ALLAHABAD HIGH COURT

Aidal Singh

Vs.

Karan Singh

Special Appeal No. 53 of 1956 connected with Special Appeals Nos. 57, 76 and 105 of 1956, against the order passed by the Single Judge Allahabad,

(Kidwai, Agarwala and Beg, JJ.)

17.01.1956. 10.01.1957

JUDGMENT

Kidwai, J.

1. These four appeals are in the nature of test cases fixed before this Full Bench in order to determine the question whether, under the rules of this Court, a special appeal lies to a division Bench from the decision of a Single Judge on a petition for the issue of a writ under Article 226 of the Constitution. The point was fully argued before us by the learned counsel for the appellants in each of the appeals and we are obliged to Mr. Jagdish Swarup for the assistance which he gave us, as amicus curiae by putting the other side of the case before us.

2. The necessary facts relating to all the four appeals are stated in the order of my learned brother, Beg J., and it is unnecessary for me to repeat them.

3. The question raised before us depends upon the interpretation on rule 5 of Chapter VIII of the rules of the Court. That rule reads as follows :-

> "An appeal shall lie to the Court from the judgment (Not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a court subject to the superintendence of the Court, and not being an order made in the exercise of revisional jurisdiction, and not being an order passed or made in the exercise of its power of superintendence, or in the exercise of criminal jurisdiction) of one Judge, and an appeal shall lie to the court from a judgment of one Judge made in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a court subject to the superintendence of the

> Court, where the Judge who passed the judgment declares that the case is a fit one for appeal."

4. Both my learned brothers have discussed at considerable length, with reference to the relevant authorities, the meaning to be attached to the words "order passed or made in exercise of its power of superintendence". They have traced in considerable detail, the history of the provisions relating to the High Court's power of superintendence and of the power of issuing writs of the nature mentioned in Article 226. They have traced the history, and origin of writs. I cannot add anything to their, if I might say so, complete discussion of these matters. Unfortunately the conclusions which my learned brothers have drawn from their survey of the authorities are divergent and while my learned brother Agarwala J., is of the opinion that orders of the nature of those with which we are concerned are passed in exercise of the court's power of superintendence, my learned brother, Beg J., holds a contrary view.

5. The first thing to be noticed is that the rules of the Court were framed after the enforcement of the Constitution. The only provision in the Constitution expressly conferring a power of superintendence upon High Courts is Article 227 which, as has been shown by my learned brothers, was the successor of earlier enactments. It conferred the power of superintendence not only in administrative matters but also in judicial matters, so that High Courts can also pass juridical orders under this Article.

6. Article 226 of the Constitution does not deal with the power of superintendence as such. Moreover, the rules provide a specific procedure for writ petition. Such petitions were to be heard, in the first instance, by a Division Bench of two judges. There could thus be no question of any special appeal in respect of cases covered by that Article and when rule 5 was being framed, no occasion arose for considering the question of appeals from orders on writ petitions. It seems to me, therefore, that when rule 5 refers to orders passed in the exercise of the Court's power of superintendence, the orders meant to be referred to were those passed under Article 227 and none other.

7. This construction is borne out by some of the earlier words of the same rule which are as follows :-

> "An appeal shall lie to the Court from the judgment (not being a judgment passed in the exercise of the appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a court subject to the superintendence of the Court............"

8. Now the words "subject to the superintendence of the Court" as used above, can have reference only to Article 227 and it is the same word "superintendence" that is repeated later on.

9. The second thing to notice is that, under the English system, the King as the supreme

repository of executive power and the fountain head of justice, had inherent power to see that the courts, tribunals and other authorities within his dominions did not act without jurisdiction or in violation of the law. He exercised this power of superintendence by the issue of various kinds of writs as suited the circumstances of each case. Later, the Lord Chancellor, as the keeper of the King's conscience and the Court of King's Bench, over which by a fiction, the King himself is deemed to preside, assumed the power of issuing these high prerogative writs, as they came to be called, in the name of the King and in order to exercise the same power of superintendence. This is however, not the power which has been conferred by the Constitution upon Indian High Courts : indeed even in England the issue of writs is now regulated by Statute. The power conferred by Article 226 of the Constitution is not one to issue writs but it is a power to issue

> "directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them."

Thus the so-called high prerogative writs come in only incidentally, the real power conferred is to issue "directions, orders or writs".

10. India possesses a written Constitution which allocates functions and duties to every authority in the State from the President downwards and guarantees certain fundamental rights to all citizens. There is no scope for any authority exercising any "inherent powers" or prerogative. Whatever may be the origin of writs, the power which the Indian High Courts now possess of issuing them is not by virtue of any power of superintendence but by express conferment. As has been shown by my learned brother, Beg J., although under earlier constitutional provisions the High Courts possessed the power of superintendence, both in administrative and in judicial matters, that did not carry with it the power of issuing writs. There is still less scope under our present Constitution for the Issue of such writs as a part of the power of superintendence. In spite of the existence of Article 227, the High Courts would not have power to issue writs but for Article 226.

11. By Article 32 the Supreme Court has the power of issuing writs for certain purposes but that does not carry with it a power of superintendence over the authorities to whom writs may be issued, this is due to the absence of any provision in respect of their powers corresponding to Article 227.

12. Again, High Courts may issue writs to executive authorities and even to the Government although admittedly, it has no power of superintendence over these authorities. Thus our Constitution treats the power to issue writs and the power of superintendence as two separate and distinct powers. I therefore, agree with my learned brother, Beg J., that the four appeals are maintainable.

Agarwala, J.

13. The appellants were tried and convicted by a Panchayati Adalat for the commission of an offence under section 426, I.P.C. and each of them was sentenced to a fine of Rs. 50/- They filed a revision against that order before the Sub Divisional Magistrate, but without success. They challenged the decisions of the Panchayati Adalat and the order of the Sub Divisional Magistrate by means of a writ petition under Article 226 of the Constitution and the relief claimed was that the orders of the Panchayati Adalat and the Sub Divisional Magistrate be quashed by the issue of a writ of certiorari. This petition was dismissed by a learned single judge of this Court and the present special appeal has been filed in this Court against that judgment under the provisions of Rule 5 Ch. 8 of the Rules of the Court which runs as follows :- "An appeal shall lie to the Court from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a court subject to the superintendence of the Court, and not being an order made in the exercise of revisional jurisdiction, and not being an order passed or made in the exercise of its power of superintendence, or in the exercise of criminal jurisdiction) of one Judge, and an appeal shall lie to the Court from a judgment of one Judge made in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a court subject to the superintendence of the court, where the Judge who passed the judgment declares that the case is a fit one for appeal."

14. The appeal was put up for a preliminary bearing before a Bench of this Court and the Bench felt considerable doubt whether a special appeal lay in view of the fact that no special appeal lies from the judgment of a single judge of this Court in the exercise of the power of superintendence. The question was whether the learned Judge in deciding the writ application under Article 226 was exercising a power of superintendence or not. The Bench, therefore, referred this case as well as three other cases of at similar nature in which the same question arose for decision to a larger Bench. These cases have now been placed before the present Full Bench and we have been assisted not only by the learned counsel for the appellants but also by Mr. Jagdish Swarup who has argued the case as an amicus curiae.

15. Rule 5 of Ch. 8 of the Rules of the Court bars a special appeal from a judgment of a single Judge in three cases :

(i) when the judgment is passed in the exercise of revisional jurisdiction.
(ii) when it is passed in the exercise of its power of superintendence, and
(iii) when it is passed in the exercise of criminal jurisdiction.

16. It will be noticed that the rule does not mention the Article of the Constitution under which the power of superintendence is exercised. Provided that the power exercised by the learned single Judge is the power of superintendence, a special appeal is barred.

17. The application to the learned single Judge was headed as being under Article 226 of the Constitution. The relief claimed was that the order of the Panchayati Adalat and of the Sub-Divisional Magistrate be quashed. The Panchayati Adalat and the Sub-Divisional Magistrate are Courts and are situated within the jurisdiction of this Court. Under Article 227 of the Constitution this Court has power of superintendence over these Courts. It is conceded that in exercise of the power of superintendence under Article 227 the relief prayed for, viz., that the orders of these Courts be quashed could have been granted.
The power vested in this Court under Article 227 is obviously the power of superintendence as stated in the Article in so many words. It is conceded therefore that if in the heading the petitioner had mentioned Article 227 instead of Article 226 no special appeal would have lain to a Division Bench. The contention, however, is that since the petition was headed as being under Article 226 of the Constitution, the learned single Judge was not asked to exercise his power of superintendence under Article 227, but was asked to exercise his power to issue a writ under Article 226 which is not a power of superintendence and therefore the bar to the institution of a special appeal on the ground of the judgment of the learned single Judge being in the exercise of the power of superintendence does not apply to the present case. In my judgment this contention is not correct.

18. Article 226 refers to writs in the nature of certiorari, prohibition, mandamus, etc. These are English writs and a short historical background may be reviewed in order to understand the true nature of the jurisdiction conferred by Article 226 upon the High Courts.

19. As stated by the Supreme Court in *Election Commission v. Venkata Rao*[1], These writs had their origin in the exercise of the King's prerogative power of superintendence over the due observance of the law by his officials and tribunals, and were issued by the Court of King's Bench habeas corpus, that the King may know whether his subjects Were lawfully imprisoned or not; certiorari, that he may know whether any proceedings commended against them are conformable to the law; mandamus, to ensure that his officials did such acts as they were bound to do under the law; and prohibition, to oblige the inferior tribunals in his realm to function within the limits of their respective jurisdiction.

20. The King's function to issue the prerogative writs was taken over first by the King's Chancellor and then by the King's Bench and later under the Supreme Court of Judicature Consolidating Act, 1925, by the High Court of Justice. In the year 1938 the cumbersome formulae of the prerogative writs were substituted by the simpler procedure of Judicial orders by the Administration of Justice (Miscellaneous Provisions) Act. Thus after the year 1938 the Supreme Court in England does not issue prerogative writs but issues orders with the same object and in exercise of the power of superintendence over inferior courts and tribunals and other officials. The point to be noted here is that the Supreme Court in England exercises this power of superintendence by issue of appropriate orders of the nature of the original prerogative writs not only over inferior courts and tribunals but also over executive officials or authorities.

21. In India before the Government was taken over by the Crown in the year 1857 two separate hierarchies of Courts were functioning. First there were the courts set up by the East India Company. These had power over Indian subjects outside the Presidency Towns. The superior Company Courts were the Sudder Dewanny Adawlut for civil matters and the Sudder Nisamut Adawlut for criminal appeals. For the determination of causes arising within the Presidency towns there were the Supreme Courts at Calcutta, Madras and Bombay established under Acts of the British Parliament and Charters of the Crown. Clause 4 of the Charter of the Calcutta Supreme Court dated March 26, 1774 provided that :

> "And it is our further will and pleasure that the said Chief Justice.......to have such jurisdiction and authority as our justices of our Court of King's Bench have and may lawfully exercise within that part of great Britian called England by the Common Law thereof."

22. As a result of this clause, the Supreme Court was vested with the power of superintendence by issuing prerogative writs not only to Courts subordinate to its appellate jurisdiction but also to other persons and authorities exercising Judicial or quasi Judicial functions. The Supreme Courts at Madras and Bombay were established by Charters containing analogous provisions in the years 1801 and 1823 respectively, vide

[1] AIR 1953 SC 210

clause 8 of the Charter of the Madras Supreme Court and Clause 13 of the Charter of the Bombay Supreme Court. In this way, the principle of superintendence by the Superior Courts was brought to India from the English Law in a limited form. Said Viscount Simon in *Ryots of Garabandho v. Zamindar of Parlakimedi*[2]*,*

> "The remedy of certiorari, in point of principle, is derived from the 'superintending' authority which the Sovereign's Courts, and in particular the Court of King's Bench, possess and exercise over inferior jurisdictions. This principle has been transplanted to other parts of the King's dominions, and operates, within certain limits, in British India."

23. There was no definite relation established between these two systems of Courts. When the Crown took over the government of India in 1857 the necessity of amalgamating the two systems of Courts into one system was felt. The High Courts Act of 1861 was consequently passed abolishing the Company Courts and the Supreme Courts and establishing in their places High Courts in the three Presidency Towns. These High Courts were vested with all the powers which the former Company Courts and the Supreme Courts exercised. Section 9 of the said Act provided :

> "Each of the High Courts to be established under this Act shall have and exercise all such Civil, Criminal, Admiralty, and Vice-Admiralty, Testamentary, Intestate, and Matrimonial

> Jurisdiction, original and appellate, and all such powers and Authority for and in relation to the Administration of Justice in the Presidency for which it is established, as Her Majesty may by such Letters Patent as aforesaid grant and direct, subject however, to such Directions and Limitations as to the Exercise of original, Civil and Criminal jurisdiction beyond the Limits of the Presidency Towns as may be prescribed thereby; and, save as by such Letters Patent may be otherwise directed, and subject and without Prejudice to the Legislative Powers in relation to the Matters aforesaid of the Governor General of India in Council, the High Court to be established in each residency shall have and exercise all jurisdiction and every power and Authority whatsoever in any Manner vested in any of the Courts in the same Presidency abolished tinder this Act at the Time of the Abolition of such last mentioned Courts".

24. In this way the power to issue prerogative writs in the exercise of the power of superintendence over Courts and tribunals and over judicial and quasi judicial authorities and persons within the limits of the Presidency Towns was inherited by the Presidency High Courts from the Supreme Courts, but as held by the Privy Council in AIR 1943 PC 164 (B) the Supreme Courts had no power of superintendence over Courts and officers exercising jurisdiction beyond the limits of the Presidency Towns. Section 15 of the High Courts Act, 1861 remedied this situation partially by vesting in the new High Courts and in other High Courts the power of superintendence over all Courts which may be subject to their appellate jurisdiction throughout the territorial limits of the High Courts. No provision was, however, made for the exercise of the power of superintendence over persons and authorities which could not be designated as Courts and were situated beyond the limits of the Presidency Towns, nor even over Courts which were not-subject to the appellate jurisdiction of the High Courts.

[2] AIR 1943 PC 164

25. The power to issue prerogative writs to the exercise of the power of superintendence which was exercised by the Supreme Court and inherited by the Presidency High Courts was not vested in the non-Presidency High Courts established under the High Courts Act of 1861 or under other subsequent legislative enactments because there were no Supreme Courts exercising the power of superintendence by means of the issue of prerogative writs in their cases.

26. The provisions of Section 9 of the High Courts Act of 1861 were incorporated in Section 106 of the Government of India Act of 1915 and later in Section 223 of the Government of India Act of 1935 and the provisions of Section 15 of the High Courts Act of 1861 were incorporated in Section 107 of the Government of India Act of 1915 but were not fully incorporated in the corresponding provision, namely Section 224 of the Government of India Act of 1935. Under clause 2 of Section 224 the judicial power of superintendence over inferior Courts subject to the appellate jurisdiction of the High Courts was expressly taken away from the High Courts. By legislative enactments the power to issue the writ of mandamus was taken away from the Presidency High Courts and was incorporated in Section 45 of the Specific Relief Act and the

power to issue writs of habeas corpus was also taken away and incorporated in Section 491 of the Criminal Procedure Code.

27. Thus at the time when the present Indian Constitution came into force the position regarding the power of superintendence in the various High Courts was as follows. (1) All High Courts in India had power of administrative superintendence over all inferior Courts subject to their appellate jurisdiction whether situated within the Presidency Towns or outside them. (2) The Presidency High Courts, but not other High Courts, had in addition the power of judicial superintendence by means of issuing prerogative writs of certiorari and prohibition over Courts and tribunals and other authorities or persons situated within the limits of the Presidency Towns. These Courts had further a power under Section 45 of the Specific Relief Act to issue an injunction in the nature of mandamus to persons and authorities within the limits of the Presidency Towns.

28. The Indian Constitution guaranteed certain fundamental rights to the residents of India. It was felt that these rights ought to be enforceable by the superior Courts and it was also felt that the proper method for their enforcement was the supervisory or superintending jurisdiction exercised by the Superior Courts in England, and that in the matter of exercising this power which was hitherto exercised by the Presidency High Courts within the limits of the Presidency Towns in a limited manner, all High Courts in India should be placed on the same footiny and further that their power should not be circumscribed to the issue of prerogative writs only but should be more comprehensive.
This was accomplished by means of three Articles, Articles 32, 226 and 227. In Article 32 the power to issue prerogative writs or directions or orders or any other order or direction was conferred upon the Supreme Court for the sole purpose of enforcing the fundamental rights. Under Article 226 the same power was conferred upon the High Courts not only for the purpose of enforcing fundamental rights but also for all other purposes and under Article 227 judicial and administrative power of superintendence over courts and tribunals throughout their territories was also conferred upon them.
The provisions of Articles 226 and 227 could have been very well incorporated in one Article but since the power of judicial and administrative superintendence over subordinate Courts had been separately mentioned in the various Government of India Acts, the same was with alterations embodied in a separate Article namely Article 227; and the power to issue prerogative writs in the exercise of the power of superintendence which had a separate historical background in India was therefore mentioned in a separate Article. The provisions of Articles 226 and 227 are not identical in all respects. Article 226 empowers the High Courts to issue directions, orders or writs not only over Courts and Tribunals but also over other persons or authorities. Article 227 is confined to the power of superintendence over Courts and Tribunals only and not other persons or authorities. Again, Article 227 confers power of administrative superintendence while Article 226 does nothing of the kind. But though Articles 226 and 227 are not identical in all respects they overlap in one respect, i.e. in the matter of issue of orders or directions or writs to inferior

Courts or Tribunals, and in the present appeals we are only concerned with this part of the power of the High Court under Article 226 and not with the part relating to the issue of orders, directions or writs as against other persons or authorities.

29. The question then is does Article 226 empowering the High Court to issue orders, direction or writs as against inferior Courts and Tribunals confer a power of superintendence or some other power? We have already seen what the Privy Council said in Ryots of Gorabandho's case about the power to issue the writ of certiorari by the Indian High Courts.

30. In AIR 1953 Supreme Court 210 at p. 212 (A) the Supreme Court observed,

> ".....the makers of the Constitution, having decided to provide for certain basic safeguards for the people in the new set up, which they called fundamental rights, evidently thought it necessary to provide also a quick and inexpensive remedy for the enforcement of such rights and, finding that the prerogative writs, which the Courts in England had developed and used whenever urgent necessity demanded immediate and decisive interposition, were peculiarly suited for the purpose, they conferred, in the States' sphere, new and wide powers on the High Courts of issuing directions orders, or writs primarily for the enforcement of fundamental rights, the power to issue such directions, etc. 'for any other purpose' being also included with a view apparently to place all the High Courts in this country in somewhat the same position as the Court of King's Bench in England." (Italics (here into ' ') mine.) These observations were quoted with approval by the Supreme Court in *T. C. Basappa v. T. Nagappa*[3], and it was held that the Indian Courts can "make an order or issue a writ in the nature of certiorari in all appropriate cases and in appropriate manner, so long as we keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law."

Then the Supreme Court, referring to the essential features of the writ of certiorari, observed :

> "The second essential feature of a writ of certiorari is that the control which is

[3]1955-1 SCR 250 at p. 256: (AIR 1954 SC 440 at p. 443)

> exercised through it over judicial or quasi-judicial Tribunals or bodies is not in an appellate but supervisory capacity ...The supervision of the superior Court exercised through writs of certiorari goes on two points......One is the area of inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of law in the course of its exercise."

31. That the jurisdiction of the High Court under Article 226 is supervisory or superintendending in character was again emphasised by the Supreme Court in *Hari Vishnu Kamath v. Ahmad Issaque*[4], The question in that case was whether in view of the provisions of Article 329 (b) of the Constitution the order of the Election Tribunal could be quashed by means of a writ of

certiorari. The Supreme Court observed that Article 329 (b) prohibited the initiation of Proceedings for setting aside an election otherwise than by an election petition presented to such authority and in such manner as provided therein. It then went on to observe :

> "But when once proceedings have been instituted in accordance with Article 329 (b) by presentation of an election petition, the requirements of that Article are fully satisfied. Thereafter when the election petition is in due course heard by a Tribunal and decided, whether its decision is open to attack, and if so, where and to what extent, must be determined by the general law applicable to decisions of Tribunals. There being no dispute that they are subject to the supervisory jurisdiction of the High Courts under Article 226, a writ of 'certiorari' under that Article will be competent against decisions of the Election Tribunals also".

32. Thus according to the Supreme Court the jurisdiction of the High Court under Article 226 is 'supervisory' or what is the same thing, of superintendence'. There is no difference between supervisory jurisdiction or jurisdiction of superintendents. The two words have been used by various Judges interchangeably in this connection. The word 'superintendence' was employed by the Supreme Court in AIR 1953 Supreme Court 210. The word 'supervisory' was used by the Supreme Court in AIR 1955 Supreme Court 233. Lord Holt used the word 'superintendence' while referring to the jurisdiction to issue writs of certiorari and mandamus. Said his Lordship –

> "No court can be intended exempt from the superintendency of the King in this Court of B.R.". (The law quarterly Review, Vol. 72 July 1956, P. 361).

33. In Halsbury's Laws of England, however, the word 'supervisory' is used. While dealing with the proceedings on the Crown side of the Queen's Bench Division it is said in Vol. 11 of Lord Simond's edition at p. 23 that

> "The proceedings described in this Part of this title are those by means of which the Queen's Bench Division exercises its ancient jurisdiction of supervising inferior courts, commanding magistrates and others to do what their duty requires in every case where there is no specific remedy and protecting the liberty of the subject by speedy and summary interposition."

34. The Privy Council used the word "superintendence" in the case of Ryots of

[4] AIR 1955 SC 233

Garabandho (B) already cited above. It is not necessary to multiply further instances.

35. The nature of the power of superintendence as exercised under Article 226 against Courts and Tribunals is the same as exercised under Article 227. The nature of the jurisdiction under Article 226 was explained by the Supreme Court in *Veerappa v. Raman and Raman Ltd*[5]*., A*It was observed.

> "Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice. However extensive the jurisdiction may be it seems to us that it is not so wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decisions impugned and decide what is the proper, view to be taken or the order to be made.

36. The same has been held with regard to the power of superintendence under Section 15 of the High Court Act of 1861 and Section 107 of the Government of India Act of 1915 and Article 227 of the Constitution. Thus in *Waryam Singh v. Amarnath*[6], the Supreme Court pointed out :-

> "This power of superintendence conferred by Article 227 is ...to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors".

37. In *Haripada v. Ananta*[7], it was held that "the power (under Article 227) was not intended for the correction of mere errors but for interference in cases of nonexercise or illegal exercise of jurisdiction or where there is error apparent on the face of the record arising from some defect in the proceeding," or it may be added, "where the inferior Court acts contrary to the principles of natural justice" vide *Motilal v. State*[8], It has been further held that the jurisdiction under Article 223 is to be exercised only in cases of grave dereliction of duty or flagrant violation of law for which no other remedy is available and which would have serious consequences if not remedied: vide *D. N. Banerjee v. P. R. Mukherjee*[9]

38. There is one other reason why the power to issue writs, directions or orders against inferior courts and tribunals under Article 226 must be construed as of the same nature as, and subject to the provisions of, the power of superintendence under Article 227. Under clause (4) of Article 227 the High Courts have no power of superintendence over any court or tribunal constituted by or under any law relating to the armed forces. Thus the Constitution has afforded a protection to the acts of military courts and tribunals. There is no such provision in Article 226. If the High Court in exercise of its power under Article 226 can issue writs, directions or orders against military courts or tribunals, the protection afforded to them by clause (4) of Article 227 will be nullified and rendered nugatory. It
cannot be that the immunity conferred by the Constitution on such courts under one

[5] IR 1952 SC 192
[6] AIR 1954 SC 215
[7] AIR 1952 Cal 526
[8] AIR 1952 All 963
[9] AIR 1953 SC 58

Article is taken away under another Article. If the immunity provided for military courts and tribunals is to be protected, Articles 226 and 227 must be read together in so far as they deal with the power of superintendence over courts and tribunals, and the limitations imposed by clause (4) upon the High Court in the matter of the exercise of the power of superintendence over such courts must govern the exercise of the same power under Article 226 on the ground that Article 227 being a special Article dealing with the power of superintendence over courts and tribunals whereas Article 226 is a general Article dealing with the power of superintendence not only over courts and tribunals but also over all other persons and authorities, it must take precedence over the general provisions of Article 226. I have no doubt that the power vested in the High Court under Article 226 is the power of superintendence in so far as the issue of writs of certiorari, mandamus and prohibition as against inferior courts and tribunals is concerned.

39. I now proceed to consider the objections raised to the above interpretation of Article 226. It is said that in controlling the actions of subordinate courts and tribunals the High Court has larger powers under Article 227 than it has under Article 226 and therefore the jurisdiction exercised under Article 226 cannot be of superintendence. In this connection reference was made to the observations of the Supreme Court in Kamath's case. It was observed by that august Court :

> "It may also be noted that while in a "certiorari' under Article 226 the High Court can only annul the decision of the Tribunal, it can, under Article 227, do that, and also issue further directions in the matter."

40. It should be observed that in this passage their Lordships were comparing the power of the Court in issuing a writ of certiorari under Article 226 with the power of the Court under Article 227. Their Lordships were not considering the power of the Court under Article 226 to issue directions, writs or orders other than the writ of certiorari. So far as the writ of certiorari to quash is concerned its work is destructive only. It simply wipes out an order passed without jurisdiction and leaves the matter at that. But the power of the High Court under Article 226 is not confined to the issue of a writ of certiorari, pure and simple. Its powers are larger as has been stated in other cases by the Supreme Court. For instance, in *Rashid Ahmad v. Municipal Board, Kairana*[10], the Supreme Court observed that the powers given to the Supreme Court under Article 32 are much wider and not confined to issuing prerogative writs. The same may be stated about the power of the High Court under Article 226. Although in Kamath's case the Supreme Court quashed the decision of the Election Tribunal by a certiorari under Article 226 and set aside the election of the first respondent in exercise of the powers conferred under Article 227, it is respectfully submit ted that both reliefs could have been granted by issuing an appropriate order under Article 226. But it may be assumed that in the matter of superintendence over inferior court and tribunals there is larger power under Art 227 than under Art 226; this however does not solve the problem whether the power under Article 226 is of superintendence or otherwise.

41. It is said that while Article 226 authorises the issue of writs, Article 227 does not

[10] AIR 1950 SC 163

confer that power upon the Court and that therefore the two powers cannot be Powers of superintendence. Reference in support of the view is made to the following observations of the Privy Council in AIR 1943 PC 164 at P. 179 (B) :

> "There is therefore neither logic nor necessity to justify any doctrine to the effect that the right of superintendence includes a right to issue a writ of certiorari."

This passage torn out of its context is liable to mislead the reader. It has to be read in the light of the preceding remarks of the Privy Council. The question in the case was whether the High Court at Madras could issue a writ of certiorari for quashing an order of the Board of Revenue which though situated within the limits of the High Court's original jurisdiction was disposing of an appeal in a litigation which had originated in the Court of Rent Officer situated beyond those limits and the cause of action of which related to land and persons situated beyond those limits. The case was argued from two aspects (1) whether the Court could issue the writ in exercise of the Power possessed by the former Supreme Court and Inherited by the High Court under Section 9 of the High Courts Act 1861 (later Section 106 of the Government of India Act, 1915), and (2) whether the Court could issue the writ in exercise of the power of superintendence conferred on the Court by Section 15 of the High Courts Act, 1861 (later Section 107 of the Government of India Act, 1915). The Privy Council held that the High Court could not issue the writ in exercise of the power inherited by it under Section 9 of the High Courts Act 1861 because that jurisdiction was confined to causes and actions arising within the limits of the Presidency Town of Madras. Then it examined the second argument whether the writ could be issued in the exercise of the power of superintendence under Section 15 of the High Courts Act 1861. It was contended by counsel that the power of superintendence conferred on the High Court in relation to Courts subject to the High Court's appellate jurisdiction was exercisable over the Board of Revenue. With regard to this argument their Lordships observed :

> "The power given by Section 15 is given by way of succession to the Sudder Dewani Adalat, as is sufficiently shown by the reference to the appellate jurisdiction. If the Supreme Court is not shown to have possessed jurisdiction to issue certiorari to the Board of Revenue in such a case as the present their Lordships are not Prepared to read any similar power into the Indian High Courts Act, Section 9 whereof is Plain enough. It is not, and cannot be, suggested that the Sudder Dewani Adalat at any time issued writs of certiorari to individuals or official bodies exercising judicial functions.

Unless taken away by special enactment, there is a prima facie right in any person aggrieved by an order made in excess of jurisdiction to challenge it by a suit in the ordinary civil Court subject, as regards specific relief, to the terms of the Specific Relief Act (1 of 1877) but if this right has been taken away by the Legislature in any case in which the Board of Revenue or any other body

exercises judicial functions it may well be that the only method of challenging a judicial determination on the ground of jurisdiction is by appeal to His Majesty in Council."

42. Thus their Lordships negatived the contention that under Section 15 the High Court could issue a writ of certiorari to Courts or tribunals which were not subject to the appellate jurisdiction of the High Court and it was in this connection and after observing what has been stated above that they said that

> "there is therefore neither logic nor necessity to justify any doctrine to the effect that the right of superintendence includes a right to issue a writ of certiorari", meaning thereby that the right of superintendence conferred upon the High Court under Section 15 in respect of Courts subject to the appellate jurisdiction of the High Court did not include a right to issue a writ of certiorari to Courts or tribunals which were not subject to that jurisdiction.

If it were that in exercise of the power of superintendence conferred by Section 15 of the Indian High Courts Act of 1861 a writ of certiorari could not be issued even against Courts subject to the appellate jurisdiction of the High Court that would have been a short answer to the contention urged by counsel, and the fact that their Lordships did not repel the argument of counsel on this short ground shows that they considered that the power of superintendence over Courts subject to the appellate jurisdiction of the High Court did include the power to issue orders in the nature of writs of certiorari quashing the orders of the Court below, though not against Courts and tribunals not subject to the appellate jurisdiction of the Court.

43. It is true that under Section 15 of the Indian High Courts Act of 1861 and afterwards Under Section 107 of the Government of India Act of 1919 and now by Article 227 the power to issue 'writs' is not specifically mentioned; but this is immaterial as in the exercise of the power of superintendence the High Court has power to issue orders the effect of which is the same as is secured by the issue of prerogative writs. There is nothing in the form in which the order is to be issued. It is the substance of the power that is material for the present purpose in considering whether the order made by the learned Single Judge is made in the exercise of the Power of superintendence. Even under Article 226 of the technical forms of writs are not generally used in this Court. When we direct a writ to be issued, what is issued is an order or direction in much the same way as they are now issued by the English Courts. Whether the technical form of prerogative writs is used or whether an order or direction having the same effect is used, the nature of the power exercised in both the cases is the same, namely, of superintendence.

44. It has been urged that the power to issue writs under Article 228 is original jurisdiction and not appellate or revisional jurisdiction. That is so. But so is the power of superintendence under Article 227. That also is original and is neither appellate nor revisional. The view of the Madras High Court in *In re, V. Tirupaliswamy Naidu*[11], that the power under Article 227 is revisional is, with respect, not acceptable. The fact that in both cases the jurisdiction is original and not

appellate or revisional does not mean that the power is not of superintendence. The two terms are not contradictory. They are classifications of the subject of jurisdiction from different angles. Though the power of superintendence is original it is not of the same kind as is possessed by the ordinary civil Courts of original jurisdiction. The power exercised by the ordinary civil Courts of first instance is a regular power to pronounce upon the rights of the parties and to give them appropriate reliefs. On the other hand the power of superintendence is a limited power exercisable in the manner explained by the Supreme Court in AIR 1952 SC, 192 .

[11] AIR 1955 Mad 287

45. It was urged that if the power under both Articles 226 and 227 was that of superintendence there would be overlapping and one of the two Articles would be redundant. This argument is not sound. It has already been explained why the power of superintendence was embodied in two Articles. It may further be pointed out that it is not unknown that Legislature do confer powers under two provisions by way of abundant caution. This can be illustrated by another provision of the Constitution namely Article 225. Under that Article the existing powers of the High Courts are inherited by the High Courts under the Constitution. The existing power of the High Courts included the power of administrative superintendence under section 224 of the Govt. of India Act 1935 over Courts subject to the appellate jurisdiction of the High Court. Why, it may be asked, has this power been again repeated in Article 227 ? The answer is that it was necessary to repeat it because all the subject-matters though involving in some resPects a common power were nevertheless not co-terminous in all respects.

46. It was urged that the approach of the Court under the two Articles is different. It is said that while in the case of Article 226 the Court enforces the legal rights of a party, under Article 227 it discharges an obligation to see that the Subordinate Courts do not act beyond their jurisdiction. This argument is based upon a misconception of the powers under Article 226. Under that Article, the Court exercises its jurisdiction for two purposes (1) for the enforcement of fundamental rights, and (2) for any other purpose.

In issuing a writ of certiorari or Prohibition against a Court of law, the Court is not normally enforcing a party's fundamental right, but is exercising the power for "another purpose, namely, for the purpose of seeing that the inferior Courts do not act beyond their jurisdiction etc. In so far as the Court issues a writ of certiorari or Prohibition against a Court of law, the approach of the Court is exactly the same as in issuing an order under Article 227.

47. As regards the argument that this High Court has not framed any rules in respect of applications under Article 227 whereas it has framed rules under Article 226 it is enough to say that the same rules are followed in practice for petitions whether they are presented under Article 226 or under Article 227. In any case the argument hardly answers the question whether the jurisdiction exercised under Article 226 to issue writs of certiorari etc., to Courts and tribunals is in the exercise of the power of superintendence or not.

48. The argument that the power in England to issue prerogative writs had its origin in the prerogative of the King whereas the power under Article 226 is created by the Constitution has no bearing upon the nature of the Power exercised both in England and in India. Though the

origin of the power in England was the prerogative of the King which was supposed to be exercisable on behalf of the King by the Judges, it is now a statutory power and is no longer exercised on the basis of the King's prerogative and the prerogative writs are not now issued and in their stead judicial orders are now issued; but that fact has not changed the nature of the power exercised by the English Courts.
It is still the same power of superintendence. Similarly it is immaterial that the Power under Article 226 is conferred by the Constitution. What one has to see is what is the nature of the power.

49. Another argument was that under Article 32 which employs the same language as Article 226, the Supreme Court has no power of superintendence over the High Courts and therefore under Article 226 also the High Courts do not exercise power of superintendence. It is true that the Supreme Court does not exercise a general power of superintendence over the High Courts in India. This is because Article 32 is confined to the enforcement of fundamental rights under Chap. III of the Constitution and these rights are enforceable against the State, or executive authorities or officials Or other persons, but not against Courts of law (with the exception of Article 20) vide the definition of the word 'State' in Article 12, and this is the reason why the Supreme Court has no general power of superintendence over the High Courts as is possessed by the High Courts under Article 227 or under Article 226. Article 226 is wider in scope than Article 32 because the directions, orders or writs mentioned therein can be issued not only for the enforcement of fundamental rights but also for "any other purposes". The argument therefore that because under Article 32 the Supreme Court has no general power of superintendence over the High Courts the High Courts also do not exercise power of superintendence under Article 226 is not sound.

50. It was urged that if no appeal were provided for from the judgment of a Single Judge when he exercises the power under Article 226 it would work hardship on the litigant because he has no right of appeal to the Supreme Court from such a judgment under Article 133 (3) of the Constitution. This argument does not appeal to me. Admittedly the order Prayed for in the present four appeals could have been made under Article 227 and if it had been so made there would have been neither a special appeal to a Division Bench nor an appeal to the Supreme Court under Article 133 (3) of the Constitution. Apparently this Court in its rule-making capacity considered that in the matter of exercise of the power of superintendence by a Single Judge in respect of the decisions of inferior Courts and tribunals the matter should rest there without any further appeal. After all, there should be an end of litigation somewhere. In the majority of cases decisions from the lower Courts generally come to the High Court in the exercise of the power of superintendence only after no less than two, and in the case of revenue Courts three, Courts have sifted the matter. The bane of Indian Litigation, in the opinion of many, is (that the Indian Law provides for too many appeals with consequent delay in the final disposal of cases. The jurisdiction of the Single Judge is under the rules confined to cases of comparatively less importance or valuation and therefore if in its collective wisdom the High Court thought when it

made the aforesaid rule that there should be no further appeal from the decision of a Single Judge when he makes an order in the exercise of his power of superintendence one cannot be sure that the rule really inflicts any hardship on a litigant. Even if there is any hardship it can be easily remedied by a provision in the rules that applications under Articles 226 and 227 can be made only to a Division Bench and not to a Single Judge. In any case there is always a right of special appeal under Article 136 to the Supreme Court, and if the judgment of the Single Judge involves a substantial question of law as to the interpretation of the Constitution an appeal to the Supreme Court is provided for under Article 132, this factor, however, cannot be any criterion for deciding the nature of the power exercisable by the High Court under Article 226.

51. It appears to me that if effect is given to the contention put forward on behalf of the appellants the result would be that in every case by the simple device of heading an application as being under Article 226 instead of its being under Article 227 the salutary provisions of the rule can be evaded and nullified. I do not think that the rule-making authority intended any such result.

52. There is nothing in the Andhra case in *Venkatanarayana v. Ramaswamy*[12], or the Patna case *Nakshed Bhagat v. Jire Khan*[13], or the Bombay or Allahabad or Calcutta cases cited in the judgment of my brother Beg J., to show that the power exercised by the High Court under Article 226 qua Courts and tribunals is not of superintendence even though there may be differences between the extent of the jurisdiction under Articles 226 and 227. The view of the Courts in *Ramayya v. State of Madras*[14], and in Chairman, Budge Budge *Municipality v. Mongru Mia*[15], that an appeal lay against the judgment of a Single Judge while exercising the power under Article 226 can have no bearing upon an interpretation of R. 5 of Chap. VIII of the Rules of this Court because the provisions of the relevant clause of the Letters Patent in their cases were different.

53. I may, however, observe that the power of superintendence as mentioned in R. 5 of Chap. VIII of the Rules of this Court is intended to refer to orders made in respect of decisions of proceedings of Courts of law or judicial tribunals and not in respect of acts of executive authorities or other officials or persons. I should not be supposed to hold that an appeal would not lie from the judgment of a Single Judge in the exercise of the power under Article 226 when the judgment is not directed against an order or proceeding of a Court of law or judicial tribunal.

54. I would therefore hold that the special appeals in all the four cases are not maintainable and would therefore reject them.

Beg, J.

55. Four Special Appeals, namely Special Appeals Nos. 53, 57, 76 and 105 of 1956 have been fixed before us for the determination of the preliminary question whether the said appeals are maintainable under Chap. VIII, R. 5 of the Rules of Court, 1952. For the purpose of the determination of this matter, it is not necessary to mention all the facts relating to these cases.

The only relevant facts that may be borne in mind in this connection are that all the aforementioned four appeals arise out of Writ petitions filed under Article 226 of the Constitution of India. Special Appeal No 53 of 1956 arises out of Writ Petition No. 96 of 1955. In this Writ petition, the applicants challenged an order of a Panchayati Adalat passed under the U. P. Panchayat Raj Act, and prayed for the issue of a writ of certiorari to quash the said order. Special Appeal No. 57 of 1956 arises out of Writ Petition No. 1275 of 1955. In this writ petition the applicants challenged an order passed by the Board of Revenue, and prayed for the issue of a writ of certiorari, or any order, or direction in the nature of the writ, for quashing the said order of the Board of Revenue.

Special Appeal No 76 of 1956 arises out of writ petition No. 168 of 1956. In this writ Petition also the applicants prayed for the issue of a writ in the nature of certiorari for quashing of a judgment of the Board of Revenue. Special Appeal No. 105 of 1956 arises out of writ petition No. 92 of 1956. In this writ petition, the applicant challenged a decision of the Labour appellate Tribunal, and prayed for the issue of a writ of certiorari, or other suitable writ or direction quashing the decision of the Labour Appellate Tribunal.

56. All the aforementioned writ petitions were dismissed by a learned Single Judge of this Court. Aggrieved with the said order of dismissal, the petitioners filed an appeal in this

[12] AIR 1955 And 40 [14] AIR 1952, Mad 300

[13] AIR 1955 Pat 118 [15] AIR 1953 Cal 433 (SB)

Court under Chap. VIII, Rule 5 of the Rules of the High Court at Allahabad. They were put up for admission before a Division Bench of this Court. In view of the wording of Chap. VIII, R. 5, the question whether the aforementioned four appeals were maintainable at all under the said provision was considered to be a doubtful one. Accordingly, all the four appeals were connected, and the question whether the said appeals could be entertained under Chap. VIII, R. 5 of the rules made by this Court was referred to a larger Bench. They were accordingly fixed before this Bench, and we have heard the learned counsel for the appellants in all the cases on the question of the maintainability of these appeals.

57. Chapter VIII, R. 5 of the Rules of Court 1952, provides as follows :

> "An appeal shall lie to the Court from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the Court, and not being an order made in the exercise of revisional jurisdiction, and not being an order passed or made in the exercise of its power of superintendence, or in the exercise of criminal jurisdiction) of one Judge, and an appeal shall lie to the Court from a judgment of one Judge made in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the Court, where the Judge who passed the judgment declares that the case is a fit one for appeal."

58. The above rule covers two classes of cases. In the first class of cases, party is entitled to file an appeal without obtaining a declaration from the Judge who passed the judgment that the case is a fit one for appeal. In the second class of cases, an appeal is maintainable only if the Judge who passed the judgment declares the case to be a fit one for appeal.
59. In the present case, all the appeals belong to the first category. These are dealt with in the first part of this rule which is the portion relevant for the purposes of the Present case. According to it, a special appeal would lie from the judgment of one Judge except in the following four cases :

> (i) Where the order passed is one made in exercise of the appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of this Court;
> (ii) Where the order passed is one made in exercise of revisional jurisdiction;
> (iii) Where the order passed is one made in exercise of the power of superintendence of this Court; and
> (iv) Where the order passed is one in exercise of criminal jurisdiction.

60. For the purposes of the present case we are only concerned with the third exception mentioned above. All these applications were made under Article 226 of the Constitution. The question that has arisen before us is whether the orders passed by the learned Single Judge dismissing these applications were Passed or made in exercise of the power of superintendence of this Court. If the power exercised by this Court under Article 226 in the aforementioned cases is a power of superintendence, then obviously all the aforesaid cases will be hit by the provisions of Exception No. (iii) above, and the appeals will have to be dismissed in limine.
61. Having heard the counsel appearing in the cases, I am of opinion that the learned Single Judge, while dismissing the said petitions under Article 226 of the Constitution, was not acting in exercise of the power of superintendence conferred on the High Courts under Article 227 of the Constitution. Articles 226 and 227 of the Constitution are placed in juxta position. Marginal note of Article 226 is "Power of High Courts to issue certain writs." Article 226 runs as follows :

> "226 (1) Notwithstanding anything in Article 32, every High Court shall have Power, throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority, including in appropriate cases any Government within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them for the enforcement of any of the rights conferred by Part III and for any other purpose.
> (2) The power conferred on a High Court by clause (1) shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Article 32."

62. Article 227 follows immediately after Article 226. Its Marginal Note is "power of superintendence over all Courts by the High Court." Clause (1) of the said Article states that :

> "Every High Court shall have superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction."

clauses (2) and (3) of the said Article relate to certain administrative powers which the High Court is empowered to exercise over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction. Clause (4) of the said Article exempts Courts or tribunals constituted by or under any law relating to the Armed Forces from the power of superintendence conferred on the High Court under this Article.

63. At the very outset what strikes one is that there are two separate Articles in the Constitution dealing with two distinct matters one which is described in the marginal note as the power to issue writs and which is dealt with in Article 226, and the other which is differently described in the marginal note as the power of superintendence and which is dealt with in Article 227. The very fact that the Constitution contains two separate provisions in respect of two powers which are described differently in two separate sections, which stand next door to each other, would indicate that the framers of the Constitution must have contemplated two separate and distinct powers, and that the power to issue writs was considered by them as a power distinct and separate from the power of superintendence. This conclusion would be supported by the well known rule of construction that an Act should be so construed as to avoid redundancy or surplus age. This rule is stated in A. S. Chaudhri's book of Constitutional Rights and Limitations, Vol. 1, (1955 Edn.) at page 17, in the following words :

> "The settled canon of construction is that a statute ought to be so construed that no clause, sentence, or word shall be superfluous, void or insignificant. Courts lean against constructions which make words unnecessary in an Act and, unless the construction leads to an absurdity, no portion of the statute should be ignored or treated as meaningless or redundant.'

64. It is further stated :

> "That a section in an Act is a surplus age is a conclusion which should be arrived at with great caution in any case and it falls for still greater caution when we find that the two sections, one of which is said to be a surplus age, are actually contiguous to each other in the Act, and neither could by any possibility have been overlooked when framing the other."

65. The numerous English and Indian cases on which the above rule is based are referred to therein.

66. The word "superintendence" is not used in Article 226 at all. Similarly, the word "writs" is not referred to in Article 227 at all.

67. The observations of N. J. Wadia J., in a Bench case of the Bombay High Court reported in *Raghunath Keshav Khadilkar v. Poona Municipality*[16], are also relevant in this connection. Referring to the analogous provisions in the Government of India Act, 1935, the learned Judge made the following observation :

> "The fact that the revisional powers of the High Court over subordinate Courts and the power to issue writs of certiorari are covered by different sections of the Act, suggests that the two powers are different in origin and extent, and supports the contention that the issuing of writs of certiorari is not done in the exercise of the revisional jurisdiction of the High Court."

68. In this connection it is relevant to note that the rules of the High Court under which the appeal is said to be barred were framed in the year 1952. The Constitution had already come into force before that. While defining the area of exemption in Chap. VIII, R. 5, the rule makers mentioned orders passed or made in exercise of the "power of superintendence" as one of the excepted categories. The words "power of superintendence" are an exact reproduction of the words "power of superintendence" contained in the marginal note of Article 227. While they adopted this method of transplantation in respect of Article 227, there appears to be no reason why, if they wanted to include power to issue certain writs "also within the area of exemption, they should not have specifically mentioned the same also in Chap. VIII R. 5. In this connection it is also noteworthy that they have in Chap. VIII, R. 5, mentioned the various powers in great detail. Thus they have clearly specified therein that a judgment not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the Court, and not being an order made in the exercise of revisional jurisdiction, and not being an order passed or made in the exercise of its power of superintendence, or in the exercise of criminal jurisdiction is also included within the exempted area. In spite of this minuteness of detail and clarity of specifications, the fact that they have refrained from expressly mentioning therein the orders passed in exercise of writ jurisdiction as one of the exempted items, can only indicate that they did not want to bar the right of appeal in such cases.

[16] AIR 1945 Bom 7

69. An analysis of the two Articles would also bear out the conclusion that the powers conferred under them are distinct and separate. A perusal of Article 227 would indicate that the power of superintendence conferred on the High Court is a power that is confined to Courts and tribunals in relation to which it exercises jurisdiction. On the other hand, the power conferred on the High Court under Article 226 is not a power that is confined to Courts and tribunals, but it extends to any person or authority including in appropriate cases any Government within the territorial jurisdiction of the High Court. Under Article 226, therefore, the High Court can issue writs, orders or directions not only to Courts or tribunals over which it has power of superintendence, but also to other persons and authorities including the Government over which it has no power of

superintendence. It is true that under this provision orders can also be issued to Courts and tribunals over which the High Court has power of superintendence, but the fact that the use of this power is extended to persons and bodies over which the High Court has no power of superintendence would, to my mind, indicate that the Power contemplated by the framers of the Constitution for the purpose of this Article was not the power of superintendence.

70. Further, the power of superintendence contemplated under Article 227 is a double power. It comprises not only judicial but also administrative control over bodies over which it is exercised. On the other hand in the power contemplated under Article 226 of the conception of administrative control over bodies over which it is exercised is conspicuous by its absence. The control is confined to the judicial aspect only. The relationship contemplated in the former case is both judicial and administrative, whereas in the latter case, it is only judicial. The relationship, therefore, between the High Court and the body superintended under Article 227 is a closer one than the relationship between the High Court and the bodies contemplated under Article 226. From this aspect, the control in the former case being stronger and tighter can be characterized as of a superintending nature; whereas the control in the latter case being weaker and more loose can be characterized as merely supervisory.

71. In this connection reference might be made to a case reported in A I R 1955 S C 233, in which their Lordships of the Supreme Court held that the Court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. It is significant to note that their Lordships of the Supreme Court characterised the power under Article 226 merely as supervisory power and not a power of superintendence. The word "Superintendence" in Iyer's Law Lexicon means "the act of superintending, care and oversight, for the purpose of direction, and with authority to direct." In Murray's New English Dictionary, Vol IX (1919 Edition) meaning No. 1 of the word 'superintend' is given as follows :

> "1. Trans. to have or exercise the charge or direction of (operations or affairs); to look after, oversee, supervise the working or management of (an institution, etc)."

72. On the other hand, meaning No. 1 of the word 'supervise' in the same dictionary is given as follows :

> "1. To look over, survey, inspect, to read through; peruse."
> 'Superintendence' therefore implies a closer connection than 'supervisory'. The word 'supeperintendence' implies a controlling hand in the direction, management and charge of the body superintended. It is a control not only over the outer judicial working, but also over the inner administrative machinery. This is the power which is conferred on the High Court over all Courts and tribunals under Article 227. On the other hand, the word 'supervisory connotes a more lax kind of control. It is control merely over the outer judicial working of bodies and not over their inner administrative machinery.

It is a power which apart from Courts tribunals, the High Court also exercises over the Government and other bodies over which it has no administrative control. This is the power conferred under Article 226. In the above case it may also be noted that while resorting to Article 226 for the issue of the writ of certiorari, in the end their Lordships observed as follows :

> "Under the circumstances, the proper order to pass to quash the decision of the Tribunal and remove it out of the way by 'certiorari' under Article 226, and to set aside the election of the first respondent in exercise of the powers conferred by Article 227."

73. This sentence would indicate that their Lordships thought that the two powers were distinct, for, whereas they resorted to Article 226 for one part of their order, they invoked Article 227 for the other. The two Articles might be supplementary to each other in some cases, but that does not mean that the power exercised under them is an identical one in all cases. It is also significant to note that they characterized the supervisory power exercised under Article 226 as one which is not appellate. This would indirectly support the view which is expounded in the latter part of the judgment to the effect that the power exercised under Article 226 is not appellate but original.

74. It is true that in certain cases the power of superintendence exercised by the High Court under Article 227 may overlap the power of the High Court to issue directions under Article 226. Thus, it might be so in some cases relating to Courts and tribunals. The fact, however, that a similar relief can be obtained by an exercise of power under either of the two sections does not mean that the power exercised under the two sections is the same. Thus, for example, there might be cases in which power of revision under Section 115, of the Civil Procedure Code, power of superintendence under Article 227 of the Constitution as well as writ power conferred under Article 226, might all be applicable for getting the same relief. That would not, however, mean that the powers under all the aforesaid sections are the same. In this connection the following observations made by Rajamannar C. J., in a Bench decision of the Madras High Court reported in In re, Gangalakurthi Pattisam, AIR 1954 Madras 573 are relevant :

> "We have seen how the learned Judges have held that the same order could well be revised both under Section 662 of the then Civil Procedure Code (Now Section 115) and Section 107, Government of India Act or Section 15 of the Charter Act. In the same way, it might be that there is some overlapping between Articles 226 and 227. Chakravarty J., in AIR 1952 Calcutta 526, to which reference was made earlier does not notice this overlapping between the two articles. But it is not difficult to conceive of cases to which Article 226 may not be applicable, tout Article 227 might be applied.

Take the case for instance, where the High Court feels that in the interest of justice and to avoid multiplicity of proceedings there should be a stay of proceeding pending before a tribunal till the disposal of a suit pending in a civil Court. Article 226, according to the Supreme Court, cannot

be invoked for the sole purpose of obtaining an interlocutory order. Vide *State of Orissa v. Madan Gopal*[17], But under Article 227 in exercise of the power of superintendence, the High Court may well direct such a stay."

75. The most marked difference between Article 226 and Article 227 consists in the method of approach that the Court would adopt in the two cases. Thus, the Court would not act under Article 226 unless there is a breach of some fundamental or other legal right of the party concerned. As observed by his Lordship Kania C. J., in a decision of the Supreme Court reported in AIR 1952 Supreme Court 12.........the existence of the right is the foundation of the exercise of jurisdiction of the Court under this Article." *Charanjit Lal v. Union of India*[18], also contains observation to the same effect. Both under Article 226 as well under Article 32 which are the two Articles relating to writ powers, the Court acts for the enforcement of legal rights. The only difference is that whereas under Article 32 the enforcement of rights is confined to fundamental rights enumerated in Part III of the Constitution, the enforcement of rights under Article 226 is not confined to fundamental rights only, but extends to other legal rights as well. On the other hand, while acting under Article 227, the Court is not so much concerned with the enforcement of the legal rights of the parties as with the discharge of its own obligation irrespective of the rights of the parties. As observed in *Jodhey v. State*[19], in reference to clause (1) of Article 227 :

> "There are no limits, fetters or restrictions placed on this power of superintendence in this clause and the purpose of this Article seems to be to make the High Court the custodian of all justice within the territorial limits of its jurisdiction and to arm it with a weapon that could be wielded for the purpose of seeing that justice is meted out fairly and properly by the bodies mentioned there."

76. Thus, while under Article 226 the primary concern of the Court is the duty that it owes to the parties viz., the enforcement of their legal right. On the other hand under Article 227 the primary concern of the Court is the duty that it owes to itself viz., the sacred discharge of its obligations as the custodian of the administration of justice irrespective of the rights of the parties. No doubt the one is involved in the other. The difference in the two Articles, however, lies in the predominance of the one over the other. The line of demarcation is no doubt a fine one but it is clear, and is indicative of the intention of the Constitution makers. It is for this very reason that whereas under Article 227 of the Constitution the Court can act suo motu under Article 226 the Court only acts on an application of the party.

77. The intention of the framers of the rules of the High Court 1952 also appears to be to treat Article 226 on a footing different from Article 227. This is borne out by the fact that

[17] AIR 1952 SC 12. [19] AIR 1952 All 788

[18] AIR 1951 SC 41

whereas they framed elaborate rules relating to the issue of various writs under Article 226, no such rules have been framed for action under Article 227. The rules framed under Article 226 are contained in Chapters XXI and XXII of Rules of Court, 1952. Rule 1 of Chap. XXII

relates to the form of application. Rule 2 lays down the method of the service of notice. It further requires that notice of the application shall be given not only to the parties to the proceedings, but also to the Court or officer concerned. It also enjoins the filing of an affidavit along with the application. Rule 3 relates to the costs and giving of security before issue of notice. There are other rules relating to the procedure to be observed and evidence to be imported in such cases. Thus there is the rule relating to the admission of affidavits as pieces of evidence on which the case may be decided. On the other hand, no such rules are framed under Article 227 of the Constitution. The position is deliberately left flexible with a view to provide for a greater discretion on the part of the Court and a larger elasticity in the method of procedure, for here the Court is approached and moved on a different level. Under Article 227 the Court is moved to action by circumstances which shock the conscience of the Court. The Court finds that the Position created is one of negation of law and justice. The Court finds itself faced with a situation fraught with danger to the administration of justice. It finds the administrative foundations of justice shaken or its judicial structure imperiled. It feels that the circumstances are such that a failure on its part to act in the matter would be tantamount to the abdication of its role as the custodian of justice within the limits of its territorial jurisdiction. In such a situation the Court may lend its hand of protection to the parties concerned, but the primary concern of the Court is self protection or the vindication of the exalted position of trust and responsibility assigned to it under Article 227. On the other hand, under Article 226 the primary concern of the Court is the protection of the rights and the interests of the parties concerned. Both the sections might apply in some cases, but the fact that their jurisdiction intersects on certain points does not mean that jurisdiction itself is the same. The existence of such a common ground does not mean that the line of demarcation between the two is demolished. The relief under Article 226 might in certain cases be claimed as a matter of right specially when the right in question is a fundamental one. On the other hand, no party can assert claim to a relief under Article 227 as a matter of right. The matter is left entirely within the domain of discretion of the Court.

78. In this connection another difference that is to be noted is that whereas Article 226 is self restrictive, Article 227 is not. There are indications in Article 226 itself of the restrictions within which the Court should act, and the limits by which the exercise of this power should be circumscribed. In issuing writs, the Court bears in mind the broad general principles which govern the various writs enumerated therein. On the other hand, there are no such indications at all under Article 227. As observed in *Jodhey v. State* cited above "there are no limits, fetters or restrictions in the power of superintendence" envisaged in Article 227. The limits under Article 227 are not imposed by the Article itself as in the case of Article 226, but are, on the other hand, self-imposed limits prompted by a feeling of wise self-restraint which a Court possessing a vast power of this nature must of itself necessarily impose on its exercise.

79. That there is a real distinction between Articles 226 and 227 has also been emphasized in a number of cases. In AIR 1955 Andhra 40 it was held that :

"The scope of Article 227 is entirely distinct and different from Article 226, Article 227

> confers upon the High Court a power of supervision over all judicial matters decided by any Court or Tribunal within the State. Hence, the dismissal of a writ petition under Article 226 cannot operate as a bar to the maintainability of an application under Article 227, In re, Annamalai Mudaliar, AIR 1953 Madras 362 and AIR 1954 Supreme Court 215 followed." (Head note)

In AIR 1955 Patna 118 the following observations are relevant :

> "Furthermore, Article 227 has no concern with the writs at all. It is concerned with providing the High Courts with power to superintend over the work of the Courts and tribunals. It is Article 226 which is concerned with the writs and it is necessary, in my opinion, to keep the two Articles distinctly in mind. There may be cases where both these articles may apply and there may be cases where only one of them may apply. It cannot be said that whenever there is a case under Article 227 of the Constitution, Article 226 must necessarily apply."

80. In *Tukaram Piraji v. Motilal Poona Mills, Ltd*[20]*.,* which is a Bench decision of the Bombay High Court, it was observed by Chagla C. J., that the powers of High Court under Article 227 of supervision are much wider than powers to issue writ under Article 226.

81. In *Ram Prasad v. State*[21]*,* it was held that :

> "Under the rules of the Allahabad High Court, applications under Article 226 and those under Article 227 of the Constitution are treated and dealt with differently. There are special rules for the institution and disposal of applications under Article 226, while there are no such rules for applications under Article 227."

82. In *Bhagirami v. The State*[22]*,* which is a Full Bench decision and AIR 1952 Allahabad 963 which is a Bench decision of the Allahabad High Court, it was observed that Articles 226 and 227 are not meant for identical situations. The view, however that Article 227 has a restricted application, and the judicial power given therein is ancillary to the administrative power appears to be open to doubt in view of the pronouncement of their Lordships of the Supreme Court in AIR 1954 Supreme Court 215. Clause (2) of Article 227 which deals with the administrative powers states that the power given therein is "without perjudice to the generality of the foregoing provision" i.e. Clause (1). The general power of superintendence, which includes judicial power is given in Clause (1). The amplitude of the general power conferred under Clause (1), however, does not appear to be curtailed by the administrative power conferred in Clauses (2) and (3). In fact, Clauses (2) and (3) are only illustrative of the general power of superintendence given under clause (1) a power which is a wide one and which embraces the domain of both the judicial as well as the administrative field.

83. It is, however, argued that, at any rate, so far as the Courts and tribunals are concerned, the power to issue writs, orders or directions against them under Article 226

[20] AIR 1954 Bom 171
[21] AIR 1952 All 843
[22] AIR 1955 All 113

constitutes an exercise of the power of superintendence. I am, however, not inclined to]agree with this contention, as it leads to an anomalous position. It means that Article 226 combines within itself two inconsistent powers - one being a power of superintendence which is exercised by the High Court over Courts and tribunals and the other being not a power of superintendence and which is exercised by the High Court over Government and other authorities and persons which are not Courts and tribunals. It appears to be more inconsistent to hold that Article 226 deals with one power only, and not with two different powers. At any rate, there is no warrant for any such distinction in the section itself.

84. This conclusion is further supported by a reference to Article 32 in which also a similar power to issue directions orders or writs is conferred on the Supreme Court. The writ power conferred on the Supreme Court under Article 32 is obviously quite independent of the power of superintendence. For whereas the Supreme Court does possess the power to issue writs or directions or orders both against Courts and tribunals as well as against the Government and other authorities, yet it has not been given any power of superintendence either over the former or the latter. A perusal of Article 32, therefore, indicates that in the mind of the Constitution makers, the power to issue writs or directions or orders in the nature of writs was contemplated as a power quite divorced from the power of superintendence. Article 32 thus provides an illustration of a complete rupture between the power to issue writs and the power of superintendence. It indicates that the power to issue writs was not conceived by the Constitution makers as a branch of the power of superintendence or as an inalienable appendage to it. Article 32 thus supports the conclusion that the writ power and power of superintendence are two separate Powers under the Constitution, and the conferment of one does not necessarily carry with it the conferment of the other.

85. A historical retrospect of the power of superintendence contemplated under Article 227 of toe Constitution confirms the same conclusion. It indicates that Article 227 embodies within itself merely a continuation of an old power, which had been possessed by Courts in India throughout the various stages of legislative history in an amplified or restricted form since long before the Constitution. On the other hand, Article 226 opens out a new realm of power. It is not a continuation of any old power. At any rate, so far as the Allahabad High Court is concerned, Article 226 has carved out an entirely a new area of jurisdiction - an area unknown and untrodden before. No doubt the power to issue writs was passed by the three Presidency High Courts of Bombay, Calcutta and Madras. Even in respect of these High Courts the power conferred under Article 226 is so different that it cannot be considered to be a continuation of the old power. This aspect of the matter has been fully dealt with in a Special Bench case of the Calcutta High Court reported in AIR 1953 Calcutta 433. At page 441 of the said case

Chakravarti C. J., observed as follows :

> "I am prepared to concede that to certain extent and in a certain sense, the jurisdiction under Article 226 is a new jurisdiction. The Article applies of its own force to all existing High Courts in Part A States; it applies to the High Courts in Part B States by virtue of Article 238 and may apply to High Courts in Part C States by virtue of Article 241. Of these, only the three Presidency High Courts of Calcutta, Bombay and Madras had power to issue certain writs within the limits of their ordinary original civil jurisdiction whereas Article 226 empowers all High Courts to which it applies to issue direction, orders and writs of certain specified kinds throughout the territories subject to their respective jurisdiction.

We need not consider here whether apart from the power given by Article 226, the power to issue writs of certiorari, quo warranto and prohibition within the limits of their original jurisdiction still survives in the case of the High Courts of Calcutta, Madras and Bombay. The power given by Article 226 is not that power, but a power to issue writs of habeas corpus and mandamus which even the Presidency High Courts had no longer any power to issue and also a power to issue directions and orders to any person or authority including, in appropriate cases, any Government : Such a power given to all the High Courts is undoubtedly a new power."

86. It is further observed by the same learned Judge that in exercising this new power, the High Courts do not function as special tribunals, but

> "they still function as ordinary Courts and it is only the procedure in respect of matters lying within their ordinary jurisdiction and the form of relief that may be given which are changed. There is thus no reason why an appeal should not lie from a judgment given in exercise of the jurisdiction under Article 226, if under the rules of the Court an appeal lies."

87. It was again observed in the same judgment that :

> "The jurisdiction cannot be revisional, because it is not concerned with revising any order of a Court subordinate to the High Court, as contemplated by Section 115, Civil Procedure Code, nor does it appertain to the general power of superintendence conferred by Section 107, Government of India Act, now Article 237. The argument that a judgment given on an application under Article 226 is a judgment given in exercise of a revisional jurisdiction and, therefore, not excepted from Clause 15 of the Letters Patent, is thus not sustainable."

88. Although S. R. Das Gupta J., differed from the majority view of Chakravarti C. J., and Banerjee J., on other points, yet on the point whether the jurisdiction conferred was a new one, he

expressed the same view and observed as follows :

> "In my opinion Article 226 conferred on High Court a new jurisdiction. It is no doubt true that by the Charter establishing Supreme Court, dated March, 26, 1774, the Supreme Court of Judicature at Fort William in Bengal was empowered and authorized to award and issue writs of mandamus, certiorari, procedendo or error, and by the Act establishing High Courts of Judicature in India, dated August 6, 1861, all jurisdiction and every power and authority already vested in any of the High Courts to be established in each Presidency town were preserved.

Subsequently, of course by legislative enactments some of those jurisdictions powers and authority, for example, as to the writs of habeas corpus and mandamus, have been taken away. But the jurisdiction which has been conferred by Article 226 is a new jurisdiction. It is a jurisdiction not only to issue writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them but also to issue to any person or authority including Government any directions or order for enforcement of any of the rights conferred by Part III of the Constitution or for any other purpose. Thus, in the first place, the jurisdiction conferred by Article 226 is not limited only to issuing writs. By the said Article Jurisdiction has been conferred upon the High Courts to issue any direction or order and upon any person or authority. Even in the matter of issuing writs High Courts have been empowered to issue new writs which is evidenced by the use of the expression "writs, including the writs in the nature of." There has not been merely extension of power as contended by Mr. Advocate-General, but a new jurisdiction has been created in High Courts by Article 226." (Pp. 445 and 446).

89. The learned Judge also repelled the further contention of the Advocate-General that the jurisdiction might be a new one in respect of other High Courts, but that it was merely an extension in so far as the High Courts of Calcutta, Madras and Bombay were concerned. On this point, he observed as follows :

> "Therefore the result, if Mr. Advocate-General's argument be accepted, would be that so far as the High Courts of Calcutta, Madras and Bombay are concerned, there has been mere extension of power, whereas so far as the other High Court

are concerned, a new jurisdiction has been conferred upon them. This certainly is a very anomalous position. In fact Mr. Gupta, who also appeared in support of the view that an appeal lies, conceded that no High Court had the rights to issue writs under Article 226 and this right is new to all High Courts and it cannot be, that Article 226 has extended the power of some High Courts while conferring new jurisdiction on others. Of course, he argued, whether or not the extended power of the three High Courts still exists or not is a different question. I, therefore, hold that Article 226 has conferred a new jurisdiction on the High Court." (P. 446, Col. 1).

90. In any case, whatever might be the position in respect of the other High Courts, so far as the Allahabad High Court is concerned, there can be no manner of doubt that the jurisdiction in this regard is an altogether new one.

91. On the other hand, the power of superintendence possessed by Courts in India is not a new power. It is an old power. When the Supreme Courts were established in India in the three Presidency Towns, they were invested with the same powers of superintendence as were exercised by the Court of the King's Bench in England. The Supreme Courts were abolished by the Indian High Courts Act, 1861, known as the Charter Act. Section 9 of the said Act, however, Provided that the High Courts to be established "shall have and exercise all jurisdiction and every power and authority whatsoever in any manner vested in any of the Courts in the same Presidency abolished under the Act."
Section 15 of the Indian High Courts Act, 1861, expressly enacted that

> "each of the High Courts established under this Act shall have superintendence over all Courts, which may be subject to its appellate jurisdiction."

It also made provision for administrative control of such Courts by the High Court.
92. The above section was replaced by Section 107 of the Government of India Act, 1915, which provided that "Each of the High Courts has superintendence over all courts for the time being subject to its appellate jurisdiction." This section also provided for the administrative control of the High Court over courts subject to its appellate jurisdiction. The position was, however, altered by section 224 of the Government of India Act, 1935, Clause 1 of which stated that "Every High Court shall have superintendence over all courts in India for the time being subject to its appellate jurisdiction." but Clause 2 of which explicitly took away the power of judicial interference. Article 227 is merely a descendant of the above mentioned provisions of the Charter Act and of the Government of India Acts of 1915 and 1935. It would thus appear that the power of superintendence has undergone changes in the course of legislative history. It was construed to embrace both judicial as well as administrative power in the Charter Act as well as the Government of India Act, 1915. The power was however, restricted under the Government of India Act 1935. Article 227 of the Constitution has again restored the same power in a more amplified form. Firstly, the power is not confined merely to courts over which the High Court has appellate jurisdiction but it extends to all courts. Secondly the power extends not only over all courts but also over all tribunals. Thus whereas Article 227 can be described to be merely extension of an old structure on old foundations, Article 226 can be described to be the construction of a completely new structure on new foundations.

93. If the power to issue writs under Article 226 is considered to be a branch of the power of Superintendence possessed by Courts, then one should have thought that the power of superintendence conferred by Section 15 of the Indian High Courts Act, 1861 and Section 107 of

the Government of India Act, 1915, would also have empowered the High Courts to issue writs to all the courts over which they exercised appellate jurisdiction. It will however, have to be conceded that no such power was possessed by the High Courts under the aforesaid provisions merely by virtue of their power of superintendence. Thus although the Allahabad High Court did possess power of superintendence over all courts subject to its appellate jurisdiction prior to the Constitution, but it cannot be said that the said power at any stage carried with it the power to issue writs. Even at the stage prior to 1935, when the power of superintendence was possessed by the Allahabad High Court in its extended form and carried with it both the judicial as well as the administrative power, it cannot be said that the possession of such a power even in its wider form carried with it the power to issue writs, much less any power to issue directions or orders in the nature of writs.

94. In the well-known case of AIR 1943 PC 164 which went to the Privy Council from the Madras High Court, their Lordships made the following significant observations :-

> "It is conceded that in the present case an appeal might have been brought to His Majesty in Council by leave from the order of the Board of Revenue. There is therefore neither logic nor necessity to justify any doctrine to the effect that the right of superintendence includes a right to issue writ of certiorari".

95. The above observations of their Lordships of the Privy Council would also indicate the difference that exists in this regard between the position in England and the position in India. It is important to realize the vital distinction between the power to issue writs as possessed by the English Courts, and the power to issue writs as possessed by the High Court in India. The power to issue writs possessed by the courts in England was from its very inception an off-spring of the general power of superintendence. It was a necessary outcome of the theory that the King was the fountain of justice and present in court through his Judges. The power to issue writs was, therefore, an integral part of the power of superintendence in England. The court of the King's Bench exercised the power of superintendence as the representative of the Sovereign. As stated in Halsbury's Laws of England, (2nd Edition), Vol. 9, 1479 :

> 'The common law regards the King as the source of fountain of justice, and certain ancient remedial processes of an extra-ordinary nature which are known as prerogative writs have from the earliest times issued from the Court of King's Bench in which the Sovereign was always present in contemplation of law".

96. The power to issue high prerogative writs exercised by the court of King's Bench was but a limb of sovereign power vesting in the King and possessed by the court as the delegate of the King. So far as India is concerned, this theory cannot apply. There is no king under the Constitution of India. The power of superintendence is not, therefore, possessed by the Indian High Courts as a representative of any Sovereign. In other words, it is not an inherent power

attached to their office as judges.

97. Even prior to the Constitution, the English theory of inherent power was held to be not applicable to India. In *Pashupati Bharati v. Secretary of State*[23] their Lordships of the Federal Court while discussing the nature of the power of superintendence possessed by the Indian High Court made the following significant observations :-

> "Nor is any support for the theory of an inherent power to be found in the analogy of the revisional and supervisory jurisdiction of the High Courts in British India. That jurisdiction is entirely a creature of statute, e.g. Section 224 of the Act of 1935 and Section 115 Civil Procedure Code Outside the statutory provisions no High Court has any inherent powers of revision over the Subordinate Courts within its jurisdiction, such for example as the court of King's Bench in England has for centuries exercised over courts inferior to itself"
>
> .

98. As already observed, though the power of superintendence is possessed by the High Courts under the Constitution, it is not possessed by the Supreme Court under the same Constitution, although the Supreme Court is a Court higher than the High Court. In India the power itself has throughout been purely a creature of the Statute and has been governed by it. As already seen, it has undergone vicissitudes in the past and has been curtailed or extended by Statute. Its history has been a chequered one, but its amplitude and extent has depended throughout on the provisions of the statute existing at the time.
In India, it has never been the reflection of a constant entity like a King. In the past, it has varied with the varying Statutes. The present Constitution has enhanced it. It can enhance it still further. It can curtail it. It can even extinguish it. This would not be the position in England where the power really subsists in the King, who is, as it were, the permanent spring of the power, which flows all over the King's territory through the channels of his Judges who are merely tributaries of the fountain head of power. The analogy of England

[23] AIR 1938 FC 1

in this regard would thus be highly misleading, and is more likely to confuse rather than to clarify the situation.

99. In any case, whatever view might be taken of the nature and scope of the power to issue writs in England, the power under Article 226 is strictly speaking , not the same power as the power to issue writs possessed by English Courts. The power possessed by the English Courts to issue writs differs from the power possessed by Indian Courts under Article 226 not only in its origin but also in its scope, nature and extent. As already seen, the origin of the former is to be traced to the Sovereign while the origin of the latter lies embedded in the Statute. As to its scope the power under Article 226 is far more extensive than any power to issue high prerogative writs that is possessed by the English Courts. The power under Article 226 is not confined to the issuing of the writs of Habeas Corpus, mandamus, prohibition, quo warranto or certiorari. Article 226 states

that every High Court shall have power to issue writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them. The specific mention of high prerogative writs under Article 226 is, therefore merely illustrative and not exhaustive of the powers of the High Court. Further, the power embraces not only the issue of writs, but extends also to the issue of directions or orders. Again, the power is not confined to courts and tribunals. It extends to any person or authority including the Government. The power, therefore, conferred under Article 226 is of the widest amplitude, and it would be a mistake to limit or confuse it with the power possessed by English Courts to issue high prerogative writs. In this connection, it is relevant to note that while dealing with the analogous provision relating to the issue of writs by the Supreme Court under Article 32, their Lordships of the Supreme Court in AIR 1950 Supreme Court 163 observed that :

> " .... the powers given to this Court under Article 32 are much wider and are not confined to issuing prerogative writs only".

100. While considering the question whether a right of appeal from an order under Article 226 exists, another important point that should be borne in mind is that the jurisdiction exercised by the Court under Article 226 is an original jurisdiction and not an appellate one. On the other hand, jurisdiction exercised under Article 227 does not appear to be an original one. An application under Article 226 when directed against the executive or administrative bodies, like the Government or the Municipal Board, relates to a matter which has not been adjudicated upon by any court or tribunal before, and is obviously an original one. Even when such an application is directed against orders of courts and tribunals, it involves impleading of fresh parties. In such an application under the rules of this Court already referred to above, the judicial or the quashi-judicial body that passed the order has to be impleaded as a party concerned. The matter is therefore determined in the presence of such bodies as a party for the first time. Further such an application might involve importation of fresh evidence in the matter. The orders of judicial or quasi-judicial tribunals might be challenged on fresh grounds which were not taken or raised at the prior stage. For example, they may be challenged on the ground of ultra vires or they may be challenged as being vitiated by bias or violation of principles of natural justice. None of these questions might have been raised prior to the writ stage. In England also writ jurisdiction is treated as a part of the original jurisdiction as opposed to the appellate jurisdiction vide Halsbury's Laws of England, Vol. 9, p. 874, where it is stated "the power to issue writs of certiorari is stated to be part of the original jurisdiction of the High Court of Justice".

101. On the other hand, the power exercised under Article 227 is not in the nature of original jurisdiction. It might be appellate Jurisdiction in the wider sense in which appellate jurisdiction is opposed to the original jurisdiction and includes the revisory jurisdiction. The power of superintendence is in fact a power that belongs to a category that is sui generis. The superintending jurisdiction is not appellate in the sense that the court acting under it can act as a court of appeal for the correction of errors of law or fact. It is also not appellate in the sense that it can be claimed as a matter of right by a party. In its nature it is more akin to the revisional

jurisdiction. The power of superintendence resembles power of revision in the sense that both of them are discretionary. The superintending jurisdiction is, however, not strictly speaking a revisional jurisdiction either. It differs from the revisional jurisdiction in at least three important respects. Firstly, whereas the revisional jurisdiction can be exercised only over courts subordinate to the High Court, the power of superintendence can be exercised not only over the courts subordinate to the High Court but over all courts. Secondly, it extends not only to courts but also to tribunals. Thirdly, whereas the grounds on which the revisional jurisdiction is exercised are strictly circumscribed by the Statute, there are no such limits placed on the power of the High Court under Article 227. The limits thus in the case of revision are defined. The limits in the case of superintendence are undefined. The limits in the case of revision are imposed by the statute. The limits in the case of superintendence are self-imposed. If the jurisdiction exercised under Article 226 is neither revisional nor appellate but an original one, one would expect a right of appeal from an order passed in such jurisdiction, but not from an order passed under Article 227 in which the jurisdiction exercised is not original.

102. In AIR 1945 Bombay 7 the power of issuing writs of certiorari was held to be not a revisional power, but a power exercised in original jurisdiction. It was accordingly held that an appeal would lie under clause 15, Letters Patent, from an order of a single Judge of the High Court passed in the exercise of the power to issue a writ of certiorari.

103. In *Hamid Hasan Nomani v. Banwarilal Roy*[24], their Lordships of the Privy Council held that the power to issue writs possessed by the Presidency Court of Calcutta was exercised on the original Civil Jurisdiction side of the High Court.

104. In AIR 1952 Madras 300 it was held that an appeal lies from an order passed by a single Judge of the High Court upon an application for a writ of certiorari to a Bench of two Judges under Clause 15 of the Letters Patent. It was further held that :

> "The bar under Clause 15, that no appeal will lie from the decision of a Single Judge made in the exercise of revisional jurisdiction has no application to proceedings under Article 226".

and that "the jurisdiction of the High Court under Article 226 is in the nature of its Ordinary Original Civil Jurisdiction".

[24] AIR 1947 PC 90

105. *P. V. Rao v. Khushaldas S. Advani*[25], shows that an appeal from the judgment of a Single Judge issuing a writ of certiorari is entertained by the Bombay High Court. The case contains two separate judgments by Chagla, C. J., and Tendolkar, J., The case appears to have been most exhaustively argued and every possible aspect of the matter appears to have been thrashed out No preliminary objection was, however, taken in the case on this score. The case would, however, only show that if there was any substance in the point, one would have expected it to be

raised in the case, and it was not raised probably because such appeals are entertained as a matter of practice in the Bombay High Court.

106. The observations of their Lordships of the Supreme Court in AIR 1955 Supreme Court 233 (D) to the effect that the Court issuing a writ of certiorari does not act in exercise of appellate jurisdiction also indirectly support the view that the court exercising such jurisdiction acts on the original side.

107. In AIR 1953 Calcutta 433 a Special Bench of the Calcutta High Court held that the High Court passing an order under Article 226 does so in exercise of its original as distinguished from its appellate jurisdiction. Such an order is a judgment and would be appellable to a Bench. Reliance in this connection was placed on AIR 1952 Madras 300 referred to above.

108. In *Belait Sheikh v. State of West Bengal* [26] it was held that :

> "In exercising such powers the High Court exercises only an original and not appellate jurisdiction, for the applicant in such proceedings asks in effect for the decision of the dispute between himself and the inferior tribunal or the public official, who is one of the respondents in the application, for the first time, there having been no decision of that dispute previously by any other tribunal".

109. In (1954) 2 Mad LJ 473 : AIR 1955 Madras 287 a Bench of the Madras High Court held that an order passed by the High Court in exercise of its powers under Article 227 of the Constitution is passed in exercise of the revisional jurisdiction of the High Court, and not in exercise of its extraordinary original jurisdiction under Article 226 of the Constitution. An appeal from an order under Article 227 would, therefore, not lie under the Letters Patent of that Court.

110. In *Sukhendu Bikash Barua v. Hare Krishna De*[27]*,* it was held that :

> "The relevant expression in Clause 15 of the Letters Patent excludes a judgment pronounced by a Single Judge in exercise of the powers of revision or in the exercise of the powers of superintendence under Article 227 of the Constitution".

111. In the above cases, an appeal from an order passed under Article 227 was held to be barred on the ground that the power exercised under Article 227 fell either under the category of the revisional power or under the category of the power of superintendence. In none of the above cases has the power of superintendence under Article 227 been

[25] AIR 1949 Bom 277 [27] AIR 1953 Cal 636

[26] AIR 1952 Cal 753

treated to be a part of the power exercised under Article 226 of the Constitution, a power which is exercised by the High Court in its original jurisdiction and is different in that regard from the power of revision as well as from the power of superintendence.

112. If the intention of the framers of the rules of the High Court, 1952, is to be judged purely from the point of view of reason then, in my opinion, it would be more reasonable to hold that there should be an appeal against a Single Judge decision of the high Court under Article 226 in writ cases arising out of orders passed by courts and tribunals than to hold that there should be no such appeal. Courts and tribunals, like the Board of Revenue and the Labour Appellate Tribunal, are manned by trained Judges of a high order who are expert in their line. Their decisions are usually given by the two members constituting a Bench. The members of the Labour Appellate Tribunal are sometimes ex-Judges of the High Court. The questions decided by such courts and tribunals usually raise intricate questions of law, and are of vital importance to the public at large as well as to the State. One would expect that such cases should require the application of mind by a Bench of the High Court of at least two Judges. It would be unreasonable to hold that the rule makers should have thought it reasonable to provide an appeal against a Single Judge decision in a writ case relating to the order of an executive authority like the licensing officer passing an order issuing permit to an individual, and no appeal against decisions of a court or tribunal like the Board of Revenue or the Labour Appellate Tribunal that sometimes decide questions of paramount importance to the public as well as to the State.

113. Further, another consequence of holding that an appeal against a single Judge decision arising out of cases decided by courts and tribunals does not lie would be that not only an appeal to the Bench would be barred, but also the right of appeal to the Supreme Court would also be barred under Article 133. This would follow from clause (3) of Article 133 which provides that 'no appeal shall, unless Parliament by law otherwise provides lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court. The right of appeal in such cases would therefore be barred altogether under Article 133, unless the case happens to fall under Article 132. Appeal to the Supreme Court by special leave provided by Article 136 is more a matter of discretion of Court than of right of a party. Even if, therefore, there was any doubt about the matter, the doubt should, in my opinion, both on the grounds of logic and reason as well as on the grounds of convenience and justice be resolved in favor of right of appeal rather than against it. The following passage from Maxwell's Interpretation of Statutes, (Tenth edition) p. 191 is relevant in this regard :

> "In determining either the general object of the legislature, or the meaning of its language in any particular passage, it is obvious that the intention which appears to be most in accord with convenience, reason, justice or legal principles, should, in all cases of doubtful significance, be presumed to be the true one".

114. Even if it be supposed for a moment that a particular case falls both under Article 226 and Article 227, there appears to be no reason why a party who has invoked Article 226 in its application and has got the order of the court under that Article should be deprived of the right of appeal, because the same order could be passed under another Article of the Constitution, namely

Article 227. If the right of appeal against the order under Article 226 existed apart from Article 227, then it is difficult to understand how the introduction of Article 227 can deprive the party of such a right. It is after all for a party to choose the particular Article under which he seeks a remedy, and if the Court holds that the application is maintainable under that Article, then there appears to be no reason why the right of appeal that accrues out of an order under it could be taken away from the Party.

115. Moreover, so far as the courts and tribunals are concerned, Article 227 will appear to be more general in character than Article 226. Article 227 gives a wider power. The power therein is a residuary one, and is intended to embrace cases for which no specific remedy is provided elsewhere. Article 227 should be invoked as a last resort in cases of a highly exceptional and extraordinary type. Where a specific remedy is provided elsewhere any resort to Article 227 should be avoided. The result would be that in cases where a remedy can be given both under Article 226 as well as under Article 227, the Court should prefer to apply Article 226. This would be borne out by the well known principle of construction that a special power excludes the general power. This principle is stated in Jagdish Swarup's Interpretation of Indian Statutes at page 253 in the following words :

> "Where there are two provisions in an Act one of which is specific or of a special character and the other of a general character, the specific or special provision qualifies the general one and ought to be applied in preference to an unaffected by the general one. In other words, where a special provision deals with a particular thing or class of things, a more general provision, even though its terms would cover the particular thing or class of things, is excluded from application thereto by reason of the particular provision."

116. In this connection it would be relevant to refer to AIR 1954 Supreme Court 215 where their Lordships of the Supreme Court have favored the view that gives to Article 227 a wider and a more general interpretation.

117. In AIR 1954 Bombay 171 which is a Bench decision of the Bombay High Court Chagla, C.J., held that the power of High Court under Article 227 of superintendence are much wider than the powers to issue writs under Article 226.

118. In *A. R. Sarin v. B. C. Patil*[28] which is a Bench decision of the Bombay High Court Chagla, C.J., refused to accept the view that Article 227 provided an alternative specific remedy. In this connection the following observations made by the learned C. J., are significant :-

> "But in order that a petition for a writ of certiorari would not lie, the petitioner must have a specific legal remedy, and specific legal remedy in this context can only mean that he must have a right to approach a Court and he must have a right to a remedy if his case was just. Article 227 only deals with the power of the High Court and not with the rights

> of litigant. A litigant may approach the High Court but he has no right to do so nor has he a right to a remedy because the High Court may refuse a remedy under Article 227. Therefore the mere power of superintendence conferred upon the High Court does not disentitle a petitioner

[28] AIR 1951 Bom 423

> seeking a writ of certiorari from coming to this Court and asking for that writ. It cannot be said under the circumstances of the case that he had an alternative specific legal remedy open to him which he should have availed of before he asked for a prerogative writ".

119. In AIR 1952 Allahabad 788 again a wider view of Article 227 was taken and in reference to the power exercised under Article 227, it was observed that :

> ".... this power should not be exercised, if there is some other remedy open to a party. Above all, it should be remembered that this is a power possessed by the Court and is to be exercised at its discretion and cannot be claimed as a matter of right by any party."

120. To sum up, the powers contemplated by the Constitution makers under Articles 226 and 227 appear to be different. The former is described as the power to issue certain writs orders or directions. The latter is described as the power of superintendence. There are two separate sections in the Constitution next door to each other dealing with these powers. The Power under Article 226 is only judicial. The power under Article 227 is both judicial and administrative. The power under Article 226 is exercised on the application of a party and for the enforcement of a legal right. The power under Article 227 can be exercised suo motu by the Court as the custodian of all justice within the limits of its territorial jurisdiction and for the vindication of its position as such. For the exercise of the power under Article 226, the Court has framed rules. There are no such rules for the exercise of power under Article 227. Article 226 appears to be self-restrictive. On the other hand, there are no restrictions indicated in Article 227 itself, and the restrictions, if any, are self-imposed. The power under Article 227 is a power that can be exercised only over courts and tribunals. On the other hand, the power under Article 226 is a power that can be exercised not only over courts and tribunals, but also over other bodies like the Government. Article 226 confers a new power, at any rate, so far as the Allahabad High Court is concerned. On the other hand, Article 227 relates to a power which is merely a continuation of an old power. In India, legislative history discloses that there has been in the past and there is at present a rupture between the two powers. Prior to the Constitution, the power to issue writs could not be considered to be a branch of the power of superintendence, because the power of superintendence possessed by the High Courts did not carry with it the power to issue writs. Even under the Constitution, the power of superintendence is treated as a power divorced from the power to issue writs. This is borne out by the fact that the Supreme Court possesses the power to issue writs, yet it does not possess the power of superintendence. The analogy of English law cannot hold good in India. In England the power to issue writs is a part and parcel of the power of superintendence, because the power there is exercised by the court as a delegate of the

Sovereign who is the fountain of all justice. This is not so in India where the source or power has always been the Statute which is at present the Constitution of India. The power conferred under Article 226 in India is also wider than the power to issue high prerogative writs in England. The power exercised under Article 226 is original. On the other hand, the power exercised under Article 227 is not original. Further, it is more reasonable to hold that an appeal should lie in cases where the judgment of a single Judge relates to the judgment of a court or tribunal than to take a contrary view.

The contrary view would also bar the right of appeal of a party to the Supreme Court under Article 133 of the Constitution. There may be cases where both the Articles 226 and 227 are applicable. In cases where the relief can be given under both, the Court should exercise its power under Article 226 on the principle that where a specific remedy is provided, the general provisions of law should not be resorted to. In any case, if a party is otherwise entitled to a right of appeal against an order under Article 226, the fact that the same relief could be granted under Article 227 is no reason for depriving it of the said right where the party has given the application itself under Article 226, has claimed its right to relief under the said Article, and the case itself has been entertained and disposed of by the Court under the same Article.

121. For the above reasons, I am of opinion that where a party has given an application under Article 226 of the Constitution and an order has been passed by a single Judge on that application under the said Article, an appeal from such an order is not barred under Chapter VIII, rule 5 of the rules of this Court on the ground that it is an order passed in exercise of the power of superintendence possessed by this Court.

122. BY THE COURT:- In view of the opinion of the majority, these appeals are held not to be barred by the provisions of rule 5 of Ch. VIII of the Rules of the Court. They will now be listed for preliminary hearing on the merits in the usual course.

Answer accordingly.