Gujarat High Court
Tata Chemicals Ltd. And Ors. vs Kailash C. Adhvaryu on 23 November, 1963
Equivalent citations: AIR 1964 Guj 265, 1964 (9) FLR 394, (1964) 0 GLR 649, (1965) ILLJ 54 Guj
Author: P Bhagwati
Bench: P Bhagwati
JUDGMENT P.N. Bhagwati, J.

1. This appeal raises some questions relating to the construction of certain provisions of the Industrial Employment (Standing Orders) Act, 1946. The facts giving rise to this appeal are few and for the most part undisputed and may be briefly stated as follows. The first appellants are a limited company carrying on business of manufacturing chemicals at Mithapur in Jamnagar District. The second appellant is the Works Manager of the factory of the first appellants at Mithapur while the third respondent is the Divisional Engineer in Charge of the power house of the first appellants. The respondent was employed as a clerk in the establishment of the first appellants since and May 1950 and at the material time he was drawing a basic salary of Rs. 80/- per month plus Dearness Allowance of Rs. 69/- per month, his total emoluments thus being Rs. 149/- per month. The industrial establishment of the first appellants being an industrial establishment to which the Industrial Employment (Standing orders) Act, 1946, was applicable, Standing Orders amongst others, for clerks other than workmen employed by the first appellants were certified by the Commissioner of Labour, Bombay, and Certifying Officer, Bombay, under Section 5 of the Act. The Standing Orders came into force on 27th February 1957 and applied to all clerks employed in the industrial establishment of the first appellants to do clerical labour but excluding all clerks in the employ of contractors. It was not disputed that the respondent was a person to whom the Standing Orders applied. On or about 13th November 1958, the respondent was dismissed from service on the ground that the respondent had committed acts of major misconduct specified in Clauses 9, 17 and 25 of Standing Order No. 31. According to the respondent the first appellants did not comply with the procedure set out in Clause 4 of Standing Order No. 32 before passing the order of dismissal as required by Clause 3 of that Standing Order. The respondent, therefore filed a suit against the appellants contending that the respondent was dismissed by the appellants without complying with Standing Order No. 32 and that the dismissal of the respondent was, therefore, ultra vires and that the respondent consequently continued to be in the employment of the first appellants and was entitled to receive from the first appellants emoluments from 14th November 1958 upto the date of reinstatement. The prayers which be claimed in the suit were: (i) a declaration that the order of dismissal passed by the appellants against the respondent was illegal and ultra vires and the respondent accordingly continued in the employment of the first appellants: and (2) an order for payment of all emoluments from 14th November 1958 upto the date of reinstatement. The suit was resisted by the appellants on various grounds. In this appeal I am concerned only with the grounds which were urged by the appellants as and by way of preliminary objection to the suit and it is, therefore, not necessary to recapitulate in detail the grounds affecting the merits of the defence. It is sufficient to state that the appellants contended that in dismissing the respondent they had complied with Standing Order No. 32 and that the dismissal of the respondent was. therefore, not invalid. The three main grounds which were urged by way of preliminary objection to the suit were, firstly that the suit was barred by the provisions of Section 9 of the Code of Civil Procedure, secondly that the civil Court had no jurisdiction to hear the suit in view of the provisions of the Industrial

Disputes Act, 1947, and thirdly that the suit was barred under the provisions of the Specific Relief Act. The first two grounds do cot survive for consideration in this appeal since they were negatived by the lower appellate Court and they have not been pressed before me by Mr. I.M. Nanavati, learned advocate appearing on behalf of the appellants. The only ground out of tie aforesaid three, grounds which was urged before me was the last ground, namely, that the suit was barred under the provisions of the Specific Relief Act. The argument under this head was that the suit was in effect and substance a suit to enforce a contract of personal service and was, therefore, not maintainable by virtue of the provisions of Section 21 (b) of the Specific Relief Act. The trial Court upheld the validity of this argument and dismissed the suit with no order as to costs. The respondent thereupon preferred an appeal in the Court of the District judge, Jamnagar, The learned Assistant Judge who heard the appeal took the view that though Section 21 (b) debarred the respondent from asking for reinstatement in service, the respondent would in any event be entitled to maintain a claim for damages for wrongful dismissal and that the Court having power to award the relief of damages under the provisions of the Specific Relief Act, the suit was not barred by the provisions of the Specific Relief Act. The learned Assistant Judge accordingly set aside the dismissal of the suit and remanded the suit to the trial Court for decision on merits. The appellants thereupon preferred the present appeal in this Court.

2. There were in the main two contentions urged by Mr. I.M. Nanavati on behalf of the appellants in support of the appeal. The first contention was the same which was advanced before the trial Court and the lower appellate Court, namely, that the suit was not maintainable by virtue of the provisions of Section 21(b) of the Specific Relief Act since it was in effect and substance a suit to enforce a contract of personal service. I shall immediately proceed to deal with this contention but before I do so. I may briefly indicate the second contention urged by Mr. I.M. Nanavati. The second contention of Mr. I.M. Nanavati was based on the provisions of Section 13-A of the Industrial Employment (Standing Orders) Act, 1946. He contended that by virtue of the provisions of this Section the Labour Court was the only authority which had jurisdiction to adjudicate upon the claim of the respondent in the suit and that the jurisdiction of the civil Court to do so was impliedly barred and that the suit was therefore, liable to be dismissed. This contention raised a very interesting question of law relating to the construction of Section 13-A of the Industrial Employment (Standing Orders) Act, 1946, and able arguments were advanced upon it. I shall examine these arguments a little later after I have disposed of the first contention of Mr. I.M. Nanavati.

3. The first contention was formulated by Mr. I.M. Nanavati in the following manner. He urged that when the respondent claimed in the plaint that the order of dismissal passed against him was illegal and ultra vires and that he continued in the employment of the first appellants, what he in effect and substance claimed was specific performance of the contract of employment between him and the first appellants which was a contract of personal service dependant on the per sonal qualifications or volition, of the parties. He contended that Section, 21(b) of the Specific Relief Apt ruled that a contract which was so dependant on the personal qualifications or volition of the parties or otherwise from its nature was such that the Court could not enforce specific performance of it in material terms, could not be specifically enforced and that the contract of employment between the respondent and the first appellants being such a, contract, the respondent was not entitled to specific enforcement of such contract against the appellants. The relief which was in effect and

substance claimed by the respondent was, therefore, in the submission of Mr. I.M. Nanwavati, a relief which was barred by the provisions of Section 21(b) of the Specific. Relief Act and the suit was, therefore, liable to fail. This contention was urged by Mr. I.M. Nanavati by way of preliminary objection to the maintainability of the suit and was argued on a demurrer as if the allegations made in the plaint were true. Now it was indisputable and could not with any colour of reason be disputed on behalf of the respondent that the contract of employment between the respondent and the first appellants was a contract of personal service which was incapable of being specifically enforced by virtue of the provisions of Section 21(b) of the Specific Relief Act but the answer given by Mr. K.M. Chhaya, learned advocate appearing on behalf of the respondent to this contention of Mr. I.M. Nanavati was that the suit was not a suit to enforce a contract of personal service so as to be barred by the provisions of Section 21(b) of the Specific Relief Act.

Mr. K. M. Chhaya urged that the dismissal of the respondent could be effected only in terms of the Standing Orders and that since in making the dismissal, Standing Order No. 32 was violated, the dismissal was a nullity and the suit was therefore merely a suit for a declaration of statutory invalidity of the dismissal and not for enforcing a con tract of personal service. The question which therefore arises for consideration on these rival contentions is whether a suit for a declaration that the dismissal is null and void and that the servant continues in the employment of the master on the ground that the dismissal is in violation of the provisions of the Standing Order which prescribes that no dismissal shall be made except after complying with a certain procedure can be said to be a suit to enforce a contract of personal service:

4. Now in cases of this kind relating to termination of a contract of master and servant, a distinction must be made between a breach of a contractual obligation and a breach of a statutory obligation. This distinction is one of principle and has general application in respect of all contracts but it assumes particular significance in its application to contracts of master and servant for it is in this latter class of cases that the occasion for its recognition and application arises most often. If there is a breach of a contractual obligation committed by a party to a contract, the other party has ordinarily two remedies available to him. He may either treat the contract as broken and sue for damages or he may refuse to accept the repudiation of the contractual obligation as a breach discharging the contract and keeping the contract alive for performance, he may sue for specific enforcement of the contract provided specific enforcement of the contract is permissible under the Specific Relief Act. If the contract is a contract of master and servant this latter remedy would obviously not be available for there can be no specific enforcement of a contract of personal service under Section 21(b) of the Specific, Relief Act and the only remedy available would be the remedy by way of damages. Where on the other hand an obligation is imposed by a statute which provides that the contract shall be terminable only in the manner provided by, the statute, there can be no valid or effective termination of the contract unless the procedure prescribed by the statute is complied with by the party intending to terminate the contract. In such a case if the procedure prescribed by the statute is not complied with, there would be no valid and effective termination of the contract. The contract would continue to subsist between the parties for the action of terminating the contract being in violation of the statutory obligation would be null and void. When a suit is filed by the: aggrieved party contending that the termination of the contract is a nullity since it has not been, effected in the manner required by the statute, the relief sought by the aggrieved party, would not be

a relief for specific performance of the contract but would be a right rarely for a declaration of the statutory invalidity of the act of termination. There being no breach of a contractual obligation, no question would arise of claiming damages for breach of contract or of enforcing specific performance of the contract. Specific performance of the contract would be necessary only if some contractual obligation is required to be enforced and that in its turn would be necessary only it the contractual obligation is broken, but where the complaint is not regarding the breach of any contractual obligation but only regarding the breach of a statutory obligation on the fulfilment of which alone the termination of the contract can take place, there would be no occasion or need to ask for specific enforcement of the contract but what the aggrieved party would be required to claim would be a declaration that the termination of the contract is null and void and that the contract continues to subsist between the parties. Applying this proposition to a contract of master and servant which is sought to be terminated by the master in breach of a statutory obligation which declares that the contract shall not be terminable except in a particular manner, the relief claimable by the aggrieved servant would be a declaration that his dismissal is null and void and that he continues in the employment of the master. In such a case Section 21(b) of the Specific Relief Act would not apply and the bar contained in that Section would not be attracted.

5. This distinction between a contractual obligation and a statutory obligation which I am making is borne out by at least two decisions which were cited at the bar, The first decision to which I shall refer in this connection is the decision of the Court of Queen's Bench Division in England is Barber v. Manchester Regional Hospital Board, (1958) 1 WLR 181. The headnote of the case given in this report sets out the facts with sufficient clarity and I need do no more than reproduce the same. The plaintiff, a consultant on the staff of a local authority hospital, continued to serve the hospital after it was transferred to the National Health Service pursuant to the National Health Service Act, 1946, and came under the control of a regional hospital board. In accordance with regulations made under the Act he continued his existing duties for the preliminary period laid down therein without entering into a new contract with the board. , By a circular letter of July 1, 1949 the board informed the plaintiff that permanent contracts on the basis of terms and conditions of service for hospital staff issued by the Minister of Health in June, 1949, would shortly be offered to all whole-time officers, but that pending settlement of such contracts the duties of his present post would be continued "subject to the terms and conditions of service above referred to". The terms and conditions concerned covered whole-time arid part-time consultants and, by Clause 16, gave to a consultant who considered his appointment was being unfairly terminated a right to submit his case to the Minister, whose duty it was to place the case before a professional committee, and, in the light of their advice, confirm the termination, or direct reinstatement of arrange some third, solution. That procedure was to be completed before the board's decision to terminate was carried into effect. On and after July 1, 1949, the plaintiff continued to serve the Hospital. As he refused to sign a permanent contract on the terms offered by the board he was dismissed, and the Minister, refused to entertain an appeal under Clause 16 of the terms and conditions of service above referred to on the ground that the plaintiff was not at the time of his dismissal, employed under a contract which incorporated those terms and conditions. The plaintiff thereupon sued the board and the Minister of Health, claiming inter alia, declarations that he was employed under a contract which did in fact incorporate those terms and conditions and that his employment with the board had never been validly determined and that he was entitled to salary up to the date of the writ. On these facts it was

held by Barry, J,, that by continuing to serve the board after the receipt of the letter of July 1, 1949, the plaintiff must be deemed impliedly to have accepted the offer contained therein and had accordingly entered into a new contract, with the board which clearly, having regard to the terms of the letter, incorporated the terms and conditions of service issued by the Minister in June, 1949, in, so far as they were applicable to his particular contract and that Clause 16 of the terms and conditions of service, being clearly appropriate for inclusion in the contract had contractual force between the plaintiff and the board and that by carrying into effect the termination of his employment before the terms of Clause 16 had been complied with and a decision reached by the Minister of Health, the board had committed a breach of its contractual obligation towards him. On the question whether the plaintiff was entitled to a declaration that his employment with the board had never been validly determined and that he was entitled to salary up to the date of the writ or whether he was entitled only to damages for breach of contract, the learned Judge held that since what was complained of in the suit was a breach of a contractual obligation, to award the plaintiff a declaration that his employment with the board had never been validly determined and that he was entitled to salary upto the date of the writ would be tantamount to enforcing performance of a contract of personal service which could not be done under the law and that the plaintiff was, therefore, entitled only to damages for breach of contract. The learned Judge, on more occasions than one in the course of his judgment emphasized the fact that the right which the plaintiff Bought to enforce in the suit was a contractual right and the obligation which was sought to be enforced against the board was a contractual obligation and that was the basis on which the learned Judge, distinguished the case before , him from the decision of the House of Lords in Vine v. National Dock Labour Board, (1957) 2 WLR 106 : (1956) 3 All ER 939. The learned Judge quoted a passage from the judgment of Lord Keith in Vine's Case, 1957-2 WLR 106: (1956) 3 All ER 939 which was in the following terms:

"This is not a straightforward relationship of master and servant. Normally, and apart from the intervention of statute, there would never be a nullity in terminating an ordinary contract of master and servant. Dismissal might be in breach of contract and so unlawful but could only sound in damages".

This passage clearly recognizes a distinction between a contractual obligation and a statutory obligation. According to the learned Law Lord, there would never be a nullity in terminating a contract of master and servant apart from the intervention of statute, meaning thereby that if a statute intervenes, even termination of an ordinary contract of master and servant can ed by the vice of nullity. If there is a dismissal of the servant by the master in breach of a statutory obligation which requires that the dismissal shall not be effecte with a certain procedure, such dismissal would not be in breach of a contract but would be in breach of a statute and would be a nullity. The learned Judge after quoting the above passage from Vine's Case, 1957-2 WLR 106 : (1956) 3 All ER 939

observed in words which leave no doubt that he held the plaintiff's' only remedy against the board. to be in damages because what was complained of by the plaintiff against the board was merely a breach of a contractual obligation and not a breach of a statutory/obligation:

"Giving this matter the best consideration I can; I am unable to equate this case to the circumstances which were being considered by the Court of Appeal and the House of Lords in 1957-2 WLR 106 : (1956) 3 All ER 939. There the, plaintiff was working under a statutory scheme of employment, and clearly in those circumstances all the Lords of Appeal who dealt with the case in the House of Lords took the view that it could not be dealt with as though it were an ordinary master and servant claim in which the rights of the parties were regulated solely by contract. Here, despite the strong statutory flavour attaching to the plaintiff's contract, I have reached the conclusion that in essence it was an ordinary contract between master and servant and nothing more. In those circumstances I feel bound to apply the general rule stated by Lord Keith, and to reach the conclusion here that the plaintiff's only remedy against the board is the recovery of damages."

These observations clearly show that where there is a mere breach of a contractual obligation in terminating a contract of master and servant the dismissal being in breach of contract would only sound in damages and the servant would not be entitled to a declaration that the dismissal is invalid and that he continues in the employment of the master since that would amount to enforcement of a contract of personal service. But where there is a breach of a statutory obligation which prevents the termination of the contract except in the manner prescribed by the statute, the dismissal being in breach of the statute, is null and void and the servant is entitled to a declaration that the dismissal is null and void and that he continues in the employment of the master. There is in such a case no enforcement of the contract of personal service.

6. The other decision to which I must refer is the decision of the Supreme Court in Dr. S. Dutt v. University of Delhi, AIR 1958 SC 1050. In this case the respondent, namely, the University of Delhi, by a resolution of the Executive Council, dated 26th April 1951, terminated the service of the appellant who was a Professor of Chemistry employed by the respondent. The appellant there upon appointed Professor M. N. Saha, the celebrated scientist, as an arbitrator under the provisions of Section 45 of the Delhi University Act and required the respondent to appoint another arbitrator. There were several disputes which the appellant wanted to be adjudicated upon by arbitration and one of the disputes was that his dismissal by the respondent was wrongful since the Vice-Chancellor Dr. Sea who according to him was inimically disposed towards him, had shut out all discussion on the question and procured a resolution for his dismissal, and that because of such malicious and wrongful barring of discussion, the resolution was bad. The respondent did not appoint another arbitrator with the result that the appellant appointed Professor M. N. Saha to act as sole arbitrator. Professor M. N. Saha thereafter entered upon the arbitration and ultimately made an award declaring inter alia that the dismissal of the appellant was "ultra vires, mala fide and had no effect on his status" and that he still continued to be a Professor of the University of Delhi. This award was challenged on behalf of the respondent. The challenge was, however, negatived by the Sub Judge, Delhi, whereupon two appeals were preferred on behalf of the respondent, it being a matter of doubt

as to where the appeal lay. The appeals were withdrawn by the High Court to itself for trial, and the High Court allowed the appeals holding that the award in so far as it declared that the dismissal of the appellant was ultra vires and that he still continued to be a professor of the University, disclosed an error apparent on the face of the award and was, therefore, liable to be set aside. The High Court took the view that the contract of service between the appellant and the respondent was a contract of personal service and that the award had the effect of specifically enforcing such contract of personal service and, therefore, offended Section 21(b) of the Specific Relief Act. The appellant thereupon carried the matter in appeal before the Supreme Court. It was urged on behalf of the appellant before the Supreme Court that the declaration that the appellant continued in service under the University in spite of his dismissal by the latter was a declaration which the law permitted to be made and was, therefore, not erroneous. Reliance was placed on the decision of the Privy Council in The High Commissioner for India v. I. M. Lall, 75 Ind App 225: (AIR 1948 PC 121), and it was contended that such a declaration had in fact been made by the Privy Council in that case. Repelling this contention the Supreme Court pointed out the basis on which I. M. Lall's Case, 75 Ind App 225: (AIR 1948 PC 121) was decided by the Privy Council in the following words:

"It was then contended that a declaration that the appellant continued in his service under the respondent in spite of his dismissal by the latter was a declaration which the law permitted to be made and was not therefore erroneous. It was-said that such a declaration had in fact been made by the Judicial Committee in 75 Ind. App. 225: (AIR 1948 PC 121). This contentio, in our view also lacks substance. That was not a case based on a contract of personal service. Indeed the contract of the respondent in that case provided that the service was "to continue during the pleasure of His Majesty, His Heirs and Successors, to be signified under the hand of the Secretary of State for India". The respondent had been dismissed by an order made under the hand of the Secretary of State for India, and as he was liable to be dismissed at the pleasure of the Crown he could base no complaint against his dismissal on the contract of service and did not, in fact, do so. He founded his suit on the claim that his dismissal by the Crown from the Indian Civil Service of which he was a member, was void and of no effect as certain mandatory provisions of the Government of India Act, 1935, had not been complied with. The Judicial Committee accepted this claim and thereupon made the declaration that the purported dismissal of the respondent was void and inoperative and he remained a member of the Service at the date of the institution of his suit. The declaration did not enforce a contract of personal service but proceeded on the basis that the dismissal could only be effected in terms of the statute and as that had not been done, it was a nullity, from which the result followed that the respondent had continued in service. All that the Judicial Committee did in this case was to make a declaration of a statutory invalidity of an act, which is a thing entirely different from enforcing a contract of personal service."

These observations of the Supreme Court clearly show that where a dismissal is challenged not on the ground of a breach of a contractual obligation but on the ground of a breach of a statutory obligation, the suit cannot be said to be a suit for enforcing a contract of personal service. The Supreme Court pointed out that in I. M. Lall's Case, 75 Ind App 325 : (AIR 1948 PC 121) the dismissed servant did not base his complaint against dismissal on the contract of service but contended that his dismissal was void and of no effect since certain mandatory provisions of the Government of India Act, 1935, had not been complied with. The Supreme Court thus clearly

recognized the distinction between a breach of a contractual obligation and a breach of a statutory obligation in so far as termination of a contract of personal service is concerned. In view of this position it was contended on behalf of the appellant that his was also a case of an ultra vires dismissal as I. M. Lall's Case, 75 Ind App 225 : (AIR 1948 PC 121) was and therefore, governed by the same considerations. The Supreme Court, however, observed in relation to this contention that the appellant's case never was that his dismissal was ultra vires the statute or otherwise a nullity and the appellant was, therefore, not entitled to rely on the analogy of I.M. Lall's Case, 75 Ind App 225: (AIR 1948 PC 121). The very fact that the Supreme Court proceeded to consider whether the case before it was a case of an ultra vires act or a case of a mere wrongful dismissal in breach of a contractual obligation shows that the Supreme Court, was of the view that if the act in question was an ultra vires act in breach of a statutory obligation as In I. M. Lall's Case, 75 Ind App 225 : (AIR 1948 PC 121) a declaration could have been validly granted to the effect that the dismissal of the appellant was null, and void and that he continued in the employment of the respondent and Section 21(b) of the Specific Relief Act would not have, stood in the way. The Supreme Court did not say that it was immaterial to consider whether the dismissal was ultra vires on the ground that even if it were, it would still amount to specific enforcement of a contract of personal service. The Supreme Court thus impliedly held that if the dismissal was challenged as ultra vires or null and void as contravening a statutory obligation, a declaration could be granted to the effect that the dismissal was null and void and the servant continued in the employment of the master and that a suit claiming such relief could not be said to be a suit to enforce a contract of personal service so as to attract the bar of Section 21(b) of the Specific Relief Act.

7. Having regard to this position in law, I must next consider whether the obligation under Standing Order No. 32 which was, according to the respondent, violated in the present case in making an order of dismissal against him was a contractual obligation or a statutory obligation. In order to be able to appreciate the arguments bearing upon this question, it is necessary to consider broadly the scheme of the Industrial Employment (Standing Orders) Act, 1946. The Act was enacted on 23rd April 1946 because the Legislature thought that it was "expedient to require employers in individual establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them".

Prior to the passing of the Act, conditions of employment obtaining in several industrial establishments were governed by contracts between the employers and their employees. Sometimes these conditions were reduced to writing but in many cases, they were not reduced to writing and were governed by oral agreements. Inevitably in many cases, the conditions of service were not well defined and there was ambiguity or doubt in regard to their nature and scope. That is why the Legislature took the view that in regard to industrial establishments to which the Act applied, the conditions of employment subject to which industrial labour was employed, should be well defined and should be precisely known to both the parties With that object, the Act made provisions for making Standing Orders which, on being certified, prescribed the conditions of service between the industrial establishments in question and their employees so that what used to be governed by contract heretofore would now be governed by the statutory Standing Orders in so far as the matters dealt with by the statutory Standing Orders are concerned. This is the principal object of the Act which must be borne in mind in determining the present question in controversy between the

parties.

8. The Act applies to every industrial establishment wherein one hundred or more workmen are employed or were employed on any day of the preceding twelve months. It can be extended even to establishments whose complement of labour is less than one hundred provided a notification in that behalf is issued by the appropriate Government in the Official Gazette. It does not apply to any industry to which Chapter VII of the Bombay Industrial Relations Act, 1946 applies or to any industrial establishment to which the provisions of the Madhya Pradesh Industrial Workmen (Standing Orders) Act, 1959, apply, for these State enactments have made distinct and independent provisions for the framing of Standing Orders. Standing Orders are defined by Section 2(g) to mean rules relating to matters set out in the Schedule. Section 3(1) requires that within six months from the date on which the Act becomes applicable to an industrial establishment, the employer shall submit to the Certifying Officer five copies of the Draft Standing Orders proposed by him for adoption in his industrial establishment. Section 3(2) enacts that provision shall be made in such draft for every matter set out to the Schedule which may be applicable to the industrial establishment, and where model Standing orders have been prescribed, such draft shall, so far as is practicable, be in conformity with such model. Under Section 4 the Standing Orders are certifiable if provision is made therein for every matter set out in the Schedule which is applicable to the industrial establishment, and the Standing Orders are otherwise in conformity with the provisions of the Act. This last requirement necessarily imports the consideration specified in Section 3(2), namely, that the draft Standing Orders must be in conformity with the model Standing Orders. Prior to the amendment of Section 4 by Act 36 of 1956, it was not competent to the Certifying Officer to adjudicate upon the fairness or reasonableness of the provisions of any Standing Orders but the Section was amended by Act 36 of 1956 and the effect of the amendment is that it has now been made the function of the Certifying Officer to adjudicate upon the fairness or reasonableness of the provisions of the Standing Orders. The net summary of the position under Section 4, therefore, is that the Standing Orders have to provide for all matters specified in the Schedule and they have also to be in conformity with the Act which includes the requirement that they have to be in conformity with the model Standing Orders, so far as is practicable. Their fairness and reasonableness can also now be examined by the Certifying Officer and suitable modifications can be made in accordance with the decision of the Certifying Officer. Section 5 provides for the procedure which has to be followed by the Certifying Officer before certifying the Standing Orders. The procedure is intended to give an opportunity to both the parties to be heard before the final order is passed. Section 6 provides for an appeal and Section 7 lays down that the Standing Orders shall come into operation on the expiry of 30 days from the date on which authenticated copies thereof are sent as required by Section 5(3), or where an appeal is preferred, on the expiry of seven days from the date on which copies of the appellate order are sent under Section 6(2). Section 8 requires the Certifying Officer to keep a register of Standing Orders and under Section 9, the Standing Orders have to be prominently posted by the employer in English and in the language understood by the majority of the workmen on Special boards. Section 10(1) lays down that Standing Orders finally certified under the Act shall not, except on agreement between the employer and the workmen, be liable to modification until the expiry of six months from the date on which the Standing Orders or the last modifications thereof came into operation. Section 10(2) prior to its amendment by Act 36 of 1956 authorized only the employer to apply for the modification of the Standing Orders but as a result of the amendment,

workmen have also now been given the right to apply for such modification. It is thus clear that after they are certified, the Standing Orders have to remain in force for six months at least unless of couse they are modified in the meanwhile by consent. After six months are over, an application for modification of the Standing Orders can be made either by the employer or by the workmen and the problem would then be considered after following the procedure prescribed in the Act for certifying the original Standing Orders. Section 11 confers the necessary powers of a Civil Court on the Certifying Officer and the appellate authority and Section 12 prohibits the admission of oral evidence which has the effect of adding to or otherwise varying or contradicting Standing Orders as finally certified under the Act, in any Court. Section 13 provides for penalties and the procedure to enforce them. Sub-section (2) of this Section is rather material arid it prescribes that an employer who does any act in contravention of the Standing Orders finally certified under the Act for his industrial establishment shall be punishably with fine.

It is, therefore, made penal for an employer to do any act in contravention of the Standing Orders finally certified under the Act. Section 13-A was not in the Act but it was subsequently introduced by Act 36 of 1956. I shall have occasion to examine the true meaning and effect of this Section a little later when I deal with the second contention of Mr. I.M. Nanavati, Proceeding further with the scheme of the Act, Section 14 confers on the appropriate Government power to exempt, conditionally or unconditionally, any industrial establishment and Section 15 confers on the appropriate Government the power to make rules to carry out the purposes of the Act. The Schedule to the Act contains eleven matters on which Standing Orders are required to be framed. This in brief is the Scheme of the Act.

9. It is in the light of the object and scheme of the Act set out above that I must examine the question as to what is the true nature of the Standing Orders certified under the Act for any particular industrial establishment. Mr. I.M. Nanavati contended that the Standing Orders when certified were incorporated in the contract of employment between the employer and the workmen and that they had, therefore, contractual force and riot statutory force. The rights and obligations created by the Standing Orders were, in the submission of Mr. I.M. Nanavati, contractual rights and obligations and not statutory rights and obligations. Mr. I.M. Nanavati relied on two circumstances in support of this conclusion which he pressed for my acceptance. The first circumstance alleged by Mr. I.M. Nanavati was that there was no specific provision in the Act making Standing Orders binding on the employer and the workmen. Mr. I.M. Nanavati readily conceded that Section 13(2) made it penal for an employer to do any act in contravention of the Standing Orders but he urged that this provision was, hot sufficient to impart a binding character to the Standing Orders. The second circumstance alleged by Mr. I.M. Nanavati was that in any event even if Section 13(2) could be regarded as making the Standing Orders binding on the employer, there was no provision in the Act which made the Standing Orders equally binding on the workmen and that no binding character, therefore attached to the Standing Orders by reason of any statutory provision. The contention of Mr. I.M. Nanavati, was that the Standing Orders were incorporated as terms of the contract of service and that binding character therefore attached to them by reason of contract and not by reason of law. Mr. I. M. Nanavati in support of this contention drew my attention to the relevant provisions of the Bombay Industrial Relations Act, 1946, and pointed out that there was no provision in the Act similar to Section 40 of the Bombay Industrial Relations Act, 1946, which provided that the Standing Orders

shall be determinative of the relations between employer and employees in regard to all industrial matters specified in Schedule I. Now it is no doubt true that there is no express provision in the Act similar to Section 40 of the Bombay Industrial Relations Act, 1946, expressly declaring that the Standing Orders shall be determinative of the relations between the employer and the workmen. But it is clear from the various provisions of the Act and particularly Section 7 that the Standing Orders when certified become operative and bind the employer and, the workmen. If the Standing Orders were not to be binding on the employer and the workmen and it were open to the employer and the workmen either to incorporate them in the contract of service or not the entire object and scheme of the Act would be frustrated. The object of making the conditions of service precise and definite in the form of Standing Orders would be completely defeated, for the evil in the shape of ambiguity or doubt in regard to the nature and cope of the conditions of service which existed prior to the commencement of the Act and which was sought to be remedied by the enactment of file Act would still continue. Besides, there would be no point in requiring that the Standing Orders most be prominently posted by the employer in English and in the language understood by the majority of his workmen on special boards unless of course the Standing Orders were to be binding on the employer and the workmen. It must also be remembered that Standing Orders are defined to mean rules relating to matters set out in the Schedule. The use of the word "rules" is of some significance. This would not have been used to describe the Standing Orders if it was left to the meet will of the employer to enter into any contract of service with the workmen despite the Standing Orders. Then again the Certifying Officer is given the power to determine the fairness or reasonableness of the Standing Orders and that to obviously done because the Standing Orders are to govern the relations between the employer ad the workmen. The employer and the workmen are both entitled to ask for modification of the Standing Orders and the same procedure is prescribed in regard to the modification of the Standing Orders as obtains in regard to the certification of the original Standing Orders. This elaborate machinery of certification of the Standing Orders and the modifications thereof would be robbed of all significance if the Standing Orders finally certified under the Act were not to be binding on the employer and the workmen. Lastly; Section 13(2) clearly indicates that there is on toe employer at any rate an obligation to act in conformity with the Standing Orders. If there is an obligation on the employer to act in accordance with the Standing Orders, there would equally be a corresponding obligation on the workmen so to act. I am, therefore, of the opinion that on a true construction of the various provisions of the Act, the Standing Orders when finally certified under the Act are binding on the employer and the workmen and govern the relations between the employer and the workmen and it is not open to the employer and the workmen to contract themselves out of the rights and obligations created by the Standing Orders.

10. So much on principle. Turning to the authorities, I find that the above view which I am inclined to take is also supported by a decision of the Patna High Court in Bihar Journals Ltd. v. Ali Hasan, AIR 1959 Pat 431. There are no doubt two decisions of the Allahabad High Court which have taken a different view, but with the greatest respect to the learned Judges who decided those cases, I find myself unable to accept that view. That view completely ignores the basic purpose of Standing Orders and does not give due effect to the provisions of Section 13(2). As a matter of fact Section 13(2) does not appear to have been cited at all before the learned Judges for there is no reference to it in either of the two judgments. But the matter does not rest here. There are at least two decisions of the Supreme Court which have definitely taken the view that the Standing Orders once certified

under the Act are binding on the employer and the workmen. The first decision is that reported in Guest, Keen, Williams Private Ltd. v. P. J. Sterling, AIR 1959 S C 1279. In that case Gajendragadkar J., delivering the judgment of the Supreme Court examined the object and scheme of the Act and at the end observed:

"Nevertheless the Standing Orders when they were certified became operative and bound the employer and all his employees .... The position then is that though the relevant standing order about the age of superannuation came into operation under Section 7 and was binding thereafter upon the employer and all his employees the right of the respondent to challenge the validity or propriety o the standing order and to claim a suitable modification in it cannot be disputed. The Standing Orders certified under the Act no doubt become part of the terms of employment by operation of Section 7;. . . . . ."

The same learned Judges speaking on behalf of the Supreme Court in the other decision reported in Bagalkot Cement Co. Ltd. v. R. K. Pathan, AIR 1963 SC 439 also made observations to the same effect when he said:

. . . . .The object of the Act, as we have already teen, was to require the employers to make the conditions of employment precise and definite and the Act ultimately intended to pres cribe these conditions in the form of standing orders so that what used to be governed by a con tract heretobefore would now be governed by the statutory standing orders ...."

These observations of the Supreme Court clearly show that the Standing Orders when finally certified under the Act become operative and bind the employer and the workmen by virtue of the pro visions of the Act and not by virtue of any con tract between the employer and the workmen.

The rights and obligations created by the Standing Orders derive their force not from the con tract between the parties but from the provisions of the Act. They are statutory rights and obligations and not contractual rights and obligations.

If, therefore, Standing Order No. 32 was violated by the first appellants in dismissing the respondent the violation was a violation of a statutory obligation and not a violation of a contractual obligation and the respondent was therefore, entitled to maintain a suit for a declaration that the order of dismissal passed by the first appellants in violation of this statutory obligation was null and void and that ho, therefore, continued in the employment of the first appellants, without in any way attracting the bar of Section 21 (b) of the Specific Relief Act.

11. That takes me to the next contention of Mr. I.M. Nanavati. The contention briefly, was that having regard to the provisions of Section 13A, the Labour Court was the only authority which had jurisdiction to entertain the claim of the respondent and that the Civil Court had no jurisdiction to entertain the suit. Mr. I.M. Nanavati relied on the well known principle of construction that where a Statute creates a right or liability and gives a special remedy for enforcing it, the remedy provided by the statute alone must be availed of and the Civil Court would have no jurisdiction to grant any relief in enforcement of such right or liability. The Industrial Employment (Standing Orders) Act, 1946,

argued Mr. I.M. Nanavati, created a right to observance of the Standing Orders certified under the Act and a liability to observe them and by Section 13A provided a special remedy for enforcing it, namely, a reference to the Labour Court and the Labour Court alone had, therefore, jurisdiction to compel obedience to the Standing Orders and the jurisdiction of the Civil Court to do so was excluded. Mr. K.M. Chhaya on the other hand contended on behalf of the respondent that the scope of Section 13A was limited and that it did not empower the Labour Court to grant any relief for enforcement of the rights and liabilities created under the Standing Orders and that the jurisdiction of the Civil Court to grant such relief could not be said to be impliedly barred. Mr. K.M. Chhaya urged that the relief claimed by the respondent in the suit in the present case could not be granted by the Labour Court under Section 13A and that the enactment of Section 13A could not, therefore operate to deprive the Civil Court of its jurisdiction to grant such relief. These rival contentions raised an interesting question of law relating to the construction of Section 13A and I shall now proceed to examine it.

12. It may be mentioned at the outset that this contention disputing the jurisdiction of the Civil Court to entertain the suit on the ground that the Labour Court was the exclusive authority constituted by Section 13A to enforce the rights and liabilities arising under the Standing Orders was neither taken in the written statement of the appellants nor was it urged before the trial Court or the lower appellate Court. It was sought to be raised for the first time at the hearing of this appeal before me. I would not, therefore, ordinarily have entertained this point but left it to the appellants to apply for leave to amend the written statement when the suit came up for hearing before the trial Court on remand and then urge it before the trial Court if leave to amend was given. But I felt that such a course would involve great hardship on the respondent who was a dismissed employee of the appellants and that it would be desirable that this point being a point of law should be disposed of by me, even though no plea raising this point was taken in the written statement and it was not advanced before the trial Court or the lower appellate Court.

13. Now Mr. I.M. Nanavati is certainly right in his contention and I agree with him that if there is one rule of construction clearer than any other, it is this, namely that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by the statute alone must be followed. That rule was stated in the following words by Willen J., in a classical passage from his judgment in Wolverhampton New Water Works Co. v. Hawkesford, (1859) 6 C. B. (N. S.) 336, at p. 356: --

"There are three classes of cases in which a liability may be established founded upon statute. One is where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law; there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, the party suing has his election to pursue either that or the statutory remedy. The second class of cases is where the statute gives the right to sue merely but provides no particular form of remedy: there, the party can only proceed by action at common law. But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. .... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the

second class. The form given by the statute must be adopted and adhered to".

This passage was quoted with approval by the Supreme Court in N. P. Ponnuswami v. Returning Officer, Namakkal, AIR 1952 SC 64 and the Supreme Court observed in relation to this pas sage :

"The rule laid down in this passage was approved by the House of Lords in Neville v. London Express Newspaper Ltd., (1919) A.. C. 368 and has been reaffirmed by the Privy Council in Attorney-General of Trinidad and Tabago v. Gordan Grant and Co. 1935 A. C. 532 and Secy. of State v. Mask and Co., 44 Cal W.N. 709 : (AIR 1940 PC 105); and it has also been held to be equally applicable to enforcement of rights (see Hurdutraj v. Off. Assignee of Calcutta, 52 Cal W. N. 343, at P. 349...."

This being the true rule on the subject the question which must be considered is; does the Industrial Employments (Standing Orders) Act, 1946, provide a remedy for the enforcement of the rights and liabilities created by the Standing Orders certified under the Act? The only Section of the Act which was relied upon by Mr, I.M. Nanavati as providing such remedy was, as I have pointed out above. Section 13A. It is therefore, necessary to examine the language of Section 13A and to determine its precise scope and content.

14. Section 13A did not form part of the Industrial Employment (Standing Orders) Act, 1946, when it was enacted on 23rd April 1946. It was introduced in the Act by way of an amendment by Act 36 of 1956 which came into force with effect from 28th August 1956. It is, therefore, clear--and it was not disputed on behalf of the appellants--that if a suit like the present one had been filed before 28th August 1956, the Civil Court would undoubtedly have had jurisdiction to entertain the suit. The only question is: has the insertion of Section 13A made any difference? Section 13A is in the following terms:

"13A. Interpretation, etc., of standing orders : -- If any question arises as to the application or interpretation of a standing order certified under this Act, any employer or workman may refer the question to any one of the Labour Courts constituted under the Industrial Disputes Act, 1947 (XIV of 1947) and specified for the disposal of such proceeding by the appropriate Government by notification in the Official Gazette, and the Labour Court to which the question is so referred shall after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties."

If any question arises as to the application of interpretation of Standing Orders certified, under the Act, a right is given to the employer and the workman to refer such question for the decision of the Labour Court, provided of course there is a Labour Court specified for the disposal of such proceeding by the appropriate Government by notification in the Official Gazette. There was no dispute in the present case that there is a Labour Court specified for the disposal of proceedings under Section 13A by the Government of Gujarat by notification in the Official Gazette. As a matter of fact the notification produced, by Mr. I.M. Nanavati clearly showed that in exercise of the powers conferred by Section 13A of the Act, the Government of Gujarat has specified the First Labour Court. Ahmedabad, the Second Labour Court, Ahmedabad, and the Third Labour Court, Ahmedabad, for

the purpose of proceedings under Section 13A in the areas of various districts including Jamnagar District in which the factory of the first appellants is situate. It is, therefore, apparent that so far as the industrial establishment of the first appellants is concerned, Section 13A would apply in relation to a question arising as to the application or interpretation of Standing Orders certified under the Act and such question can be referred by the employer or the workmen to the First Labour Court, Ahmedabad, or the Second. Labour Court, Ahmedabad, or the Third Labour Court, Ahmedabad, and the decision of such Labour Court would be final and binding on the parties. Now the question which requires to be answered is : Does this power of the Labour Court under Section 13A embrace within its scope the power to enforce the rights and liabilities created under the Standing Orders certified under the Act? Can Section 13A be said to have provided a remedy for enforcement of the rights and obligations created by the Standing Orders certified under the Act for it is only if Section 13A can be regarded as having provided a remedy for enforcement of the rights and obligations created by the Standing Orders certified under the Act that on the rule of interpretation above stated, the jurisdiction of the Civil Court to enforce such rights and obligations can be said to be excluded. I must, therefore, examine what is the precise scope and extent of the power conferred on the Labour Court under Section 13A and determine whether the Labour Court has power under Section 13A to enforce the rights and liabilities created by the Standing Orders certified under the Act.

15. Standing Orders as soon as they are certified under the Act become binding on the employer and the workmen and determine the relations between them. Each, is, therefore, entitled to exact observance of the Standing Orders from the other. If there is any violation of the Standing Orders, an employer or the workman who is aggrieved by the violation, is entitled to complain about the violation and to enforce his right which is infringed by the violation. The enforcement of the right would involve giving of redress with a view to securing such enforcement. Such redress may be by way of declaration or direction. In the case of a threatened violation of the right under the Standing Orders, such redress may even take the form of prohibitory relief. To take only one example by way of an illustration: Suppose in the present case Standing Order No. 32 was in fact violated by reason of no inquiry having been held as provided by Clause 4 of Standing, Order No. 32 before the making of the order of dismissal. The dismissal of the respondent would in that event be in violation of the right conferred on the respondent under Standing Order No. 32 and the respondent would be entitled to enforce such right aganst the first appellants, the reliefs necessary to secure such enforcement being a declaration that the dismissal of the respondent was null and void and that the respondent continued in the employment of the first appellants and a direction that the respondent be paid his emoluments from the date of dismissal upto the date of reinstatement. The enforcement of the right created by Standing Order No. 32 would not be possible unless these reliefs can be given to the respondent. The question, therefore, resolves itself into a narrow one, namely, can the Labour Court under Section 13A grant the aforesaid relifs to the respondent? Can the Labour Court give the necessary reliefs for enforcement of the rights and liabilities created by the Standing Orders under Section 13A? If such reliefs can be given by the Labour Court under Section 13A there would be considerable force in the argument of Mr. I.M. Nanavati but I am afraid such is not the position.

16. The language of Section 13A clearly negatives the contention of Mr. I.M. Nanavati. Section 13A on a plain grammatical construction rules that if any question arises as to the application or

interpretation of a Standing Order certified under the Act, such question can be referred to the Labour Court by the employer or the workman and on such reference, the Labour Court is empowered to decide such question and the decision bf the Labour Court is declared to be final and binding on the parties. The Section provides only for reference of a question as to the application or interpretation of a Standing Order certified under the Act and the Labour Court is authorized to give its decision on the question so referred. The function of the Labour Court is limited only to the decision of the question as to the application or interpretation of the Standing Order which is referred to it. The Labour Court is not invested with the power to grant relief in enforcement of the rights and liabilities created by the Standing Orders. There are no words in Section 13A which empower the Labour Court to grant redress for violation of the rights and obligations created under the Standing Orders. The Labour Court cannot for example in the present case giant a declaration that the dismissal of the respondent is null and, void and that the respondent continues in the employment of the first appellants nor can the Labour Court give any direction to the first appellants to pay to the respondent his emoluments from the date of dismissal upto the date of reinstatement. Mr. I. M. Nanavati contended that the power conferred on the Labour Court under Section 13A to decide any question as to the application or interpretation of a Standing Order which might be referred to it by an employer or a workman carried with it the power to give relief to the employer or the workman who made such reference. I cannot assent to this proposition. There is a wide difference between a power to determine a question and a power to grant relief by way of redress of a grievance that any right or obligation has been violated. No power to grant relief by way of enforcement of the rights and obligations created by the Standing Orders can be implied merely from the conferment of power on the Labour Court to decide any question as to the application or interpretation of a Standing Order, which might be referred to it by the employer or the workman. Though in making this submission Mr. I.M. Nanavati did not expressly state so, he really relied on the doctrine of implied powers. But as pointed oat by the Supreme Court in Bidi Leaves Etc. Association v. State of Bombay, 64 Bom L. R. 375 : (AIR 1962 SC 486), the doctrine of implied powers cannot be invoked unless it is found that a power conferred on an authority cannot be discharged or the power cannot be exercised at all unless some auxiliary or incidental power is assumed to exist. The two powers, the one actually conferred on the Labour Court by Section 13A and the other sought to be attributed to the Labour Court by Mr. I. M. Nanavati are essentially distinct powers and it is not necessary to the exercise of the former that the latter should also exist in the Labour Court. Ever without having the latter power the Labour Court can effectively exercise the former power. It clearly appears from these considerations that Section 13A has been enacted with a view to resolving differences which may arise between the employer and the workman as to the application or interpretation of a Standing Order which do not involve the enforcement of the rights and liabilities created under the Standing Orders by giving redress to one party or the' other. If any action is taken by the employer in violation of the Standing Orders which requires to be given to the workman, such redress cannot be given by the Labour Court under Section 13A and unless the Union espouses the cause of the workman and raises an industrial dispute which may be referred by the appropriate Government to the Labour Court for adjudication under the provisions of Sections 10 or 12 of the Industrial Disputes Act, 1947, the only remedy available to the workman would be to file a civil suit for securing such redress. Section 13A cannot stand in the way of the workman seeking such redress from the civil Court.

17. Mr. I.M. Nanavati contended that if this construction were placed upon Section 13A it would defeat the object of enactment of the Section which was to, confer a right on an individual workman to secure enforcement of the rights conferred upon him by the Standing Orders. He urged that until the introduction of Section 13A the only remedy available against the employer to breach of the obligations imposed by the Standing Orders was the raising of an industrial dispute by the Union and reference of such industrial dispute by the appropriate Government for adjudication by the Labour Court. Unless the Union espoused the cause of the individual workman, he had no remedy available to him. It was for this reason, argued Mr. I.M. Nanavati, that Section 13A was brought on the statute book for the purpose of conferring a right on the individual workman to obtain redress for his grievances. Mr. I.M. Nanavati pointed out that under the Bom bay Industrial Relations Act, the workman enjoyed a similar right to approach the Labour Court for any violation of his rights tinder the Standing Orders and it was with a view to equating the rights of the workman governed by the Industrial Disputes Act, 1947, with the rights of the workman governed by the Bombay Industrial Relations Act, 1946, that Section 13A was introduced by way of an amendment. This contention of Mr. I.M. Nanavati is in my opinion, not well-founded. In the first instance the language of Section 13A does not support this contention. It must be remembered that the intention of the legislatures is to be gathered from the language used and the Court's function is not to say what the Legislature meant but to ascertain what the Legislature has said it meant. The Court should not forget the words of caution uttered by Lord Watson in Salomon v. Salomon and Co., 1897 AC 22 :

"Intention of the Legislature is a common but very slippery phrase, which popularly understood, may signify anything from intention embodied in positive enactment to speculative opinion as to what the Legislature probably would have meant, although there has been an omission to enact it. In a Court of Law or Equity, what the Legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication".

Having regard to the language used by the Legislature in Section 13A, it is not possible to take the view that Section 13A was intended to confer a right on an individual workman to secure enforcement of the rights conferred upon him by the Standing Orders. If such were the intention appropriate language would have certainly been used by the Legislature. There is also one other factor which militates against this contention of Mr. I.M. Nanavati though it is a slight one. The present case has arisen within the Gujarat State and in its application to the Gujarat State the Industrial Employment (Standing Orders) Act, 1946, stands amended by Bombay Act 21 of 1938. The effect of the amendment is that if any question arises as to the application or interpretation of a Standing Order, the employer or the workman or the prescribed representative of workmen can refer such question to the Labour Court. If the intention of the Legislature were to confer a right on an individual workman to approach the Labour Court to enforce his rights under the Standing Orders there would have been no point in including the representative of workmen in the category of persons entitled to apply to the Labour Court under Section 13A. The representative of workmen, namely, the Union, had always a right to raise an industrial dispute and to ask the appropriate Government to refer it for adjudication to the Labour Court. This circumstance also, indicates though in a small way that the scope, of Section 13A is a narrow and limited one and it relates to

resolution of differences as to the application or interpretation of Standing Orders which do not involve enforcement of the rights and obligations created under the Standing Orders by giving of redress to one party or the other and does not embrace applications for redress in enforcement of the rights and obligations created under the Standing Orders. Mr. I.M. Nanavati pointed out that the effect of accepting this construction would be that the individual workman would be deprived of the remedy by way of approaching the Labour Court for redress under Section 13A and he would be consigned only to the remedy of a suit in a Civil Court which would not be a cheap and expedtious remedy as the remedy by way of approaching the Labour Court under Section 13A. The Industrial Employment (Standing Orders) Act, 1946, is a welfare legislation and the Court should, therefore argued Mr. I.M. Nanavati, adopt a beneficent rule of construction in that if Section 13A is capable of two constructions, the construction contended for by him being a construction, more beneficial to the workman should be preferred to the other construction. Mr. I.M. Nanavati relied on certain observations from the judgment of, the Supreme Court in Alembic Chemical Works Co. Ltd. v. Workmen. AIR 1961 S C 647 in support of this proposition. Now this proposition is unexceptionable and there can be no dispute about it, but the difficulty in the way of Mr. I.M. Nanavati is that this proposition is not at all applicable in the construction of Section 13A. Section 13A is, for reasons which I have already given, not capable of two constructions and the rule of construction relied on by Mr. I.M. Nanavati cannot, therefore, apply.

18. In this view- of the matter it is clear that the present case falls within the second category of cases referred to by Willes J., in the passage from his judgment in Wolverhampton's Case, (1859) 6 C.B. (NS) 336 quoted above. The Standing Orders certified under the Industrial Employment (Standing Orders) Act, 1946, create rights and obligations but the Act does not provide any special or particular remedy for enforcing such rights and obligations and the workman whose rights are infringed by violation of Standing Order can, therefore, proceed by an ordinary action in a Civil Court in order to enforce such rights against the employer. The contention of Mr. I.M. Nanavati based on the provisions of Section 13A must, therefore, be rejected.

19. The result, therefore, is that the appeal fails and will be dismissed with costs all throughout.