(1962) 11 CAL CK 0019

Calcutta High Court

Case No: Matter No. 120 of 1961

Shree Hanuman Foundries Ltd.		APPELLANT
	Vs	
Hem Ranjan Deb and Others		RESPONDENT

Date of Decision: Nov. 22, 1962

Acts Referred:

- Constitution of India, 1950 - Article 217, 233, 233, 234, 234
- Criminal Procedure Code, 1898 (CrPC) - Section 10, 11, 12, 13, 14
- Evidence Act, 1872 - Section 3
- Industrial Disputes Act, 1947 - Section 7, 7C
- Penal Code, 1860 (IPC) - Section 19, 20

Citation: 67 CWN 437

Hon'ble Judges: Banerjee, J

Bench: Single Bench

Advocate: Mahadeb Hazra, for the Appellant;S.A. Masud and Amar Prosad Chakravarty, for the Respondent

Judgement

Banerjee, J.

The petitioner company feels aggrieved by an award made by the Second Labour Court, West Bengal, which held that the petitioner Company was unjustified in dismissing two of the employees and directed their re-instatement in service, with emoluments unpaid during the period of their forced unemployment. The only grievance made by the petitioner company in this Rule is that respondent No. 1, Hem Ranjan Deb, was not qualified for appointment as the presiding officer of the Labour Court, inasmuch as he did not hold any "judicial office" in India for not less than seven years, prior to his such appointment, as required under sub-section 3(a) of section 7 of the Industrial Disputes Act. Paragraph 8(B) of the petition contains particulars of the career of respondent No. 1 and is to the following effect :-

(i) January 23, 1940--Appointed as Sub-Deputy Collector on probation.

(ii) January 24, 1940--Appointed as Sub-Deputy Collector and Circle Officer.

(iii) July 1, 1940--Invested with powers of a Third Class Magistrate.

(iv) January 23, 1941--Confirmed in the post of Sub-Deputy Collector.

(v) July 1, 1950--Invested with powers of a second class Magistrate.

(vi) April 1, 1952--Invested with powers of a First Class Magistrate.

(vii) July 27, 1959--Appointed as the Presiding Officer of the Second Labour Court.

2. There is some dispute about the dates when the respondent No. 1 was invested with different classes of Magisterial power but I have proceeded on the basis of the dates given in the affidavit-in-opposition, because the said dates were not shown to be wrong and at the time of the argument the correctness of said dates was not seriously challenged by Mr. Mahadev Hazra, the learned Advocate for the petitioner Company.

3. It was, however, contended by Mr. Hazra that the respondent No. 1, never held a "Judicial Office", although he may have been invested with different classes of magisterial power in course of his employment in the executive service and as such he did not qualify himself for appointment as the presiding officer of the Labour Court, within the meaning of section 7 (3) (a) of the Industrial Disputes Act, which reads as follows:-

A person shall not be qualified for appointment as the Presiding Officer of a Labour Court, unless--

(a) he has held any judicial office in India for not less than 7 years;

* * * * *

4. The notification under which the respondent No. 1, was appointed as the Presiding Officer of the Second Labour Court, is set out below:--

3422--I.R./IR/3A-959 dated 27.7.59.

In exercise of the power conferred by sub-sections 2 & 3 of section 7 of the Industrial Disputes Act, 1947 (14 of 1947) read with sub-section 7C of the said Act, the Governor is pleased to appoint Shri Hemranjan Deb who is an independent person and has not attained the age of 65 years and has held a judicial office in India for not less than 7 years to be the presiding Officer of the Second Labour Court constituted under the Govt. of West Bengal''s Notification No. 1727-IR/IR/3A-1/58 dated 26.4.''58, Vide Shri Probodh Chandra Maitra (Calcutta Gazette August 6, 1959).

5. The petitioner has asked for a Writ of Certiorari for quashing the award, for a Writ of Mandamus restraining the respondents from giving effect to the award and for a Writ of quo-warranto calling upon the respondent No. 1 to show cause under what

authority he entertained and heard the reference and made the purported award.

6. The words "judicial office" have been used in the Constitution but have not been defined. It is therefore, necessary for me to examine some of the provisions in the Constitution relating to the appointment either of a Judge of a High Court or of a judge of a court subordinate to the High Court, so as to see if any guidance can be obtained therefrom.

7. Article 217 relates to the appointment and conditions of the office of a Judge of a High Court and clause (2) thereof reads as follows :-

A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and--

(a) has for at least ten years held a judicial office in the territory of India.

* * * *

8. Article 233 of the Constitution deals with the appointment of district judges and is as follows :-

(1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

9. Article 234 deals with recruitment of persons other than district judges to the judicial service and is set out below :--

Appointments of persons other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State.

10. Article 235 provides for control over Subordinate Courts and is quoted below :--

The control over District Courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court; but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court, to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

11. Article 236 is the interpretation clause and is to the following effect :-

In this Chapter--

(a) the expression ''district judge'' includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge;

(b) the expression ''judicial service'' means a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts interior to the post of district judge.

12. Article 237 provides for application of the provisions of Articles 233 to 236 to any class or classes of Magistrates, by public notification to be made by the Governor and reads as follows :--

The Governor may by public notification direct that the foregoing provisions of this Chapter and any rules made thereunder shall with effect from such date as may be fixed by him in that behalf apply in relation to any class or classes of magistrates in the State as they apply in relation to persons appointed to the judicial service of the State subject to such exceptions and modifications as may be specified in the notification.

13. From the interpretation of the expression "judicial service" it is clear that it means a service consisting exclusively of persons who occupy the post of district judges and other civil judicial posts inferior to the post 11 district judges. Within the meaning of the expression ''district judge'' are included judges of the City Civil Court, additional district judges, joint district judges, chief judges of Small Cause Courts and also chief presidency magistrates and additional chief presidency magistrates, but no other magistrates. No notification as contemplated in Article 237 has yet been made by the Governor.

14. Thus, the Constitution does not contain a definite answer to the quiry whether the other magistrates hold any "judicial office", which may not be a "civil judicial post". There is a definition of the word "magistrate" in the General Clauses Act (Act X of 1897), which reads as :--

Magistrate shall include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force.

15. The definition is of the inclusive type implying thereby that there are magistrates who do not exercise powers of magistrates under Code of Criminal Procedure.

16. Under the Police Act, 1861 (V of 1361) the words "Magistrate of the District" mean "the Chief Officer charged with the executive administration of a district and exercising the powers of a Magistrate by whatever designation the Chief Officer charged with such executive administration is styled." The said Act also defines the word Magistrate as follows:--

Magistrate shall include all persons within the general police-district exercising all or any of the powers of a Magistrate.

17. The definition emphasises on the executive character of the office of a Magistrate.

18. That a district magistrate is the chief executive administrator of a district also appears from section 11 of the Code of Criminal Procedure, namely :-

Whenever in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the Chief Executive administration of the district, such officer shall, pending the orders of the State Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate

19. The executive administration of a district includes functions other than the functions which are the ordinary functions of criminal courts. Therefore, the office of a magistrate is not fundamentally a judicial office, although a magistrate in his office may exercise all or any of the powers of a magistrate under the Code of Criminal Procedure. By merely holding the office of a magistrate, a person does not become entitled to exercise all the powers under the Code of Criminal Procedure. The powers under the Code of Criminal Procedure have to be conferred on magistrates; it is not that the office of a magistrate carries with it those powers. u/s 14 of the Code of Criminal Procedure, the powers under the Code of the Criminal Procedure may be conferred upon any person, other than a magistrate, who holds or has Held any judicial post under the Union or a State or possesses such other qualifications as may, in consultation with High Court, be specified in this behalf by the State Government by notification in the Official Gazette and such a person, when invested with such powers, is called a Special Magistrate. Section 14 of the Code of Criminal Procedure reads as follows:-

(1) The State Government may confer upon any person who holds or has held any judicial post under the Union or a State or possesses such other qualifications as may, in consultation with the High Court, be specified in this behalf by the State Government by notification in the official Gazette all or any of the powers conferred or conferrable by or under this Code on a Magistrate of the first, second or third class in respect to particular cases or to a particular class or particular classes of cases, or in regard to cases generally in any local area outside the presidency towns.

(2) Such Magistrates shall be called Special Magistrates, and shall be appointed for such term as the State Government may by general or special order direct.

(3) The State Government may delegate, with such limitations as it thinks fit, to any officer under its control the powers conferred by sub-section (1).

(4) No powers shall be conferred under this section on any police-officer below the grade of Assistant District Superintendent, and no powers shall be conferred on a

police-officer except so far as may be necessary for preserving the peace, preventing crime and detecting, apprehending and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.

20. Chapter II of the Code of Criminal Procedure deals with constitution of Criminal Courts and section 6 in the Chapter specifies the classes of Criminal Courts :-

Besides the High Court and the Courts constituted under any law other than this Code for the time being in force, there shall be five classes of Criminal Courts in India, namely :-

I. Courts of Sessions;

II. Presidency Magistrates;

III. Magistrates of the first class;

IV. Magistrates of the second class;

V. Magistrates of the third class.

21. Section 10 of the said Code deals with appointment of district magistrates and additional district magistrates and is set out below:-

(1) In every district outside the presidency towns the State Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate.

(2) The State Government may appoint any Magistrate of the first class to be an Additional District Magistrate and such Additional District Magistrate shall have all or any of the powers of a District Magistrate under this Code, or under any other law for the time being in force, as the State Government may direct.

(3) For the purposes of sections 192, sub-section (1), [407, sub-section (2)] and 528, sub-sections (2) and (3) such Additional District Magistrate shall be deemed to be subordinate to the District Magistrate.

22. Section 12 of the said Code provides for appointment of Subordinate Magistrates and is to the following effect:-

(1) The State Government may appoint as many persons as it thinks fit, besides the District "Magistrate, to be Magistrates of the first, second or third class in any district outside the presidency-towns; and the State Government or the District Magistrate, subject to the control of the State Government may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

(2) Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such district.

23. Section 13 of the Code contains provisions for appointment of sub-divisional magistrate and reads as follows :-

(1) The State Government may place any Magistrate of the first or second class in charge of a sub-division, and relieve him of the charge as occasion requires.

(2) Such Magistrates shall be called Sub-divisional Magistrates.

(3) The State Government may delegate its powers under this section to the District Magistrate.

24. Section 18 of the said Code deals with appointment of presidency magistrates and is here in below quoted:--

(1) The State Government shall, from time to time, appoint a sufficient number of persons (hereinafter called presidency magistrates) to be magistrates for each of the presidency-towns, and shall appoint one of such persons to be Chief Presidency Magistrate for each such town.

(2) The powers of a Presidency Magistrate under this Code shall be exercised by the Chief Presidency Magistrate, or by a salaried. Presidency Magistrate, or by any other Presidency Magistrate empowered by the State Government to sit singly, or by any Bench of Presidency Magistrates.

(3) A Presidency Magistrate may be appointed under this section for such term as the State Government may, by general or special order, direct.

(4) The State Government may appoint any person to be an Additional Chief Presidency Magistrate, and such Additional Chief Presidency Magistrate shall have all or any of the powers of a Chief Presidency Magistrate under this Code or under any other law for the time being in force, as the State Government may direct.

25. Chapter III of the Code deals with powers of Courts and sections 28 and 29 in that Chapter, are as follows :-

Section 28. "Subject to the other provisions of this Code any offence under the Indian Penal Code may be tried-

(a) by the High Court, or

(b) by the Court of Session, or

(c) by any other Court by which such offence is shown in the eighth column of the second schedule to be triable.

Section 29. (1) Subject to the other provisions of this Code, any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court.

(2) When no Court is so mentioned, it may be tried by the High Court or subject as aforesaid by any Court constituted under this Code by which such offence is shown in the eighth column of the second schedule to be triable.

26. Section 30 of the Code deals with investiture of powers on district magistrates, presidency magistrates and magistrates of the first class to try offences punishable not with death or imprisonment exceeding 7 years and read as follows :-

Notwithstanding anything contained in section 28 or section 29, the State Government may, in consultation with the High Court, invest any District Magistrate, Presidency Magistrate or Magistrate of the first class with power to try as a Magistrate all offences not punishable with death or with imprisonment for life or with imprisonment for a term exceeding seven yeas:

Provided that no District Magistrate, Presidency Magistrate or Magistrate of the first class shall be invested with such powers unless he has, for not less than ten years, exercised as a Magistrate powers not inferior to those of a Magistrate of the first class,

27. Section 32 of the Code contains provisions, as to sentences which Magistrates may pass and is quoted below:-

(1) The Courts of Magistrates may pass the following sentences, namely :-

(a) Courts of Presidency Magistrates and of Magistrates of the first class.

(b) Courts of Magistrates of the second class.

(c) Courts of Magistrates of the third class.

Imprisonment for a term not exceeding two years, including such solitary confinement as is authorised by law; Fine not exceeding two thousand rupees; [Whipping].

Imprisonment for a term not exceeding six months, including such solitary confinement as is authorised by law; Fine not exceeding five hundred rupees.

Imprisonment for a term not exceeding one month; Fine not exceeding one hundred rupees.

(2) The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorised by law to pass.

28. Sections 36 and 37 deal with the ordinary and additional powers of magistrates and read as follows :-

Section 36. "All District Magistrates, Sub-divisional Magistrates and Magistrates of the first, second and third classes, have the powers hereinafter respectively conferred upon them and specified in the third schedule. Such powers are called their ''ordinary powers''.

Section 37. "In addition to his ordinary powers, any Sub-divisional Magistrate or any Magistrate of the first, second or third class may be invested by the State Government or the District Magistrate, as the case may be, with any powers specified in the fourth schedule as powers with which he may be invested by the State Government or the District Magistrate.

29. Sections 39 to 41 of the Code deal with confinement, continuation and cancellation of powers and are set out below :-

Section 39. (1) In conferring powers under this Code the State Government may by order, empower persons specially by name or in virtue of their office or classes of officials generally by their official titles.

(2) Every such order shall take effect from the date on which it is communicated to the person so empowered.

Section 40. Whenever any person holding an office in the service of Government who has been invested with any powers under this Code throughout any local area is appointed to an equal or higher office of the same nature, within a like local area under the same State Government, he shall, unless the State Government otherwise directs, or has otherwise directed, exercise the same powers in the local area in which he is so appointed.

Section 41. (1) The State Government may withdraw all or any of the powers conferred under this Code on any person by it or by any officer subordinate to it.

(2) Any powers conferred by the District Magistrate may be withdrawn by the District Magistrate.

30. From the scheme of the Code of Criminal Procedure, as set out above, it appears that powers under the Code, which include judicial powers over crimes under the Indian Penal Code and offences under any other law, may be conferred on magistrates and may also be cancelled. Without such conferment of powers, the post remains an executive post.

31. In this connection I have to consider the provisions of another Act, which is known as the Judicial Officers Protection Act, 1850 (XVIII of 1850). The Act was passed, as the long title shows, for the protection of "judicial officers". The Act, consisting of a single section, reads as follows :-

No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction :

Provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of; and no officer of any Court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate,

Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court, for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same.

32. The protection given by the Act extends not only to judges but to magistrates, justices of the peace, collectors, other persons acting judicially and the emphasis is on acts done in the discharge of judicial duties as contrasted generally to administrative and executive duties (vide in this connection Anowar Hussain v. Ajoy Kumar) (1) AIR 1959 Ass 28), and not on the fundamental nature of the office itself.

33. There may be good reasons why emphasis has been laid, in the Judicial Officers Protection Act, on the discharge of judicial duties by any officer and not for the office itself. Judicial duties are not only discharged by Judges or Tribunals established by law but also by many executive or competent authorities, say for example, a Rent Controller who exercises a particular type of judicial function (vide in this connection Bhailal v. Additional Deputy Commissioner (2) AIR 1953 Nag. 89--Per Hidaytulla, J.). Without emphasis on the nature of duties discharged many a non-judicial officer, discharging judicial duties, would have become deprived of the protection given by the Act.

34. Then again, for the purposes of certain Acts, persons who do not hold judicial offices are also treated as judges or courts and the proceedings before them are treated as judicial proceedings. Thus u/s 19 of the Indian Penal Code the word "Judge" has the following meaning :-

''The word ''Judge'' denotes not only every person who is officially designated as a Judge, but also every person who is empowered by law to give in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

Illustrations.

(a) A Collector exercising jurisdiction in a suit under Act X of 1859, is a Judge.

(b) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment with or without appeal, is a Judge.

(c) A member of a panchayat which has power, under Regulation VII, 1816, of the Madras Code, to try and determine suits, is a Judge.

(d) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge.

35. The words "Court of Justice" u/s 20 of the Indian Penal Code mean :-

The words ''Court of Justice'' denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

Illustration.

A panchayat acting under Regulation VII, 1816, of the Madras Code, having power to try and determine suits, is a Court of Justice.

36. u/s 3 of the Indian Evidence Act the expression "Court includes all Judges and Magistrates, and all other persons, except arbitrators, legally authorised to take evidence." u/s 4 (1) (m) of the Criminal Procedure Code "Judicial Proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath.

37. The definitions of the expressions aforementioned are meant for the purposes of those Acts and, therefore, although a Magistrate may be a "Judge" or a "Court of Justice" within the meaning of the Indian Penal Code or a "Court" within the meaning of the Indian Evidence Act and although the proceeding before him may be a ''judicial proceeding'' within the meaning of the Code of Criminal Procedure and although he may be administering criminal justice as part of the duties of his office, none of the attributes or peculiarities of his functions convert the fundamentally executive or administrative office of a Magistrate into a judicial office.

38. It may be appropriate to notice in this connection section 8 of the foe-fence of India Act, 1939, which emphasised on the nature of the power exercised by Magistrates, when providing for their appointment as members of special tribunals. The relevant portion of the section reads as follows :-

(2) No person shall be appointed as a member of a Special Tribunal unless he--

(a) is qualified under subsection (3) of section 220 of the Government of India Act, 1985, for appointment as a Judge of a High Court; or

(b) has for a total period of not less than three years exercised whether continuously or not, the powers under the Code of Criminal Procedure, 1898 (hereafter in this Chapter referred to as the Code) of any one or more of the following, namely :-

(i) Sessions Judge, Additional Sessions Judge, Chief Presidency Magistrate, Additional Chief Presidency Magistrate.

(ii) District Magistrate, Additional District Magistrate.

39. Before I part with point, I have, however, to take into consideration a decision by the Madras High Court in (3) N. Devashyam v. State of Madras, (A.I.R. 1958 Mad. 53). In that case Rajagopala Aiyanger, J. had to consider, amongst other matter, the validity of appointment of a person, who was serving as a presidency magistrate to be a subordinate judge. The case is not of much assistance because in the State of

Madras the separation of the judiciary from the executive has been effected and under the scheme the Madras State Higher Judicial Services and the Madras State Judicial Services have been constituted. The higher judicial service consists of District Judges (Grade I and Grade II), Chief Judge, Small Causes Court, Madras, Judges, City Civil Court, Madras; the State Judicial Service consists of the post of District Munsiffs, Sub-Divisional Magistrates, Presidency Magistrates and Subordinate Judges. It was in that background that his Lordship observed that the Constitution did not intend to preserve and perpetuate for ever the dichotomy between the Civil Judicial Services and the Magisterial Service and that the appointment of a judicial Magistrate, like a Presidency Magistrate, to the post of a Subordinate judge was not illegal.

40. In West Bengal the scheme of separation of the judicial from the executive service has not been effected. Magistrates, who are essentially executive officers, are, in this State, invested with criminal judicial powers under the Criminal Procedure Code and other statutes. It will be wrong to treat an essentially executive office, clothed with judicial powers over crime and offences, as a judicial office. For the reason aforesaid I hold that the respondent. Hem Ranjan Deb, did not hold any judicial office in India for not less than 7 years and was ineligible for appointment as a Presiding Officer of Labour Court. Nevertheless, he was the de-facto presiding officer of a Labour-Court.

41. The question then arises what is the effect of an award made by an officer de facto functioning as a Labour Court, although ineligible for appointment to that office. This point is now covered by several decisions, both in this Country and abroad and herein-below I refer to three of them.

42. The first judgment to which I need refer is the case of (4) Palm Behary Das v. King Emperor, (15 C.L.J. 517), in which the legality of the conviction of certain persons was, inter alia, challenged collaterally on the ground that the Local Government was; irregularly constituted and the Sessions Judge was irregularly appointed. Repelling the argument, Mookerjee, J. observed :-

that the acts of one who, although not the de jure holder of a legal office, was actually in possession of it under some colour of title or under such conditions as indicated the acquiescence of the public in his actions, could not b:-collaterally impeached in any proceeding to which such person was not a party: Parker v. Kett (1693-1701) 1 Ld. Raym. 658 and R. v. Bedford Level (1805) 6 East. 359. The view, however, has sometimes been maintained that there can be no de facto officer where there is no office de jure; Norton v. Shelby County (1885) 118 U.S. 425. But the contrary opinion has been maintained upon weighty reasons; and it has been held that an unconstitutional law establishing an office, may, until such law has been declared unconstitutional, be regarded as conferring colour of title, and that the incumbent of such an office should be treated as a de facto officer. The two fundamental pre-requisities to the existence of a de facto officer are, first, the

possession of the office and the performance of the duties attached to it; and secondly, colour of title, that is, apparent right to the office and acquiescence in the possession of it by the public. The proposition that the official acts of public officers, in an office created by an unconstitutional procedure, performed before its unconstitutional character has been declared by an authoritative decision, cannot be collaterally attacked, is illustrated by more than one decision to be found in the books. In Clarke v. Commonwealth (1857) 29 Pa. 129, the prisoner had been convicted of murder in a Court, the Judge of which was exercising functions in a county attached to his district subsequent to his election, and his contention on appeal was that the Act of the Legislature by which such addition of territory was attempted to be made was unconstitutional. But the Court held that the question could not be raised collaterally, that the Judge was a Judge de facto and as against all but the Commonwealth a Judge de jure; and the murderer was hanged. In Campbell v. Commonwealth (1880) 96 Pa. 344, the prisoners had been convicted of arson in burning a dwelling-house and other buildings. Two associate Judges sat with the President Judge and participated in the trial and sentence.

The validity of their title to the office, and hence of the composition of the Court, was questioned in appeal on the ground that they had been elected to their office unconstitutionally. It was held that they were judges de facto and as against all parties but the Commonwealth they were Judges de jure, and having at least a colour of title to their offices, their title thereto could not be questioned in any other form than by quo-warranto the instance of the Commonwealth. The result was that the burners of the dwelling-houses went to the penitentiary for eight years, though at a subsequent term the associate Judges were ousted in an action in quo-warranto brought by the Attorney-General. Of like import is the decision in Coile v. Commonwealth (1883) 104 Pa. 117 and the murderer was executed. See also State v. Corroll (1871) 38 Conn. 449, 9 Am. Rep. 409, State v. Gardener (1896) 53 Ohio St. Rep. 145, 31 L.R.A. 660, and King v. Philadelphia Co. (1893) 154 Pa. 160, 31 L.R.A. 141. A somewhat similar attempt was made in this country in Queen Empress v. Ganga Ram (1894) ILR 16 All. 136, where the appointment of Mr. Justice Burkitt as a Judge of the Allahabad High Court was unsuccessfully questioned; the decision, however, is practically valueless in view of the pronouncement by the Judicial Committee in Balwant Singh v. Rani Kishori (1897) ILR 20 All. 267, L.R. 25 IndAp 54 that the learned Judge had been validly appointed to his office.

The doctrine that the acts of officers de facto performed by them within the scope of their assumed official authority, in the interest of the public or third persons and not for their own benefit, are generally as valid and binding as if they were the acts of officers de jure, dates as far back as the Year-books and it stands confirmed, without any qualification or exception by a long line of adjudications. Viner says ''acts done by an officer de facto and not de jure are good, for the law favours one in a reputed authority''. (Abridgment, Tit. Officers and Offices, G. 4). In fact, the question for determination in cases involving the application of the de facto doctrine, as not as

rule, rule, whether the challenged acts, assuming the officer be de facto as such, are valid, but whether the person whose title is questioned is or was really de facto Officer."

* * * * *

The substance of the matter is that the de facto doctrine was introduced into the law as a matter of policy and necessity, to protect the interest of the public and the individual where those interests were involved in the official acts of persons exercising the duties of an office without being lawful officers. The doctrine in fact is necessary to maintain the supremacy of the law and to preserve peace and order in the community at large. Indeed, if any individual or body of individuals were permitted, at his or their pleasure, to collaterally challenge the authority of and to refuse obedience to the Government of the State and the numerous functionaries through whom it exercised its various powers, on the ground of irregular existence or defective title, insubordination and disorder of the worst kind would be encouraged. For the good, order and peace of society, their authority must be upheld until income regular mode their title is directly investigated and determined See the observations in Scudding v. Lorant (1851) 3 H.L.C. 418, and Norton v. Shelby County (1886) 118 U.S. 425. In the matter now before us, the sanction u/s 196 of the Criminal Procedure Code was granted by the de facto Local Governments the cognizance of the case has been taken by the de facto Sessions Judge. In my opinion, it is not open to the appellants to question collaterally the legality of the conviction upon the allegation that the Local Government was irregularly constituted and the Sessions Judge irregularly appointed. The first ground upon which the legality of the trial is assailed must consequently be over-ruled.

43. The next case to which I need refer is the case of (5) Parameswara Pillai v. State Prosecutor, (A.I.R. 1951 T.C. 45) in which the authority of the then Chief Justice of Travancore-Cochin High Court, constituting a Division Bench with another learned Judge, to affirm a death sentence and to dismiss an appeal against a conviction for murder was challenged in an application for leave to appeal to the Supreme Court, on the ground that the Chief Justice was ineligible for appointment to the post. In repelling the argument the High Court reiterated the view that the right of a de facto Judge to hold his office was not open to question nor was his jurisdiction subject to attack in a collateral proceeding and dismissed the application.

44. Strong reliance was placed by the Travancor Cochin High Court on a decision by the Ontario Supreme Court in Re: Toronta Railway Co. v. City of Toronto (6) (1919 46 Dominion Law Reports 547) to which also I should refer. The case before the Ontario Supreme Court was an appeal against a decision imposing a penalty on the appellant by a Tribunal constituted under the Ontario Railway Act and the question arose whether members of the Tribunal were validly appointed and if not whether the penalty imposed by them was liable to be set aside. In repelling the objection, Meredith, C.J., observed :-

The same ruling was made by the Supreme Court of Errors of the State of Connecticut in Brown v. O'' Connell (1870) 36 Conn, 432, and it was held by the Court that ''to constitute an officer de facto it is not necessary that he have colour of appointment from some power having actual authority to make the appointment but it is sufficient that he has had appointment from some power having colour of authority to make it.

45. The question in that case arose in an action on a recognizance entered into by the defendant before the person acting as Judge of a Police Court, the validity of whose appointment was attacked.

46. In stating his opinion, Butler, J., said :--

It is easy to suppose cases where an officer may be appointed by a body who suppose they have a right to appoint him, when in law they have not, and yet the officer will be such de facto and his acts cannot be collaterally impeached.

47. This case is referred to in Brie on Ultra Vires, 3rd Ed., p. 614, as authority for the proposition that a judicial officer appointed by the common council of a city in pursuance of an Act of the Legislature afterwards declared unconstitutional is an officer de facto, and recognizance entered into before him is valid''.

48. There are numerous that cases in the Courts of the United States of America to the same effect, as those which I have mentioned. The rule to be deduced from the cases in the United State is stated in 23 Cyc. 621, as follows:

The right of a de facto Judge to hold his office is not open to question, nor are his acts subject to attack in a collateral proceeding these being matters which can only be inquired into in a proceeding to which he is a party. Nor can his title be determined in an action tried before him, nor in certiorari proceedings to view a conviction had before him, nor on an appeal by a person who has been tried and convicted before him; and cases are referred to which support each of the proposition stated.

49. That being the position of a de facto Judge it is not open to the petitioners to challenge his authority in a collateral proceeding namely, by way of a Writ petition against an award made by him. Therefore, he payers in the petition, in so far as they are prayers for Writs of Certiorari and Mandamus must fail.

50. But even then there is a prayer for Writ of Quo-Warranto calling upon the respondent, Hem Ranjan Deb, to show cause under what authority he entertained and heard the reference and made his purported award. In this respect, however, there is one very great difficulty in the way of the petitioner. This objection was not taken before the Labour Court and the petitioner acquiesced in the jurisdiction of that Court. Now that the award is against itself, the petitioner company has chosen to hunt up this point. Quo warranto is a discretionary relief. By reason of the acquiescence exhibited by the petitioner, I am of the opinion that I should not

exercise my discretion in favour of the petitioner.

51. Therefore, although I hold that respondent No. 1, Hem Ranjan Deb is ineligible to hold the office as the Presiding officer of the Second Labour Court, the petitioner is entitled to no relief in this Rule. The Rule is discharged. There will be no order as to costs.