations, the learned Advocate-General has tried to impress upon us that the Pepsu Land Commission in the case in hand cannot be considered to possess inherent power to set aside an *ex parte* order. *Rameshwar Dayal* v. *Sub-Divisional Officer* (4), a Bench decision of the Allahabad High Court has also been cited by Shri Kaushal. This decision,

(1) I.L.R. 1957 Punj. 305=A.I.R. 1957 Punj. 72.
(2) A.I.R. 1958 M.P. 260.
(3) A.I.R. 1958 Patna 427.
(4) I.L.R. (1961)2 All. 298.

according to the learned counsel, lays down that the inherent power of Court to do justice and to pass any orders which it considers necessary in the interest of justice, irrespective of whether express provisions of the laws of procedure provide for it or not, is also not available to an Election Tribunal, in that, it is not a Court and possesses no common law powers. An election tribunal can pass only such orders as the provisions of that Act under which it is created provide for. In the reported case, the Court was concerned with U.P. Panchayat Raj Act, under which a Sub-Divisional Officer hearing an election petition had declined to grant an interim relief against removal from office of the Pradhan held by the petitioner (in the Allahabad High Court) on the ground that he had no jurisdiction to stay transfer of charge. The refusal of the Election Tribunal was upheld by the High Court. Our attention has next been drawn by the learned Advocate-General to a recent Full Bench of this Court in *Deep Chand and another* v. *Additional Director, Consolidation of Holdings, Punjab, and another* (5), in which it has been laid down that the Additional Director of Consolidation is not empowered to recall or review his earlier erroneous and unjust order, merely because it is discovered later that the error was due to his own mistaken view of the merits of the controversy. The learned Advocate-General has very strongly urged that to set aside an *ex parte* order is in reality to exercise the power of review which is a creation of statute and, therefore, unless the statute either expressly or by necessary intendment confers this power, no Court or a quasi-judicial Tribunal can assume that such a power inheres in it.

In my opinion, the power to set aside an *ex parte* order made to the prejudice of a party before a judicial or a quasi-judicial Tribunal without hearing him cannot be equated with a power of review such as is contemplated in and provided by section 114 and Order 47, Code of Civil Procedure. The kind of power of review with which the Full Bench of this Court in *Deep Chand's case* was concerned was the power of review on the basis of reconsideration of the merits of a decision whether on facts or in law. The consideration of the operation of the rule of *res judicata* was, therefore, rightly taken into account in considering the question in that case. The power that concerns us is, truly speaking, not a power to directly re-hear the case on the merits and interfere with an order already passed on its re-appraisal, but the power to consider whether there was legal justification for the Pepsu Land Commission to

(5) I.L.R. (1964)1 Punj. 665=1964 P.L.R. 318.

proceed to finally determine a controversy affecting a citizen's rights in his absence and without hearing him when true facts have been disclosed. That relates to something antecedent or anterior to the actual hearing of the controversy on the merits.

Such a power, in my view, may well be assumed to inhere in every Tribunal or authority which has to judicially determine anything affecting the rights of the contesting parties before it. This power which from one point of view may also partake of the character of a duty or an obligation designed to serve the ends of justice, inheres in such a Tribunal or authority because it is rooted in the fundamental rules of natural justice which require that every party should be heard before an order to his prejudice is made and also that no act of Court should harm a litigant for no fault of his. If a person is harmed by a mistake of the Court, he is entitled to be restored to the position he would have occupied but for that mistake. This principle is summed up in the maxim *actus curiae naminem gravabit*. These rules of natural justice originally applicable to Courts under the common law have profitably been transplanted without incompatibility from their native judicial soil into the quasi-judicial terrain and they can with equal advantage be transplanted into all parts of the territory of administration as well. Similar power inheres in the Courts in India, as our judicial set-up has its roots in and has been inspired by the English conception and objective of administration of justice. Indeed, section 151, Code of Civil Procedure, also seems to me to reflect the spirit of the rules of natural justice, for, it extends statutory recognition to the existence of inherent power to act *ex debito justitiae* in the established Courts in this Republic. This inherent power is manifestly broad-based on the larger concept of the rules of natural justice founded on consideration of justice, equity and good conscience. This section, it may be remembered, does not create or confer any new power: it merely saves the already existing inherent powers of the Courts to serve the ends of justice and to prevent the abuse of the process of the Court. The object of enacting this section is to clarify and remove all possible doubt that powers expressly conferred on the Courts by the Code do not automatically restrict their inherent power to do complete and substantial justice. Being inherent and underfined, this power must have its limitations circumscribed by law and by considerations of equity, and justice: its exercise has accordingly always been carefully guarded so as to prevent its arbitrary or capricious use in contravention of law and equity. Such inherent power of the Courts has under the Rule of law, which

pervades the entire fabric of our set-up, been appropriately extended to the Tribunals like the one which concerns us in the case in hand. The Pepsu Lands Commission must, therefore, for reasons similar to those governing the Courts, be held to possess such inherent power. Of course, in common with the Courts, the exercise of this power rests with the Commission, though it is open to the parties to bring the infirmity to its notice. But being controlled and guided by judicial discretion, this power can neither be exercised nor declined arbitrarily or capriciously. Law reports teem with judicial decisions in which Courts have to serve the ends of justice, set aside under inherent power *ex parte* orders, not covered by other express provisions of the Code. Those decisions are helpful only by way of illustrations and it is neither possible nor practicable to formulate a fixed or rigid rule to serve as a straight jacket in all conceivable contingencies, unrelated to circumstances and time. It is the disciplined judicial sense of the Court or the Tribunal gripped by rules of reason and justice on which primarily depends the satisfactory working of the recognised, though not iron-clad, rules of natural justice in each given case.

Adverting to the facts of the present case, on 7th April, 1961, the petitioners were expected to adduce their evidence. It is alleged that they suddenly fell ill and it is admitted that a telegram was sent by them seeking adjournment on this ground, but the same reached the Lands Commission late, with the result that final orders were passed without hearing the petitioners. In the return, it is admitted that the telegram was received at 1.15 p.m. on 7th April, 1961, but this was after the announcement of the final order. It is, however, added in the return that "otherwise it is no way of seeking adjournments. It is strange that both the petitioners fell ill on 7th April, 1961, the date fixed for hearing". On 27th July, 1961, one of the petitioners applied for reconsideration of the report of the Lands Commission. On this, no action was taken. On 7th September, 1961, another application was submitted by the same petitioner which was rejected on 25th June, 1962, that is, after nine months, on the ground that there is no power in the Lands Commission to reopen proceedings after such a long time. In our opinion, this was an eminently a fit case in which the Lands Commission should have exercised its inherent power to go into the petitoners' allegations and judicially arrive at a finding whether or not the petitioners were prevented from attending the hearing for reasons beyond their control as alleged and whether it was a fit case in which the matter required to be reheard. In fact, I am inclined to think that as soon as the telegram was received by the

Commission on 7th April, 1961, in fairness, the petitioners should have been informed of the decision of the Commission and of the late receipt of the telegram, and, if considered proper, the Lands Commission may well have fixed a date for the petitioners to establish the allegation of sickness. In any event, information of the decision and of the late receipt of the telegram would have left the matter to the petitioners to take suitable steps, as advised, with due diligence to safeguard their rights. Again, when the application was made on 27th July, 1961 and a further application on 7th September, 1961, it is not clear why they were not heard and disposed of with reasonable promptitude before 25th June, 1962. This delay, which appears to be *prima facie* inordinate on the facts and circumstances of this case is not easy to appreciate. The factor of delay, which seems to have weighed with the Lands Commission, is *prima facie* largely due to the delayed hearing given by the Commission itself. It also appears to us that the Lands Commission was fully possessed of the inherent power on these facts to entertain and decide on the merits, the petitioners' application whether or not they were prevented by some cause beyond their control from attending the Court. To decline to do so on the impression that there is no power in the Lands Commission on account of lapse of time, does not appear to us to be quite correct in law and it does seem to violate the elementary rules of natural justice. Failure to exercise this power is, in our opinion, a clear violation of the established rules of natural justice and it has defeated rather than served the ends of justice. At this stage, reference may appropriately be made to *Dhian Singh* v. *Deputy Secretary, etc.* (6), in which it is observed that it is an elementary rule of our Jurisprudence that no suitor should be made to suffer or be denied justice because of the remissness or mistake of the Court or the Tribunal, as the case may be. Justice, according to those observations, is the first and foremost objective which has been secured to the citizens of this Republic as contained in the solemn resolution in the Preamble of our Constitution and this supplies the key-note to our scheme of Jurisprudence and our legal system.

We are in the circumstances constrained to quash the impugned orders of the Lands Commission, dated 25th June, 1962, and of the Financial Commissioner, dated 30th April, 1963. This, of course, does not mean that the order of the Lands Commission, dated 7th April, 1961, is being automatically set aside by this Court and the

(6) 1959 P.L.R. 529.

proceedings re-opened. All that we propose to do by this order is to quash the two orders mentioned above and to leave it to the Lands Commission to enquire into the petitioners' allegation that they were unavoidably prevented from attending the Lands Commission on 7th April, 1961, and adducing their evidence as required. This decision would, of course, be arrived at uninfluenced by the factor of delay caused by the Commission and in accordance with law on the facts established. It is hoped that no further undue delay would now be caused in the disposal of the petitioners' application. Parties are left to bear their own costs in this Court.

R. S.

CIVIL MISCELLANEOUS

Before A. N. Grover, J.

L .D. JAIN,—*Petitioner*

versus

GENERAL MANAGER, GOVERNMENT OF INDIA PRESS, AND OTHERS,—*Respondents*

Civil Writ No. 181-D of 1963.

March 16, 1966.

Working Journalists (Conditions of Service) Miscellaneous Provisions Act (XLV of 1955)—Object of—Ss. 2(b) and 19 B—Gazette of India—Whether a "newspaper"—Government employees working in Government Presses—Whether governed by section 19 B—Section 19 B—Whether violative of Article 14 of the Constitution.

Held, that the Gazette of India is the official publication of all kinds of news and information which the Government wish to be made known to the public and is a "newspaper" within the meaning of section 2(b) of Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955. It is not essential for a newspaper to conform strictly to the usual pattern of a daily or weekly or monthly newspaper or a magazine containing news which members of the public ordinarily read in order to get reports of recent events, comments on them, etc.

Held, that Working Journalists (Conditions of Service) and Miscellaneous Provisions Act is meant to protect the working Journalists in the newspaper industry which was privately run with a profit-making motive. The Act was, therefore, not intended or meant for being applied to the employees of the