1995 (2) G. L. H. 1079
M. S. PARIKH, J.

Gujarat Rajya Kamdar Sangh...Petitioner
Versus
State of Gujarat ...Respondent

Special Civil Application No. 4884 of 1995*

D/- 7-8-1995

*Special Civil Application under Art. 226 of the Constitution of India filed for quashing and setting aside orders of dismissal passed by respondent No. 4-Company against its workmen

(A) Constitution of India - Arts. 12, 226 - Dismissal of workmen from service by private employer - Writ Jurisdiction of High Court for remedying private wrong - Scope -Petition under Art. 226 against private employer for quashing order of dismissal is not maintainable, as private employer is not "other authority" within the meaning of Art. 12 - Inquiry Authority holding departmental inquiry is not quasi-judicial authority - Not amenable to Writ jurisdiction.

(B) Labour Law - Industrial Employment (Standing Orders) Act, 1946 - Model Standing Order No. 25 - Provision for holding inquiry before discharging or dismissing workman for misconduct - Effect of non-compliance - Held, Certified Standing Orders or Model Standing Orders under the Act are not statutory provisions nor do they have statutory flavour - Hence, employer's action of dismissing workmen in violation of standing orders is not illegal or void *ab initio* - High Court rejected petitioner's contention that when the private employer acts as an inquiry authority under the Standing Orders, such employer acts in the capacity of quasi- judicial authority amenable to writ jurisdiction of the High Court.

(C) Service Law - Departmental

[@page1079] **Enquiry - Enquiry Officer conducting inquiry in private employment - Not a quasi-judicial authority - Not amenable to Writ jurisdiction.**

(D) Labour Law - Industrial Disputes Act, 1946 - Ss. 2A, 10 - Dismissed workmen must pursue the remedy provided under the Act for redressal of their grievance - Such remedy is effective and efficacious.

(E) Administrative Law - Quasi- judicial function - Inquiry authority holding departmental inquiry in private employment is not quasi- judicial authority - Not amenable to Writ jurisdiction.

The conclusion, therefore, is that the Model Standing Orders, and for that matter Model Standing Order No. 25 cannot be said to be statutory provisions. They do not have statutory flavour as would make a public limited company or any other private employer "other authority" within the meaning of the said words appearing in Art. 12 or 226 of the Constitution of India. Any violation of the Model Standing Orders entitles an employee to appropriate relief either before the forum created under the Industrial Disputes Act or the Civil Court where recourse to Civil Court is open according to the principles indicated in. the case of Rajasthan State Road Transport Corporation (supra). The remedy under the Industrial Disputes Act would be more efficacious than the company itself being directed to hold inquiry. In fact the workmen would get better forum under the Industrial Dispute Act for getting justice in the matter of inquiry regarding the charges of misconduct against them. The impugned action of the dismissal cannot be said to be illegal or void a *b initio,* as it is justiciable before the appropriate forum under the Industrial Disputes Act. In this view of the matter and in the facts of the case, remedy under Art. 226 as sought is not entertainable. (Para 35)

Cases Referred:

1. The Workmen of M/s Firestone Tyre & Rubber Co. of India (P) Ltd. v. The Management & Ors. AIR 1973 SC 1227 (Distinguished) (Para 7)
2. Workmen of the Motipur Sugar Factory (P) Ltd. v. The Motipur Sugar Factory (P) Ltd. 1965 (3) SCR 588 = AIR 1965 SC 1803 (Referred) (Paras 7 & 28)
3. Statesman (P) Ltd. v. H. R. Deb & Ors. AIR 1968 SC 1495 (Referred) (Para 8)
4. Manmohan Singh Jaitla v. Commissioner, Union Territory of Chandigarh & Ors., 1984 Suppl. SCC 540 (Para 9)
5. Shri Anadi Mukta Sadguru S.M.V.S.J.M.S. Trust & Ors. v. V. R. Rudani & Ors., AIR 1989 SC 1607 (Distinguished) (Para 10)
6. J. K. Aggarwal v. Haryana Seeds Development Corpn. Ltd. & Ors. 1991 (II) LLJ 412 (Distinguished) (Para 11)
7. M. C. Mehta & Anr. v. Union of India & Ors., AIR 1987 SC 1086 (Distinguished) (Para 12)
8. Consumer Education & Research Centre & Ors. v. Union of India & Ors., 1995 (3) SCC 42 (Distinguished) (Paras 13 & 14)
9. D. K. Yadav v. M/s J.M.A. Industries Ltd., JT 1993 (3) SC 617 = 1993 (3) SCC 259 (Distinguished) (Para 15)
10. Rohtas Industries Ltd. v. Rohtas Industries Staff Union, AIR 1976 SC 425 (Distinguished) (Para 16)
11. Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha & Ors., AIR 1980 SC 1896 (Distinguished) (Para 17)
12. State of U.P. v. Mohammad Nooh, AIR 1958 SC 86 (Paras 18 & 19) *[@page1080]*
13. Mazdoor Sabha v. State of Gujarat, 1992 (1) G.L.H. 308 (Distinguished) (Para 20)
14. Textile Labour Association v. State of Gujarat & Ors. 1995 (1) G.L.H. 12 (Distinguished) (Para 22)
15. Ahmedabad Cotton Mfg. Co. Ltd. v. Union of India, AIR 1977 Guj. 113 (Distinguished) (Paras 23 & 24)
16 Dwarka Nath v. Income-tax Officer, AIR 1966 SC 81 (Referred) (Para 29)
17. M/s Punjab Beverages Pvt. Ltd. v. Suresh Chand & Anr, AIR 1978 SC 995 (Referred) (Para 31)
18. V. I. Khalifa v. Satubha Tapubha Vaghela, 1988 (2) G.L.H. 73 (Referred) (Para 32)
19. Rajasthan State Road Transport Corpn. & Anr. v. Krishna Kant, 1995 (4) JT 348 (Relied on) (Para 33)

Appearances :

Mr. H. K. Rathod, L.A. with Mr. V. B. Patel, Ld. Sr. Advocate for the petitioner
Ms. Kathaben Gajjar, Ld. AGP as instructed by Mr. D. A. Bambhania, Ld. Govt. Solicitor for respondent Nos. 1 to 3
Mr. K. S. Nanavati, L.A. for the respondent No. 4
Mr. M. R. Anand, L.A. for respondent No. 5
Mr. T. R. Mishra, L.A. for respondent No. 6

M. S. PARIKH, J.:-

1. Rule. Service of rule waived by Ms. Kathaben Gajjar, Ld. AGP as instructed by Mr. D. A. Bambhania, Ld. Govt. Solicitor for respondents Nos. 1 to 3, Mr. K. S. Nanavati, L.A. for respondent No. 4, Mr. M. R. Anand, L.A. for respondent No. 5 and Mr. T. R. Mishra, L.A. for respondent No. 6.

2. The petitioner, a registered trade union, alleging to have majority of the members, has filed this petition under Article 226 of the Constitution of India for obtaining various reliefs *inter alia* the reliefs with regard to making reference to the Industrial Tribunal in pursuance to failure report dated 3-4-1995, to initiate proceedings under the Code of Discipline for recognition of the petitioner-union in response to letter dated 28-4-1995, take immediate action and proceedings against respondent No. 4-Company for adopting unfair labour practice as defined under Section 2 (r)(a) of the Industrial Disputes Act, to quash and set aside 11 dismissal

orders produced at Annexure-Z/12 collectively and to reinstate them in service with continuity and full back wages.

3. Out of the reliefs claimed in this petition as aforesaid, admittedly only relief (C) with regard to quashing and setting aside all the 11 dismissal orders and reinstatement of the said 11 workmen as aforesaid is the only relief, which is pressed into service as surviving on account of the fact that necessary reference has already been made.

4. The facts therefore move into a narrow compass. As against the petitioner-union the respondents Nos. 5 and 6 unions are also the registered trade unions and in contradistinction of the petitioner-union, recognised unions. Annexure-Z/12 collectively indicates that the 11 workmen are dismissed with immediate effect, that is to say on or around 12-6-1995 and 14-6-1995. It is not in dispute that no inquiry has been conducted and no opportunity before passing the order of dismissal, had been given to the concerned workmen. The charges of misconduct are contained in the orders of dismissal and they need not be elaborated here, since it can hardly be disputed that this Court cannot go into the disputed question with regard to *[@page1081]* correctness or otherwise of the charges contained in the dismissal order. It would, however, be important to note that the 11 workmen were served with the impugned orders of dismissal alongwith the cheques for the amount due and payable to the respective workmen.

5. Mr. K. S. Nanavati, learned Counsel for the respondent No. 4-Company has raised a preliminary objection to the effect that the respondent No: 4- Company being neither 'State' nor 'any other authority' as contemplated under Article 12 of the Constitution of India cannot be subjected to writ jurisdiction of this Court. The question, therefore, in short is whether this writ petition is maintainable.

6. Mr. V. B. Patel, learned Senior Advocate appearing with Mr. H. K. Rathod, learned Advocate for the petitioner-union has canvassed following submissions for entertaining this petition. Mr. Patel fairly conceded that the respondent No. 4-Company as such is neither a 'State' nor 'an instrumentality of State' and that it can also not be said to be 'other authority' except as submitted. The submission then is that the respondent No. 4-Company as an employer is a different person while acting as an inquiry authority. The company in the latter capacity can be said to be a quasi-judicial authority constituted by the management of the company. In order to substantiate this argument Mr. Patel has relied upon Section 12-A of Industrial Employment (Standing Orders) Act, 1946 which provides for application of Model Standing Orders to an industrial establishment till upto the time the Standing Orders, as finally certified under this Act, come into operation under Section 7 of the Act in the concerned establishment. Model Standing Order No. 25 *inter alia* provides for inquiry being held before a workman is dismissed or removed from service, as a result of charges of misconducts. According to the submission of Mr. Patel the conditions of service including the provision of holding inquiry and following of rules of natural justice as can be visualised in the aforesaid Standing Order would have a statutory flavour and flows therefrom a statutory obligation on the part of the company acting in its capacity as a quasi-judicial authority. Mr. Patel describes this to be a functional approach in describing the respondent No.4-Company for the purpose of Article 12 as also Article 226 of the Constitution of India. To make good his argument he has made reference to a number of decisions which may be stated :

7. In *The Workmen of M/s Firestone Tyre & Rubber Co. of India P. Ltd.* v. *The Management & Ors.* reported in AIR 1973 SC 1227, reference has been made to para 42 of the citation. It has been observed there that Standing Orders, which have been certified under the Industrial Employment (Standing Orders) Act, 1946 become part of the statutory terms and conditions of the service between the industrial employer and employees and that they govern the relationship between the parties. It has, however, been observed that there is no provision which states that an order of dismissal or discharge is illegal if it is not preceded by a proper and valid domestic inquiry. No doubt it has been emphasised in the various decisions that an employer is expected to hold a proper inquiry before dismissing or discharging a workman. Referring to earlier decision in the case of *Workmen of Motipur Sugar Factory (P) Ltd.* (1965) 3 SCR 588 = (AIR 1965 SC 1803) it has been observed that if the inquiry was defective or no inquiry was held, as required by the Standing Orders, the entire case would be open before the Tribunal and the employer would have to justify, on *[@page1082]* evidence as well that its order of dismissal or discharge was proper. What Mr. Patel emphasised from this decision is that the terms and conditions of the service as reflected by the Model Standing Orders are statutory terms and

conditions and that the Model Standing Orders have statutory flavour. At the same time, the decision of the Apex Court cannot be looked into in isolation and the other observations noted above would assume importance in dealing with the submission of Mr. Patel.

8. Second decision in order of submission is in the case *of Statesman (P) Ltd.* v. *H. R. Deb & Ors.* reported in AIR 1968 SC p. 1495, while dealing with the question as to when an appointment under Section 7(3)(d) of the Industrial Disputes Act, 1947 can be questioned in a *quo warranto* proceeding, the Hon'ble Supreme Court observed at page 1500 with regard to the phrase "holding a judicial office" as under:

"For it cannot be denied that the expression "holding a judicial office" signifies more than discharge of judicial functions while holding some other office. The phrase postulates that there is an office and that that office is primarily judicial. Office means a fixed position for performance of duties."

From this Mr. Patel would submit that the company acting in the aforesaid capacity can undoubtedly be said to be a quasi-judicial authority.

9. Then there is a decision in the case of *Manmohan Singh Jaitla* v. *Commissioner, Union Territory of Chandigarh and Ors.,* reported in 1984 Suppl. SCC p. 540. Mr. Patel read paras 6 and 7 of this citation. Accordingly in an agreement not in consonance with the statutory provisions beneficial to a class in need of protection cannot be given effect if it stands in derogation of mandatory provisions of the statute and that the Deputy Commissioner and Commissioner were statutory authorities operating under Punjab Aided Schools (Security of Service) Act, 1969 and that they are quasi-judicial authorities, with the result that they would be comprehended in the expression "Tribunal" as used in Article 227 of the Constitution of India. The submission is that the company acting in the capacity as aforesaid, would be open to writ jurisdiction also under Article 227 of the Constitution of India. It can be seen that the Apex Court was dealing with the statutory provisions of Punjab Aided Schools (Security of Service) Act, 1969 and aided school receiving 95% of expenses by way of grant from Government. It is difficult to draw any analogy from this authority to hold that the company can be termed as 'other authority' or that it can be said to be subject to a writ jurisdiction under Article 227 of the Constitution of India.

10. Next in order to submission is the decision in the case of *Shri Anadi Mukta Sadguru S.M.V.S.J.M.S. Trust* v. *V. R. Rudani* reported in AIR 1989 SC 1607. This decision has been pressed into service for a proposition that a writ of mandamus could be issued even to a person who may not be a statutory authority or an instrumentality of State. However, when the attention of Mr. Patel was drawn to the limitation in this regard to the effect that such a writ could be issued to any other person or authority performing public duty, Mr. Patel at once submitted that the petitioner would not pray for a mandamus asking for wages or for reinstatement. It would only pray for preventing the respondent No. 4 from continuing with the dismissal action, which according to Mr. Patel is void. It will be seen hereafter that the argument that the action of the Company in *[@page1083]* dismissing the 11 workmen is void faces contrary precedent and, therefore, based on this argument preventive relief as submitted by Mr. Patel can hardly be entertained. This is all that can be said from the reading of paras 14 and 15 of the citation, reliance on which has been placed.

11. Next in turn is the decision in the case of *J. K. Agarwal* v. *Haryana Seeds Development Corpn. Ltd. & Ors.* reported in 1991 II L.L.J. p. 412. This is the observation which came to be read by Mr. Patel : "The long and short of it is that if the Court sees that a domestic Tribunal is proposing to proceed in a manner contrary to justice, it can intervene to stop it." The respondent- Corporation in this case happened to be a Government Company and the employee faced disciplinary proceedings regulated by the Haryana Civil Services (Punishment and Appeals) Rules being. the statutory rules as distinguished from the Standing Orders which are sought to be described as having statutory flavour.

12. Next is *M. C. Mehta's* case reported in AIR 1987 SC 1086. On reading of this decision Mr. Patel sought to invoke Article 21 of the Constitution of India. But on going through the observations of the Apex Court it can hardly be said that Article 21 would apply to a case of individual dismissals of 11 workmen. Para 7 which has been read from page 1091 would itself make the position clear. In fact, the argument with regard to applicability of Article 21 to a public limited Company could have been better based on reading of para 8

onwards. But there also the vital consideration set out by the Apex Court is the engagement of the concerned industry vital to public interest and with potential to affect the life and health of large sections of people. Even there also the Court did not proceed to decide the question whether Shriram, a private corporation is an authority within the meaning of Article 12 so as to be subjected to the discipline of the fundamental right under Article 21 of the Constitution.

13. Mr. Patel then referred to a decision in the case of *Consumer Education & Research Centre and Ors.* v. *Union of India & Ors.* reported in (1995) 3 SCC p. 42. He relied upon para 28, which would read:

"It would thus be clear that in an appropriate case, the court would give appropriate directions to the employer, be it the State or its undertaking or private employer to make the right to life meaningful; to prevent pollution of workplace; protection of the environment; protection of the health of the workman or to preserve free and unpolluted water for the safety and health of the people. The authorities or even private persons or industry are bound by the directions issued by this Court under Article 32 and Article 142 of the Constitution."

14. The question before the Supreme Court revolved round the right to health and medical care to protect health and vigour of the workmen while in service or post-retirement in the context of occupational health hazards and the matter concerned public interest qua the workmen at large. It is in this context that the Supreme Court has observed as under with regard to public law remedy :

"...It is, therefore, settled law that in public law claim for compensation is a remedy available under Article 32 or Article 226 for the enforcement and protection of fundamental and human rights. The defence of sovereign immunity is inapplicable and alien to the concept of guarantee of fundamental rights. There is no question of defence *[@page1084]* being available for constitutional remedy. It is a practical and inexpensive mode of redress available for the contravention made by the State, its servants, its instrumentalities, a company or a person in the purported exercise of their powers and enforcement of the rights claimed either under the statutes or licence issued under the statute or for the enforcement of any right or duty under the Constitution or the law."

15. The case of *D. K. Yadav* v. *M/s. J.M.A. Industries Ltd.,* reported in JT 1993 (3) S.C. 617, arose from the Award of the Labour Court, Haryana at Faridabad. The position of a workmen terminated without observation of principles of natural justice came to be examined in the background of the remedy already availed of before the Labour Court. It is in this context that the Supreme Court has observed in para 11 that the law must, therefore, be now taken to be well-settled that procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 and such law would be liable to be tested on the anvil of Article 14 and the procedure prescribed by a statute or statutory rule or rules or orders affecting the civil rights or result in civil consequences would have to answer the requirement of Article 14. It must be right, just and fair and not arbitrary,. fanciful or oppressive. There can be no distinction between a quasi-judicial function and an administrative function for the purpose of principles of natural justice. The impact of Articles 14 and 21 was examined while considering Clause 13(2)(iv) of the standing order which provided for loss of lien of the worker on his appointment if he remained absent without sanctioning leave or beyond the period of leave originally granted or subsequently extended. It was held that the Tribunal did not record any conclusive finding with regard to the workman having had no opportunity to explain his absence. It was his plea at the earliest that despite his reporting for duty on a particular day and on subsequent days and readiness to join duty he was prevented to report to duty, and that he was not permitted to sign the attendance register. The Tribunal did not record any conclusive findings in this behalf. It concluded that the management had power under Clause 13 of the certified Standing Orders to terminate the service of the appellant. Under such circumstances the Apex Court held that the principles of natural justice must be read into Clause 13(2)(iv), otherwise it would become arbitrary, unjust and unfair violating Article 14. When so read the impugned action is violative of the principles of natural justice, observed the Apex Court.

16. Mr. Patel would then like to quote para 9 of *Rohtas Industries Ltd.* v. *Rohtas Industries Staff Union* reported in 1976 SC 425 (at page 429), it reads :

"The expansive and extraordinary power of the High Courts under Article 226 is as wide as the amplitude of the language used indicates and so can affect any person - even a private individual - and be available *for any* (other) *purpose,* even one for which another remedy may exist. The amendment to Article 226 in 1963 inserting Article 226 (1-A) reiterates the targets of the writ power as inclusive of any person by the expressive reference to the *residence* of such person. But it is one thing to affirm the jurisdiction, another to authorise its free exercise like a bull in a china shop. This Court has spelt out wise and clear restraints on the use of this extraordinary remedy and High Courts will not go beyond those wholesome inhibitions except where the monstrosity of the situation or other exceptional circumstances cry for timely judicial *[@page1085]* interdict or mandate. The mentor of law is justice and a potent drug should be judiciously administered. Speaking in critical retrospect and portentous prospect, the writ power has, by and large, been the people's sentinel on the *qui vive* and to cut back on or liquidate that power may cast a peril to human rights. We hold that the award here is not beyond the legal reach of Article 226, although this power must be kept in severely judicious leash."

These observations of the Apex Court have been carefully borne in mind while dealing with the submission of Mr. Patel. The stress is on the restraints on the use of extraordinary remedy under Article 226.

17. Next in order of submission is the decision in the case of *Gujarat Steel Tubes Ltd.* v. *Gujarat Steel Tubes Mazdoor Sabha & Ors.* reported in AIR 1980 S.C. 1986. Paras 72 and 73 were read by Mr. Patel. A close reading of both the paras would speak for itself :

"72. Once we assume that the jurisdiction of the arbitrator to enquire into the alleged misconduct was exercised, was there any ground under Article 226 of the Constitution to demolish that holding? Every wrong order cannot be righted merely because it; is wrong. It can be quashed only if it is vitiated by the fundamental flaws of gross miscarriage of justice, absence of legal evidence, perverse misreading of facts, serious errors of law on the face of the order, jurisdictional failure and the like."

73. While the remedy under Article 226 is extraordinary and is of Anglo-Saxon vintage, it is not a carbon copy of English processes. Article 226 is a sparing surgery but the lancet operates where injustice suppurates. While traditional restraints like availability or alternative remedy bold back the court, and judicial power should not ordinarily rush in where the other two branches fear to tread, judicial daring is not daunted where glaring injustice demands even affirmative action. The wide words of Article 226 are designed for service of the lowly numbers in their grievances if the subject belongs to the court's province and the remedy is appropriate to the judicial process. There is a native hue about Article 226, without being anglophilic or anglophobic in attitude. Viewed from this jurisprudential perspective, we have to be cautious both in not overstepping as if Article 226 were as large as an appeal and not failing to intervene where a grave error has crept in. Moreover, we sit here in appeal over the High Court's judgment. And an appellate power interferes not when the order appealed is not right but only when it is clearly wrong. The difference is real, though fine."

18. The last of the decisions of the Honourable Supreme Court referred to by Mr. Patel is earlier in point of time. It is in case of *State of U. P.* v. *Mohammad Nooh,* reported in A.I.R. 1958 S. C. 86. Mr. Patel read paras 10 & 11 of the citation. Mr. Patel wanted me to quote this observation :

"In the next place it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy."

19. This is in answer to the arguments of adequate remedy being available to a petitioner. The Court was concerned with an employee serving in the U. P. Police force who faced departmental proceeding which was subjected to writ jurisdiction before the Allahabad High Court in the first instance and carried to the Apex Court by the U.P. State. It is in the *[@page1086]* context of the State being party in a writ jurisdiction above observation with regard to availability of alternative remedy appears to have been made. Para 11 might be excerpted :

"On the authorities referred to above it appears to us that there may conceivably be cases and the instant case is in point - where the error, irregularity or illegally touching jurisdiction or procedure committed by an inferior court or tribunal of first instance is so patent & loudly obtrusive that it leaves on its decision an indelible stamp

infirmity or vice which cannot be obliterated or cured on appeal or revision. If an inferior court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the Superior Courts sense of fair play the Superior Court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the Court of tribunal of first instance, even if an appeal to another Inferior Court or tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what *ex facie* was a nullity for reasons aforementioned. This would be so all the more if the tribunals holding the original trial and the tribunals hearing the appeal or revision were merely departmental tribunal composed of persons belonging to the departmental hierarchy without adequate legal training and background and whose glaring lapses occasionally come to our notice. The Superior Court will ordinarily decline to interfere by issuing certiorari and all we say is that in a proper case of the kind mentioned above it has the power to do so and may and should exercise it. We say no more than that.

20. Then there are some Gujarat decisions which have also been referred to by Mr. Patel.

In *Majdoor Sabha* v. *State of Gujarat* reported in 1992 (1) G.L.H. p. 308 a Division Bench of this Court speaking through S. B. Majmudar, J. as His Lordship then was, had an occasion to consider en masse terminations of all workmen by a company in flagrant violation of provisions of Industrial Disputes Act as contained in Sections 25FFA and 25FFF on the one hand and Section 25-0 on the other. In the background of peculiar facts revolving round the aforesaid provisions of law, this Court held that when the entire working force in a concern is dispensed with without following the aforesaid statutory provisions, it could not be said that such wholesale termination would still remain in the domain of private rights and obligations between the concerned workmen on the one hand and the employer on the other. Such wholesale termination contrary to these provisions would project a picture of violation of public duty as would affect the entire working force and their dependents. Under such circumstances such an action would also be violative of Article 21 of the Constitution and even if petition under Article 226 might not lie against such companies for enforcement of Article 21, still, the question will remain whether they could with impunity violate statutory obligations flowing from the aforesaid provisions and in an arbitrary manner dispense with the entire working force of their concerns and still urge that what they had done would be affecting private rights and duties and statutory obligations enacted to control such actions would not amount to imposing public duties. Following observations head noted from paras 11, 12, 26 and 27 would assume importance in the background of the facts before the *[@page1087]* Division Bench :

"Provisions like Sections 25FFA and 25FFF have been enacted by the Legislature with a view to seeing that the concerns do not snap the livelihood of entire segment of working force as it is bound to spell economic disaster for vast segment of the society comprising of not only the entire working force but their large number of departments *(sic.)* who would be put to economic death. Consequently, when the dispute does not remain between a workman or a group of workmen on the one hand and the employer on the other but it becomes comprehensive one, encompassing the entire working force and when it is alleged that this is done in breach of statutory duty on the part of the employer, then in such contingencies, once the employer is covered by the sweep of Article 226(1), even a private employer would be liable to be called upon by a writ of mandamus or any other suitable writ, order or direction in the nature of mandamus to perform its statutory obligations of public nature flowing from such action on its part, and to suffer the consequences of its action being declared null and void.

Even though respondent No. 3 is not an instrumentality of State nor it is creature of any statute, it has been enjoined to follow statutory obligations imposed on it by Sections 25FFA and 25FFF before it can close down its undertaking and render entire working force in its institution destitute and starving. This statutory obligation imposed on it is not of a private character but it partakes character of public duty as segment of society gets severely affected by non-compliance of such statutory duty and consequently the grievance voiced against such wholesale illegal termination of employment of the entire working force contrary to these statutory provisions highlights the injury of public nature and does not remain in the domain of infringement of purely private right on the one hand and corresponding private duty on the other. It, therefore, becomes clear that present writ petition under Article 226(1) is maintainable against respondent No. 3 in so far as it has effected wholesale

termination of its entire working force by notice at Annexure-B without following statutory obligations imposed on it under Sections 25FFA and 25FFF."

21. With regard to the usage of the words 'any person or authority' in Article 226 this Court, after consideration of number of authorities observed as under:

"The words 'any person or authority' used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. *They may cover any other person or body performing public duty.* The form of the body concerned is not very much relevant. *What is relevant is the nature of the duty imposed on the body.* The duty must be judged in the light of positive obligation owned by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied."

In my opinion, the decision in Majdoor Sabha (supra) referred to hereinabove would not be applicable to the facts of the present case.

22. Then there is a reference to a recent decision of this Court in the case of *Textile Labour Association* v. *State of Gujarat and Ors.* reported in 1995(1) G.L.H. p. 12. In that case it was not in dispute that the workers, 2700 in number, had worked for considerable time and were entitled to wages for the period they worked. The Textile Labour Association *[@page1088]* on behalf of such workmen prayed for issuance of a direction for the payment of salary to the said workers for the period they actually worked. The petition came to be resisted by the State Bank of Saurashtra, a secured creditor having first charge in the current assets of the company which included finished goods. In the main petition the prayers were made for declaring the closure of the undertaking being *(sic.)* the employer, without prior permission under Section 25-O of the Industrial Disputes Act to be illegal and void and to appoint a committee for disposal of finished and unfinished goods and for direction to make payment for wages to the workers. In the background of such facts this Court observed in para 19 as under:

"In view of the express language of Article 21 of the Constitution of India, it is clear that it is not restricted for enforcement against the State only and Article 226 also provides for issuing writ to any person. Therefore, the writ petition under Article 226 of the Constitution for enforcement of fundamental rights can be issued to any person who need not be an authority of the State and it can be a private party."

23. Mr. Patel also relied upon a Full Bench decision of this Court in the case *of Ahmedabad Cotton Mfg. Co.* v. *Union of India* reported in AIR 1977 Gujarat 113, particularly with regard to alternative remedy and relied upon the following observations head-noted from para 11 :

"The amplitude of the fetter would depend on the amplitude of such alternative remedy which is provided for direct attack by or under the other law in question and not on any general remedy of a civil suit by way of a collateral attack."

He also relied upon following observations head-noted from paras 22 and 23 :

"When the petitioner is to be asked to exhaust his alternative remedies provided under the Act before entertaining the writ petition, this distinction would always be material where the order is a nullity as being *ex facie* without jurisdiction or in non-compliance with the provisions of the Act or the essential principles of justice or on any other ground as explained in Tarachand Gupta's case, AIR 1971 SC 1558 (1565) or Bhopal Sugar Industry's case AIR 1967 SC 549 or Mohd. Nooh's case AIR 1958 SC 86 (94) and is, therefore, a purported order or nullity. In such a context the alternative remedy would be a futile remedy because it did not attack the inherent nullity in the challenged decision, which would result in the material distinction that the party may appeal against such decision but he was not bound to do so. Therefore, in such cases, where the challenge is on the ground that the order is an *ultra vires* order, the question of exhausting alternative remedy could hardly arise as the petitioner could straightway seek remedy of judicial review. These settled principles would be all the more applicable after this constitutional status where the emphasis is now on full redress of injuries for which specified purpose only this extraordinary remedy is created so that in such substantial

injuries consisting of non-compliance with other constitutional or statutory provisions or illegalities which go to the root so as to result in failure of justice when committed by authorities and Tribunals acting under those provisions, it would be a poor consolation to a citizen to be told in cases of such purported orders to avail of such remedy which he is not bound to exhaust and which would not be efficacious at all but a futile remedy in case the order is confirmed as it would *[@page1089]* still remain a nullity."

24. The observations speak for themselves and can hardly have any application to the case of 11 workmen, whose cause has been taken up by the petitioner-union. This is more so for the reason that the dismissal of the said workmen would be subject to scrutiny by the Labour Court and/or Industrial Court as can be seen from the decisions of the Apex Court, which have been referred to by Mr. Nanavati.

25. Close reading of the aforesaid decisions would not support the broad formulation of law as suggested by Mr. Patel in the opening part of his submissions. Even assuming that there is some scope for argument in support of the submission made by Mr. Patel, it would not be necessary to take to any better reasoning than the one which can be gathered from the latest decision of Apex Court (1995) 4 JT 348 : Rajasthan State Road Transport Corpn's case), which, in my opinion provides a clear answer to the submissions made by Mr. Patel and a clear guide to meet with the facts of the present case. However, in the first instance reference may be made to earlier decisions of the Hon'ble Supreme submitted by Mr. Nanavati. Before that is done it would be necessary to have reference to the provisions of Section 2(K), Section 2(A), Section 7 and Section 10 of the Industrial Disputes Act read with Second schedule to the said Act.

26. Section 2(K) defines an industrial dispute which would include any dispute or difference between an employer and workman/workmen that would be connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person.

Section 2(A) says that where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union or workmen is a party to the dispute.

Section 7 deals with Labour Courts and their Constitution.

Section 10 deals with remedy of making reference of dispute to Board, Court or Tribunal and Clause (c) of sub-Section (1) thereof states that the appropriate Government may refer the dispute or any matter appearing to be connected with or relevant to the dispute if it relates to any matter specified in the second Schedule to a Labour Court for adjudication. The Second Schedule *inter alia* includes item No. 3 being that of discharge or dismissal of workman including reinstatement, or grant of relief to, workmen wrongfully dismissed.

27. Upon reading of the aforesaid provisions of the Industrial Dispute Act Mr. Nanavati, learned Counsel appearing for respondent No. 4 submitted that the remedy of dismissed workmen is circumscribed by the Industrial Disputes Act and writ jurisdiction is not available to such workmen. His submission is that the employer even under model standing orders in question does not act as Tribunal. Assuming that the employer being a Public Limited Company acts in its capacity as a quasi-judicial authority, in the present case the company cannot he considered as having acted in its capacity as an inquiry Authority, but it has acted in its capacity as the employer leaving the quasi-judicial function to be exercised by the Labour Court in an *[@page1090]* appropriate reference. He also submitted that there being an alternative efficacious remedy recognised by the aforesaid statute this Court should refrain from exercising its writ power under Article 226, else the authorities and tribunal under the Industrial Disputes Act cannot function and floodgates of litigation would get opened before the High Court.

28. To substantiate his submission Mr. Nanavati, first read Head note "B" from the decision of the Honourable Supreme Court in the case of *Workmen of the Motipur Sugar Factory Pvt. Ltd.* v. *The Motipur Sugar Factory Pvt. Ltd.* reported in AIR 1965 SC 1803. Head note "B" reproduced from paras 11 & 12 of the citation reads :

"Where an employer has failed to make an enquiry before dismissing or discharging a workman it is open to him to justify his action before the Tribunal by leading all relevant evidence before it. The entire matter would be open before the Tribunal. It will have jurisdiction not only to go into the limited questions open to a Tribunal where domestic enquiry has been properly held, but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified. The important effect or omission to hold an enquiry is merely that the Tribunal would not have to consider only whether there was a *prima facie* case but would decide for itself on the evidence adduced whether the charges have really been made out. In principle there is no difference whether the matter comes before the Tribunal for approval under Section 33 or on a reference under Section 10. In either case if the enquiry is defective or if no enquiry has been held as required by Standing Orders, the employer would have to justify on facts as well that its order of dismissal or discharge was proper. A defective enquiry stands on the same footing as no enquiry. If the dismissal be set aside by the Industrial Tribunal only on the ground that the employer has dismissed his employee without holding an enquiry it would inevitably mean that the employer will immediately proceed to hold the enquiry and pass an order dismissing the employee once again. In this event, another industrial dispute would arise and the employer would be entitled to rely upon the enquiry which he had held in the meantime. This would mean delay and on the second occasion it will entitle the employer to claim the benefit of the domestic enquiry."

29. Mr. Nanavati also referred to a decision of *Dwarka Nath* v. *Income-Tax Officer,* reported in AIR 1966 SC 81. He relied upon the observations appearing in para 5 to the effect that a writ of certiorari can be issued only to quash a judicial or a quasi-judicial act and not an administrative act. Before the writ can be issued following conditions have to be complied with :

1. The body of persons must have legal authority;
2. there must be authority to determine questions affecting the rights of subjects;
3. the body of persons should have a duty to act judicially.

A writ of certiorari can be issued to quash a quasi-judicial act of an administrative tribunal or authority.

30. Flowing from the aforesaid principles is the submission of Mr. Nanavati that model Standing Orders can neither be treated as statutory provisions containing statutory conditions of service nor can they be said to have any statutory flavour. They are merely conditions of service of workmen in an industry infused into the contract of service between the employer and the workman. *[@page1091]*

31. In *M/s. Punjab Bevarages Pvt. Ltd.* v. *Suresh Chand & Ann,* reported in AIR 1978 SC 995 the Apex Court was concerned with interpretation of Section 33 of the Industrial Disputes Act. The relevant observation is that the contravention of Section 33 does not render the order of discharge or dismissal void and inoperative and that the only remedy available to the workman for challenging the order of discharge or dismissal is that provided under Section 33-A, apart of course from the remedy under Section 10. In the present case-admittedly Section 33 is not applicable and the dismissal is of a less aggravated form than as contemplated in Section 33 of the I.D. Act. Following observations headnoted from paras 11, 12 and 13 of the citation assume importance in so far as the submissions made on behalf of the petitioners are concerned.

"It will be seen that mere contravention of Section 33 by the employer will not entitle the workman to an order of reinstatement, because inquiry under Section 33-A is not confined only to the determination of the question as to whether the employer has contravened Section 33, but even if such contravention is proved, the Tribunal has to go further and deal with the merits of the order of discharge or dismissal. *The very fact that even after the contravention of Section 33 is proved, the Tribunal is required to go into the further question whether the order of discharge, or dismissal passed by the employer is justified on the merits, clearly indicates that the order of discharge is not rendered void and inoperative by such contravention.* It is also significant to note that if the contravention of Section 33 were construed as having an invalidating effect on the order of discharge or dismissal, Section 33-A would be rendered meaningless and futile. Such a highly anomalous result would never have been intended by the Legislature." (Emphasis supplied.)

32. Way back in 1988 a learned single Judge of this Court in *V. I. Khalifa* v. *Satubha Tapubha Vaghela,* reported in 1988 (2) G.L.H. 73 had an occasion to consider exercise of writ jurisdiction under Article 226

against a Co-operative Bank, which was held to be not "State" within the meaning of Article 12 of the Constitution. This Court held that issuance of writ under Article 226 would not be justified to rectify an alleged private wrong consisting of dismissal of the petitioner from service. Following observations from Para 18 will assume importance :

"Even assuming for an argument's sake that the respondent is public utility service, the issuance of writ under Article 226 would not be justified for remedying a private wrong."

33. Rest of the decisions of this Court as well as other High Courts referred to by Mr. Nanavati may not be necessary as, in my opinion, the Hon'ble Supreme Court in the latest decision in the case of *Rajasthan State Road Transport Corporation & Anr.* v. *Krishna Kant,* reported in 1995(4) JT 348, has answered the very basis of functional approach canvassed by Mr. Patel. That basis is that the Model Standing Orders are statutory in nature or have statutory flavour. The Supreme Court has negatived such proposition while recording following principles with regard to the conflict between jurisdiction of Civil Court and jurisdiction under the Industrial Disputes Act:

"We may now summarise the principles flowing from the above discussions -

(1) Where the dispute arises from *[@page1092]* general law of contract, i.e. where reliefs are claimed on the basis of the general law of contract, a suit filed in Civil Court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute' within the meaning of Section 2(k) or Section 2-Aof the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act.

(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946 - which can be called 'sister enactments' to Industrial Disputes Act - and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forum created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2-A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to Civil Court is open.

(4) It is not correct to say that the remedies provides by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate government. The power to make a reference conferred upon the government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one *ex facie.* The power conferred is the power to refer and not the power to decide, though it may be that the government is entitled to examine whether the dispute is *ex facie* frivolous, not meriting an adjudication.

(5) Consistent with the policy of law aforesaid, we commend the Parliament and the State Legislatures to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly, i.e. without the requirement of a reference by the government - in case of industrial disputes covered by Section 2(a) of the Industrial Disputes Act. This would go a long way in removing the misgivings with respect to the effectiveness of the remedies provides by the Industrial Disputes Act.

(6) The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act, 1946 are statutorily imposed conditions of service and are binding both upon the employers and employees, though they do not amount to "statutory provision". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the Civil Court where recourse to Civil Court is open according to the principles indicates herein.

(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and un encumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable Civil Courts. Indeed, the powers of the courts and tribunals under the Industrial Disputes Act are far *[@page1093]* more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute."

34. Mr. M. R. Anand, Ld. Counsel appearing for respondent No. 5 rightly submitted that the basis of Mr. Patel's argument does not stand by virtue of the principles set out in the aforesaid Supreme Court decisions. Mr. Mishra, Ld. Advocate appearing for the respondent No. 6-union also endorses the submission made on behalf of respondent No. 4-Company.

35. The conclusion, therefore, is that the Model Standing Orders, and for that matter Model Standing Order No. 25 cannot be said to be statutory provisions. They do not have such statutory flavour as would make a public limited company or any other private employer "other authority" within the meaning of the said words appearing in Article 12 or 226 of the Constitution of India. Any violation of the Model Standing Orders entitles an employee to appropriate relief either before the forum created under the Industrial Disputes Act or the Civil Court where recourse to Civil Court is open according to the principles indicated in the case of Rajasthan State Road Transport Corporation (supra). The remedy under the Industrial Disputes Act. would be more efficacious than the company itself being directed to hold inquiry. In fact the workmen would get better forum under the Industrial Disputes Act for getting justice in the matter of inquiry regarding the charges of misconduct against them. The impugned action of the dismissal cannot be said to be illegal or void *ab initio,* as it justiciable before the appropriate forum under the Industrial Disputes Act. In this view of the matter and in the facts of the case, remedy under Article 226 as sought is not entertainable.

36. In the result, this petition deserves to be dismissed with following direction as the aforesaid surviving prayers cannot be entertained by this Court.

37. The respondent-Government of Gujarat being the appropriate Government, is directed to make appropriate reference regarding the dispute relating to dismissal/removal of 11 workmen represented by the petitioner-Union within 7 days from the date of receipt of writ of this direction.

38. Subject to aforesaid direction, rule is discharged. No order as to costs.

(SBP) Rule discharged.