ALLAHABAD HIGH COURT

Murlidhar

Vs.

State of U.P

Writ Petns. Nos. 302 to 304 and 306 of 1962

(M.C. Desai, C.J. and R.N. Sharma, J.)

23.10.1963

JUDGMENT

Desai, C.J.

1. This and the associated petitions for certiorari have been referred to a larger Bench by our brother Nigam on account of their raising the question whether *Narottam Saran v. State of U.P.,* [1] was correctly decided or not. The petitioners in all these petitions are tenants of accommodations governed by the U.P. (Temporary) Control of Rent and Eviction Act and owned by opposite party No. 3 of each petition. Under Section 3(1) no suit, can without the permission of the District Magistrate, be filed in any civil court against a tenant for his eviction from any accommodation (except on one or more of certain grounds, none of which exists in these cases). All the accommodations are situated in Lucknow city and the landlords applied to the District Magistrate, Lucknow for permission to eject the petitioners. The District Magistrate permitted the landlords in this petition and in petitions Nos. 304 and 306 and refused permission in petition No. 303. Section 3(2), (3) and (4) lays down that when a District Magistrate grants or refuses to grant permission on a landlord's application the party aggrieved may within a certain time apply to the Commissioner to revise the order, that the Commissioner

> "shall hear the application .... within six weeks .... and he may, if he is not satisfied as to the correctness, legality or propriety of the order passed by the District Magistrate or as to the regularity of proceedings

> held before him, alter or reverse his order, or make such other order as may be just and proper" and that
> "this order would be final subject to any order passed by the State Government under Section 7-F."

The petitioners in this petition and petitions Nos. 304 and 306 and the landlord in petition No. 303 applied to the Commissioner to revise the District Magistrate's orders under Section 3(2) and the Commissioner cancelled the permission already granted by the District Magistrate or refused to revise the District Magistrate's orders refusing permission. In other words, the landlords in all the cases remained without permission. Section 7-F is to the effect that

> "the State Government may call for the record of any case granting or refusing to grant permission .... and make such order as appears to it necessary for the ends of justice".

The landlords applied to the State Government to exercise this power. The applications are long applications containing detailed facts. They were entertained by the State Government and on behalf of it, the Area Rationing Officer issued notices to the petitioners, who were cited as opposite parties in the applications, calling upon them

> "to file their written statements to the enclosed petitions. .... within four days of the receipt of the letter for onward transmission to the Government."

The petitioners in all the cases filed written statements dealing with all the contentions put forth by the landlords in their applications to the State Government. None of the petitioners in his written statement asked for an opportunity to be heard orally by the State Government before passing orders on the landlord's application; apparently each petitioner was satisfied with the opportunity given to him to file a written statement in reply to the landlord's application. After considering the landlord's applications and the petitioner's written statements the State Government in all the cases set aside the orders passed by the Commissioner and permitted the landlords to file suits for eviction of the petitioners. It was recited in the orders that the contention of the parties had been considered, that other matters were taken into consideration, that justice demanded that the landlords be allowed to occupy the accommodations themselves

and that consequently permission was granted to them under Section 3 of the Act to file ejectment suits against the petitioners. These orders were passed in three cases on 2-4-1962 and 23-4-1962 and in the fourth case (petition No. 303) on 24-4-1962. The petitioners applied to the State Government for review of its orders and the State Government rejected their applications on or about 3-8-1962. Thereupon on 27-8-1962 these petitions were filed for certiorari for the quashing of the State Government's orders passed under Section 7-F and the orders passed by it refusing to review them. The ground on which the orders passed under Section 7-F were challenged was that the State Government acted quasi-judicially and passed the orders without giving to the petitioners a reasonable opportunity of presenting their cases and of being heard. The orders refusing to review Section 7-F orders were challenged on the grounds that the applications for review were summarily dismissed without the petitioners being heard.

2. An order passed by a District Magistrate granting or refusing to grant permission is undisputedly an administrative order. The scope of Section 3(1) has been explained at length by me in *Parmeshwar Dayal v. Addl. Commr. Lucknow,* [2] and *Dwarka Nath Munshi v. Gayatri Devi,* [3] When a District Magistrate grants permission he only grants permission for the filing of a suit for the tenant's eviction and does not decide any question of rights of the parties. Whether the parties are landlord or tenant and whether the landlord has a right to eject the tenant or the tenant is under a liability to be ejected will be decided in the suit brought with the permission. The District Magistrate does not decide these questions at all when he grants permission; evidently his permitting a suit in which these questions would be agitated and decided cannot itself amount to deciding them. In deciding whether permission should be granted of not he is not at all concerned with these questions and he has no jurisdiction to decide them. Permission is required only for the riling of a suit for eviction, and not for determining the tenancy. A suit for eviction can be filed only after the tenancy has been terminated either by a notice to quit or by the happening of a certain event and Section 3 does not prohibit or postpone the termination of the tenancy by the landlord. Before this Act was enacted a landlord could sue for eviction of his tenant at his sweet will (within the period of limitation) after the tenancy was terminated and Section 3(1) restricts that right only to this extent that he must obtain the District Magistrate's permission to file a suit to evict the tenant. Section 3 does not lay down in what circumstances the District Magistrate should grant permission or in what circumstances he should refuse permission or what matters he should, or may, or

should not, or may not, take into consideration. He can grant permission on any ground that appeals to him or refuse permission on any ground that appeals to him and the legislature has not attempted to fetter his discretion. He may grant permission on the ground that the landlord wants the accommodation for own occupation or that there is not dearth of accommodation and the tenant can very well be asked to seek another or that the tenant has made himself a nuisance or that he habitually delays paying rent to him. He may refuse permission on the ground that he is unreasonably annoyed with the tenant or that there is such a shortage of accommodation that it would be very hard on the tenant to be asked to go and find another accommodation or that the tenant has established a business in the accommodation and would lose the goodwill if he is asked to shift himself to another accommodation.
There are so many matters which might be taken into consideration that they could not be exhaustively mentioned and the legislature had to leave the matter at the discretion of the District Magistrate without fettering it in any manner. Neither has a landlord been given a right to gel permission nor has a tenant been given a right to prevent permission being granted and, therefore, no judicial consideration is involved in the District Magistrate's deciding the question; it is to be decided on the basis of the administrative policy. So it has been settled by decisions of this Court that granting or refusing to grant permission is an administrative order.

3. When Section 3(1) does not lay down in what circumstances an order granting or refusing to grant permission is correct or proper or legal, it is not understood why in Sub-Section (3) the Commissioner has been given power to revise the District Magistrate's order on the ground that it is not correct or legal or proper. Really "if he is not satisfied as to the correctness, legality or propriety of the order ...." would apply more when the order is one refusing permission than when it is one granting permission. The only circumstance in which an order granting permission can be said to be illegal is when the premises are not an accommodation or the District Magistrate is not the District Magistrate having jurisdiction over the place where the accommodation is situated but in either of these cases it is quite unnecessary for the tenant to seek relief against the order from the Commissioner under Sub-Section (3) because if the premises are not an accommodation he is liable to be sued for eviction without any permission and if a wrong District Magistrate has granted permission the civil court itself will not accept it. Hardly any ground which appeals to a District Magistrate and on the basis of which he grants permission would be found by the Commissioner to be improper. If the ground does not exist it may be said that the order

is not correct within the meaning of Sub-Section (3). All these cases are much smaller in number than those in which the District Magistrate refuses to grant permission by an order which is not correct or not legal or not proper. He may without jurisdiction go into the question whether the parties are landlord and tenant and refuse permission on the ground that they are not or he may refuse permission on the ground that the premises are not an accommodation. He may refuse permission on wrong facts and his order may be said to be incorrect. Or he may refuse permission on unjustifiable grounds and without considering the rights of the parties under the common law which have not been interfered with by the Act. Practically, therefore, there is hardly any scope for a Commissioner's interfering with a permission granted by a District Magistrate except of administrative grounds. The nature of a Commissioner's order is not at all different from that of the District Magistrate's order and merely because a Commissioner is required to be satisfied about the incorrectness or illegality or impropriety of the District Magistrate's order it cannot be said that he acts quasi-judicially and not administratively. He performs the same jurisdiction and in exactly the same way as the District Magistrate; the legislature used the words "if he is not satisfied ...... by the District Magistrate" simply to prevent his interfering with the District Magistrate's order at his sweet will or on any or no ground. The restriction on his power to revise a District Magistrate's order does not alter the nature of his jurisdiction and convert it into quasi-judicial jurisdiction.

4. In Murli Dhar Gupta y. Addl. Commr. 1955 All LJ 498 Brij Mohan Lal, J., observed that "the Commissioner's order is not a purely administrative order. It is a quasi-judicial order, if not A judicial order". With great respect I am unable to take the same view. It cannot be partly administrative and partly quasi-judicial. The learned Judge came to this opinion merely because the Commissioner is bound to hear the parties and hag been empowered to confirm or set aside the District Magistrate's order on being satisfied that he had acted illegally or with material irregularity or had refused to act. The case was governed by the provisions of Section 3(3) as it stood before its amendment by Act XVII of 1954. The learned Judge stated that the legislative intention to be gathered from the provision was that the Commissioner was to act in a quasi-judicial manner and that his order could be challenged if he contravened the requirements of law. An administrative agency also can be required to hear the parties and can be given the power to confirm or set aside an inferior administrative authority's order; consequently it cannot be said that Section 3(3) as it stood in 1953 was consistent only with the Commissioner's acting quasi-judicially.

Any administrative order can be challenged on the ground that it contravenes a law; this vulnerability is not the monopoly of a judicial or quasi-judicial order. No other reasons have been given by the learned Judge and he has not cited any authority. T may here deal with *Abida Begam v. Rent Control and Eviction Officer,* [4] in which Beg and V.D. Bhargava, JJ., took the view that "a pure and simple order of allotment" passed by a District Magistrate may be "purely an administrative order", though if an order is passed under Rule 4, 6 or 7 of the Control of Rent and Eviction Rules, 1949, the proceedings become of a quasi-judicial nature and the order itself would be quasi-judicial liable to be quashed on the ground that the natural justice principles have not been observed, vide p. 678. I have considerable difficulty in accepting the proposition that if an allotment order is passed under Rule 4, or rule 6 or rule 7 it ceases to be an administrative order and becomes quasi-judicial. Rule 4 gives power to a landlord to nominate a tenant if the District Magistrate does not pass an order under Section 7(2) within thirty days of the receipt of the intimation about the accommodation having fallen vacant, Rule 6 allows a District Magistrate to permit an accommodation to be occupied by its owner who bona fide needs it for his personal occupation and Rule 7 lays down that when a portion of an accommodation falls vacant the District Magistrate should consult the owner, who is in occupation of the other portion and pass an order under Section 7(2) in accordance with his wishes so far as possible. I am at a loss to understand how these provisions can convert an administrative order into a quasi-judicial order. An Administrative authority by rules (sic) and merely because a District Magistrate is required by rules to do certain acts he does not cease to be an administrative authority and become a quasi-judicial authority. Moreover if an order under Section 7(2) is an administrative order it cannot change its nature and become a quasi-judicial order through, the operation of rules made by the State Government to give effect to the purposes of the Act. If according to the purposes of the Act an order is administrative the State Government would have no power to make a rule the effect of which would be to convert it into a quasi-judicial order. Finally, in this case we are not concerned with the question whether an order under Section 7(2) is administrative or quasi-judicial.

In *Majeed Uddin v. Ghulam Husain Naqui,* [5] Mootham, C.J., described the Commissioner's jurisdiction as quasi-judicial, but the case was overruled on the main decision by a Full Bench of this Court in 1963 All LJ 296 : (AIR 1964 Allahabad 7). Tondon, J., saw no distinction between the jurisdiction exercised by a District Magistrate and the jurisdiction exercised by a Commissioner under Section 3 in *Chmian Lal v. Banwari Lal,* [6] he observed with reference to the Commissioner's

jurisdiction

> "despite his wide powers his jurisdiction in the matter of granting and refusing permission may at least be said to be essentially similar to that of the District Magistrate himself under Sub-Section (1) of Section 3. But they are by no means different or larger than possessed by the District Magistrate" (p. 73).

5. Coming to the jurisdiction of the State Government under Section 7-F, there are several authorities of this Court laying down that it is administrative and not quasi-judicial. It does not differ in essence from that of a District Magistrate under Section 3(1) and is as unfettered as *Raghubar Dayal and V. Bhargaya, JJ., said in* [7] at page 234 :-

> "It is clear that the State Government is given absolute discretion to pass any order it considers necessary for the ends of justice on perusal of the order. The State Government is not required to give notice to the parties or to afford them opportunity to lay their case before it or to argue their case before it. In passing such a discretionary order the State Government cannot be said to act in a quasi-judicial capacity."

This decision was followed by V.D. Bhargava, J., in *Rafiuddin v. Govt. of U.P.,* [8] and by A.P. Srivastava and Bishambhar Dayal, JJ., in *Virendra Swarup Johari v. State of U.P.,* [9] In the latter case the learned Judges pointed out at p. 674 that a District Magistrate acts administratively while performing his function under Section 3, that the jurisdiction that a Commissioner exercises under Section 3(3) is quite different from the jurisdiction which the State Government exercises under Section 7-F and that two out of the three tests laid down in the *Province of Bombay v. Khushaldas S. Advani,* [10] following *R. v. Electricity Commrs.* [11] and *R. v. London County Council,* [12] that a Tribunal in order to be at quasi-judicial Tribunal must have legal authority to determine questions affecting the rights of the parties and a duty to act judicially are not satisfied when the State Government exercises jurisdiction under Section 7-F. The question arose indirectly before a Full Bench of this Court in Kailash Chandra y. State of U.P., AIR 1962 Allahabad 1 and Dwivedi, J., said at page 5 :-

> "The procedure before administrative tribunals and authorities is characteristically simple, informal, flexible, and shorn off empty ritualism. To

> say then that the sending for of the record of a case is the condition precedent to the passing of an order under Section 7-F is to overlook the ontogenesis of the administrative process."

Another Full Bench of this Court in 1963 All LJ 296 : (AIR 1964 Allahabad 7) approved of the decisions in the cases of AIR 1954 Allahabad 232 and 1962 All LJ 672.

6. Which functions are administrative and which judicial has been admirably dealt with in the article. "The Development of Administrative Law in the United States" by Edward A. Harriman in (1915-16) 25 Yale Law Journal, 658. The learned author makes the following points. The issue of a license is an administrative matter, pure and simple. It is wrong to say that an administrative body acts judicially or quasi-judicially because the requirements to the validity of its action are imposed by law, such as giving of a notice, hearing the parties, acting fairly and with sound discretion etc. because it is the duty of every administrative authority to exercise sound discretion and in certain cases to give notice and in other cases an opportunity for hearing before it. None of these requirements in the least affects its administrative character. It seems almost as if there were a confusion of thought between "judicious" and "judicial". The judicial function is to determine the rights of the parties to the cause and the administrative function, to determine, the respective rights of the State or of the public and of those affected by administrative action. In *Jaswant Sugar Mills v. Lakshmi Chand,*[13] the Supreme Court pointed out that the legal authority to determine a question affecting rights does not make the determination judicial, it being the duty to act judicially which invests it with that character. It is pointed out in the article 'Administrative' Tribunals and the Courts by D.M. Gordon in 49 LQR 94 and 419 that ministerial judicial and administrative functions exemplify the three degrees of irresponsibleness that a Tribunal may possess; acting judicially it has very little power to consult its own wishes in theory, whatever it may do in practice, because it professes to be bound by fixed and settled objective standards whereas acting administratively it must be guided by its own wishes because it has not A fixed standard to follow and its standards are purely subjective and in the last analysis it follows its own ways (110). The test laid down at page 117 to see whether a Tribunal is an administrative Tribunal or a judicial one is to see what it is that it administers - is it its function to ascertain legal rights and liabilities or to create them ? Is it to apply the law or to apply policy and expediency ? The standard which it is to follow is of

importance and unless it is settled it is uncertain which class it falls into. The distinguishing mark of an Administrative Tribunal is that it possesses a complete, absolute or unfettered discretion; it has no ascertainable standard but follows only policy and expediency, which, being subjective considerations, are what it itself makes them; see p. 425. The difference between the administrative process and the judicial process is, vide "Machinery of justice in England" by it. M. Jackson, page 312, that the former is generally used for matters to be decided on public policy while the conception of law as being essentially fixed and binding runs through the latter. The test laid down by W. H. Pillsbury in his article "Administrative Tribunals" in (1922-23) 36 HLR 405, is the character of the act to be performed and not whether the Tribunal uses the procedure and the machinery of a Court because none has a monopoly upon a particular method of trial. If the power of act in question is reasonably necessary or incidental to the proper carrying out of an executive function, the character of the act is administrative. Where the function of a tribunal is primarily regulatory and the power to hear and determine controversies is merely incidental to a regulatory duty, the function is administrative, whereas ff the duty is primarily to decide question of legal rights between parties, the function is judicial; see p. 419 and 422, Judged in the light of these pronouncements of well known jurists the function of the State Government when acting under Section 7-F is administrative and not quasi-judicial. In AIR 1963 Supreme Court 677 recently decided by the Supreme Court it was laid down that a judicial decision must

> "be the act of a body or authority invested by law with authority to determine question or disputes affecting the rights of a citizen and under a duty to act judicially."

Administrative authorities are also invested with authority or power to determine questions which affect rights of citizens but, unless in arriving at their decision they are required to act judicially, their decisions are executive or administrative, legal authority to determine questions affecting rights of citizens does not make the determination judicial, see the observations of Shah, J., at p. 681. In the *Board of High School and Intermediate Education v. Ghanshyam Das Gupta,* [14] mo the, Supreme Court reiterated the principles laid down in the case of Khushaldas, AIR 1950 Supreme Court 222 and added that whether a party is required to act judicially or not has to be inferred from the provisions of the statute, the nature of the rights affected, the manner of the disposal provided and then effect of the decision on the person

affected. That the State Government should act judicially when acting under Section 7-F cannot be inferred from any provisions of the Act. No manner of disposal of a revision application is provided at all in the Act nor has any objective criterion been laid down. The only dispute before the State Government is whether a landlord should be permitted to sue for ejectment of his tenant, or not, its decision on the question has no effect on that rights of the parties because they will be determined in the suit by the Court. The *Board of Revenue U.P. v. Sardarni Vidayawati,* [15] is an authority for the proposition that the Chief Controlling Revenue Authority acts quasi-judicially when it decides a question under Section 56 of the Stamp Act inasmuch as its decision may saddle an individual with a large pecuniary liability and it has to decide a pure question of law. It is impossible to apply this reasoning in the instant cases; whether a landlord should be permitted to sue his tenant for eviction or not is not a question of law and does not by itself impose any liability either upon the landlord, or upon the tenant, against whom it is decided. Our attention was drawn to *Ujjam Bai v. State of U.P.,* [16] but it does not deal with the question whether a tribunal acts administratively or quasi-judicially or with the question whether it is bound to give an oral hearing.

7. Very great reliance was placed by Sri Dhaon upon an unreported decision of the Supreme Court in *Laxman Purshottam v. The State of Bombay,* [17] eported in : AIR 1964 Supreme Court 436. Under Section 11 of the Hereditary Offices Act a Collector was empowered to declare an alienation of certain kind to be null and void and Section 12 made it lawful for a Collector in carrying out the provisions of Section n to summarily evict any person wrongfully in possession of any land or to levy any rent. Section 79 provided that

> "Government may call for and examine the record of the proceedings of any officer for the purpose of satisfying itself as to the legality or propriety of any order passed and may reverse or modify the order as shall seem fit, or if it seem necessary may order a new enquiry."

Laxman aggrieved by an order passed under Section 11 by the Collector applied to the Government under Section 79 and the Government after an enquiry passed an order resuming the land and restoring it to Laxman. Subsequently at the instance of the defendants the Government reviewed its order and allowed the defendants to remain in possession of the land on payment of certain rent. The second order of the Government was challenged by Laxman on the ground that the earlier order passed

under Section 79 was a quasi-judicial order and that the Government had no jurisdiction to review it. The Supreme Court held that an order passed by a Collector under Section 12 is quasi-judicial because it has to be preceded by an enquiry and to be supported by reasons and that an order can be quasi-judicial even when there is no contest between one individual and another provided that there is contest between an authority purporting to do an act and a person opposing it and

> "provided the statute imposes a duty on the authority to act judicially".

Since the Collector's order under Section 11 was quasi-judicial, the order passed by him under Section 12 also was quasi-judicial because

> "the provisions of these two sections are thus interlinked and it is difficult to conceive that as the proceedings progress their quasi-judicial nature degenerates into an administrative one".

The Supreme Court took into consideration the fact that an appeal from the Collector's order under Section 12 is provided in Section 77 and on this ground distinguished the case from that of *Robinson v. Minister of Town and Country Planning,* [18] in which a Minister's order in dispute was not appealable and was held to be administrative. Mudholkar, J. who delivered the judgment referred to a statement its Justice and Administrative Law by Robson at Page 533 to the effect that the principles of naturals justice do not apply to a Minister's action in making an order for the simple reason that the initiative lies wholly with him. Section 7-F does not provide for any application to be made to the State Government and leaves the initiative for passing an order wholly with the State Government and therefore on the principle laid down; by Robson and accepted by the Supreme Court the rules of natural justice should not apply to the State Government's making an order under it. Coming to the nature of the order to be passed by the Government under Section 79 Mudholkar, J. observed that it was a quasi-judicial order as

> "when an authority exercises its revisional powers it necessarily acts in a judicial or quasi-judicial capacity."

There is a material difference between the language used in Section 79 of the Hereditary Offices Act and that used in Section 7-F under consideration. In the former the Government is required to satisfy itself as to the legality or propriety of any order

passed whereas the latter contains no such requirement. The former empowers the Government to reverse or modify the order or to order a new enquiry, whereas the latter simply empowers the State Government to make an order as appears to it necessary for the ends of justice. The word "revise" is not used at all in the latter provision; it, therefore, cannot be said that the power conferred by Section 7-F is a power to revise within-the meaning of the observation of Mudholkar, J. Lastly, an order reversing or modifying a quasi-judicial order must itself be a quasi-judicial order, because Mudholkar, J. laid down that a quasi-judicial order "cannot be set aside or revised or modified just as an administrative order can be" and a quasi-judicial proceeding cannot degenerate into an administrative one. I have, therefore, no hesitation in saying that the Supreme Court's decision that an order under Section 79 of the Hereditary Offices Act is a quasi-judicial order has no application to an order passed by the State Government under Section 7-F. I am unable to agree with Dhavan, J. in *Ram Chand v. Bhagwan Das*, [19] where he held that Section 7-F confers quasi-judicial jurisdiction upon the State Government and that the cases of AIR 1954 Allahabad 232 and 1962 All LJ 672 and 1956 All LJ 329 are no longer good law. The decisions in those cases being bench decisions were binding upon the learned Judge and the decision, in Civil Appeal No. 206 of 1960, D/-13-12-1962, reported in : AIR 1964 Supreme Court 436 did not directly affect them and did not overrule them. So long as they were not overruled by the Supreme Court they were binding upon the learned Judge; if they required reconsideration in the light of the decision in Civil Appeal No. 206 of 1960, D/-13-12-1962, reported in : AIR 1964 Supreme Court 436 the case should have been referred to a larger bench. The Supreme Court did not lay down any new law in and, therefore, if the decisions in Narottam Saran, AIR 1954 Allahabad 232 etc., were not good law, they were not good law even prior to the decision in Laxman Purshottam, Civil Appeal No. 206 of 1960, D/-13-12-1962, reported in : AIR 1964 Supreme Court 436 and could be overruled only by a larger bench. I have explained how the decision in Laxman Purshottam, Civil Appeal No. 206 of 1960, D/d. 13-12-1962, reported in : AIR 1964 Supreme Court 436 does not at all support the contention that the jurisdiction conferred by Section 7-F is quasi-judicial. A District Magistrate's and a Commissioner's orders under Section 3 have been shown to be administrative and there is nothing incongruous in the State Government's order under Section 7-F also being administrative.

8. *Local Govt. Board v. Arlidge,* [20] contains valuable observations relevant to the question of procedure to be adopted by an administrative authority clothed with

jurisdiction. Under a certain provision an appeal is provided to the Local Government Board from an order passed by a Local Authority to the effect that a certain house must be closed on account of its being unfit for human habitation and the appeal is to be disposed of in accordance with the rules made by the Local Government Board. In the case, an appeal was presented to the Local Government Board which got a public local enquiry made, and was within its power, and after considering the report of the local enquiry, the evidence given at the enquiry and the facts it dismissed the appeal. The owner of the house then applied for certiorari for the quashing of the Local Board's order on the ground that it disposed of the appeal contrary to the manner provided by law inasmuch as the report of the local enquiry was not shown to him, which officer of the Local Government Board actually decided the appeal was not disclosed to him and he was not heard orally by the Local Government Board. The House of Lords rejected the contention of the petitioner that he was entitled to be heard orally by the Local Government Board before it could dismiss his appeal. Viscount Haldane L.C. observed at p. 132 :

> "When the duty of deciding an appeal is imposed, those whose duty it is to decide it must act judicially. They must deal with the question referred to them without bias, and they must give to each of the parties the opportunity of adequately presenting the case made...... But it does not follow that the procedure of every such tribunal must be the same. In the case of a Court of law tradition......has prescribed certain principles to which in the main the procedure must conform. But what that procedure is to be in detail must depend on the nature of the tribunal. In modern times it has become increasingly common for Parliament to give an appeal in matters which really pertain to administration, rather than to the exercise of the judicial functions of an ordinary Court, to authorities whose functions are administrative and not in the ordinary sense judicial."

Referring to the power given to the Local Government Board to decide an appeal the Lord Chancellor said at p. 132 :

> "When...... Parliament entrusts it with judicial duties, Parliament must be taken, in the absence of any declaration to the contrary, to have intended it to follow the procedure which is its own, and is necessary if it is to be capable of doing its work efficiently."

The Lord Chancellor referred to *Board of Education v. Rice,* [21] in which Lord Loreburn had said that the Board of Education was not to treat an appeal preferred to it as though it were a trial, said that so long as the Local Government Board followed a procedure which was usual and not calculated to violate the tests referred to above it discharged the duty imposed upon it in the fashion Parliament must be taken to have contemplated when it deliberately transferred the jurisdiction from a Court to the local authorities and then, for the purposes of all appeals, from quarter sessions to an administrative department of the State and ended with these words :

> "I do not think the Board was bound to hear the respondent orally, provided it gave him the opportunity he actually had. Moreover, I doubt whether it is correct to speak of the case as the inter parses. The Hamstead Borough Council was itself acting administratively, although it had the right to appear, and did appear, before the inspector and on the appeal, and might have to pay or receive costs" (Page 132)".

Lord Shaw of Dunfermline observed at p. 137 :

> "Judicial methods may, in many points of administration be entirely unsuitable, and produce delays, expense, and public and private injury. The department must obey the statute." and at p. 138 :

> "When a central administrative board deals with an appeal from a local authority it must do its best to act justly, and to reach just ends by just means. If a statute prescribes the means it must employ them. If it is left without express guidance it must still act honestly and by honest means. In regard to these certain ways and methods of judicial procedure may very likely be imitated; and lawyer-like methods may find especial favor from lawyers. But that the judiciary should presume to impose its own methods on administrative or executive officers is a usurpation."

Lord Parmoor expressed himself as :

> "Where, however, the question of propriety of procedure is raised in a hearing before some tribunal other than a Court of law there is no obligation to adopt the regular forms of legal procedure. It is sufficient that the case has been heard in a

judicial spirit and in accordance with the principles of substantial justice" (p. 140). And, lastly, Lord Moulton said at p. 150 :

"It is said, truthfully, that on such an appeal the Local Government Board must act judicially, but this, in my opinion, only means that it must preserve a judicial temper and perform, its duties conscientiously, with a proper feeling of responsibility in view of the fact that its acts affect property and rights of individuals."

It must be observed that it was because an appeal lay to the Local Government Board that it was held to exercise quasi-judicial power and yet it was held that oral hearing was not essential. The position of the petitioner in the instant case is still weaker than that of the appellant in the above case. Kania, C.J., laid down in *A.K. Gopalan v. State of Madras,* [22] at page 44 :

"I am not prepared to accept the contention that a right to be heard orally is an essential right of procedure even according to the rules of natural justice. The right to make a defense may be admitted, but there is nothing to support the contention that an oral interview is compulsory." and relied upon 1915 AC 120. In *F.N. Roy v. Collector of Customs,* [23] the Supreme Court rejected the contention that the Government revising an order of the Central Board of Revenue ought to have given personal hearing to the petitioner by observing "There is no rule of natural justice that at every stage a person is entitled to a personal hearing" (p. 652). In *Nakkuda Ali v. M.F. De. S. Jayaratne,* [24] the Judicial Committee of the Privy Council had to consider the nature of the jurisdiction exercised by the Controller of Textile when cancelling a textile license under a certain regulation in Ceylon which empowered him to do so "'where the Controller has reasonable grounds to believe that any dealer is unfit to be allowed to continue as a dealer." Their Lordships held that the regulation imposed a condition that there must in fact exist the reasonable ground mentioned in the regulation, but said :

"But it does not seem to follow necessarily from this that the Controller must be acting judicially in exercising the power. Can one not act reasonably without acting judicially ? It is not difficult to think of circumstances in which the Controller might, in any ordinary sense of the words, have reasonable grounds of belief without having ever confronted the license holder with the information which is the source of his belief. It is a long step in the argument to say that because a man is enjoined that he must not take action unless he has reasonable

> ground for believing something he can only arrive at that belief by a course of conduct analogous to the judicial process."

They relied upon 1924-1 KB 171 and then said at p. 78 :

> "When he cancels a license he is not determining a question : he is taking executive action to withdraw a privilege because he believes, and has reasonable grounds to believe, that the holder is unfit to retain it. But, that apart, no procedure is laid down by the regulation for securing that the license holder is to have notice of the Controller's intention to revoke the license, or that there must be any enquiry, public or private, before the Controller acts. The license holder has no right to appeal to the Controller or from the Controller."

Granting or cancelling a license stands on the same footing as granting permission to file a suit or refusing it; just as no question is decided when a license is granted or cancelled so also no question is decided when permission to file a suit for eviction is granted or refused and just as the fact that no appeal lay from the Controller's order was relevant to the question, so also is the fact that no appeal lies from a District Magistrate's order granting or refusing permission. In *Kapur Singh v. Union of India,* [25] the Supreme Court decided that

> "an opportunity of making an oral representation not being in our view a necessary postulate of an opportunity of showing cause within the, meaning of Article 311 of the Constitution,"

the protection conferred by the Article cannot be said to have been denied by the Government servant's not being given an oral hearing. Again in *Jagannath Agarwala v. State of Orissa,* [26] giving viva voce hearing was held to be not an essential ingredient of an opportunity to be heard. It is clear from these decisions that it was not incumbent upon the State Government when acting under Section 7-F to give an oral hearing to the petitioners. Whether they should have been heard orally or not was a matter at its discretion. The petitioners themselves never asked for an oral hearing and were not denied any such request. Even if the State Government acted quasi-judicially the orders passed by on the petitions could not be quashed on the ground that it did not give an oral hearing to the petitioners. The State Government considered the written statements of the petitioners which were in detail and this was sufficient compliance

with the principle of natural justice. E.F. Albertworth writes in his article "Judicial Review of Administrative Action by the Federal Supreme Court' in 35 H.L.R., 127 that a single hearing whether in a Court or before an administrative official meets the requirement of due process and that the right of hearing of appeal is not essential; so after a hearing has been given by a District Magistrate and the Commissioner on revision the right of hearing before the State Government in a proceeding under Section 7-F cannot be claimed. For the incidents of a hearing reference may be made to the article "The right to hear in English Administrative Law" by S.A. De. Smith in (1955) 68 HLR 569; it is said therein that where a decision is made by Government departments as distinct from a special tribunal the person affected is not entitled to be heard before the officer who decides the issue.

9. In the result I find that the State Government acted administratively and not quasi-judicially when it dismissed the applications of the petitioners and was not bound to hear them orally before dismissing their applications. The orders passed by it cannot, therefore, be quashed by certiorari. All the petitions should be dismissed with costs.

Sharma, J.

10. I have had the advantage of perusing the judgment of the Hon'ble the Chief Justice with which I concur and have nothing to add. I agree that the petitions should be dismissed with costs.

Petitions dismissed.

Cases Referred.

1. AIR 1954 All 232
2. 1963 All LJ 296: (AIR 1964 All 7)
3. 1961 All LJ 353
4. AIR 1959 All 675
5. 1961 All LJ 32
6. 1959 All WR (HC) 70
7. AIR 1954 All 232
8. 1956 All LJ 329
9. 1962 All LJ 672

10. AIR 1950 SC 222
11. 1924-1 KB 171
12. 1931-2 KB 215
13. AIR 1963 SC 677
14. AIR 1962 SC
15. AIR 1962 SC 1217
16. AIR 1962 SC 1621
17. Civil Appeal No. 206 of 1960, D/-13-12-1962
18. (1947) 1 All England Reporter 851
19. 1963 All LJ 752
20. 1915 AC 120
21. 1911 AC 179
22. AIR 1950 SC 27
23. AIR 1957 SC 648
24. 1951 AC 66
25. AIR 1960 SC 493
26. AIR 1961 SC 1361