

(1969) 09 CAL CK 0024

In the Calcutta High Court

Case No : Civil Revision Case No. 2725 of 1969

Golak Behari Tewari

APPELLANT

Vs

Additional District Magistrate, Bankura and Others

RESPONDENT

Date of Decision : 05-09-1969

Acts Referred:

Bengal Ferries Act, 1885 — Section 13, 14, 7, 8, 9
Constitution of India, 1950 — Article 136, 136(1), 226, 227

Citation : 74 CWN 454

Hon'ble Judges : Anil Kr. Sen, J;A.C. Gupta, J

Bench : Division Bench

Judgement

Anil Kr. Sen, J.—This Rule was obtained by the petitioner Golak Behary Tewari calling upon the Additional District Magistrate, Bankura, the sub-Divisional Land Reforms Officer (S) Bankura and one Bhakti Ram Bhalotia to show cause why this court should not in the exercise of its jurisdiction under Article 227 of the Constitution set aside an order dated July 18, 1968 passed by the Commissioner Burdwan Division and why further consequential order should not be passed granting him lease of a public Ferry known as Majia Ballavpur Ferry. This Rule is being opposed by Respondents 1 and 2 namely the Additional District Magistrate and Sub-Divisional Land Reforms Officer as also by Bhaktiram Bhalotia. There is no dispute that the disputed Majia Ballavpur Ferry is a public ferry which is regulated by the provisions of the Bengal Ferries Act 1885 (hereinafter referred to as the said Act). The existing term of the lease of the aforesaid public ferry over the river Damodar was to expire on 30th Baisakh 1374 B.S. and a proposal was initiated from some time before that date for holding a fresh auction. Initially February 12, 1968 was fixed to be the date of auction but it was subsequently shifted on a public notice issued on April 8, 1968—a copy whereof is made Annexure A to the application under Article 227 of the Constitution and it was notified that the said ferry would be put to public auction on April 15, 1968. This public notice recorded that the Sub-Divisional Officer Sadar, Bankura will conduct the auction and that the auction would be held subject to certain

conditions set out therein including a condition that the auction shall be subject to the sanction of the auctioning authority and that it will be open to the said authority to accept or not to accept the highest bid: it may be noted that although the public notice notified that it was the Sub-Divisional Officer who should conduct the auction there is an order recorded in the records dated April 2, 1963 that it would be the Sub-Divisional Land Reforms Officer who should preside over the auction fixed on April 15, 1968.

2. The Sub-Divisional Land Reforms Officer held the auction on April 15, 1968; there were bidders including the present petitioner and the present petitioner tendered the highest bid of Rs. 30,000/-. On the Bid-Sheet the Sub-Divisional Land Reforms Officer recorded on April 15, 1968 the following: "The bid is closed. The highest bid of Rs. 30,000/- offered by Sri Golak Tewari, son of late Sarbeswar Tewari of P.O. and Village Ballavpur is accepted subject to approval or appropriate authority".

3. The bid-sheet was forwarded to the Respondent No. 1 had passed any order, the Respondent No. 3 filed an application to the Sub-Divisional Land Reforms Officer on April 18, 1968 stating therein that due to sudden illness from the night of April 14, 1968 he could not attend the auction, that he was ready and willing to offer a sum of Rs. 51,000/- if the said ferry be leased out to him. On April 19, 1968 it appears the Sub-Divisional Land Reforms Officer put up a note obviously addressed to the Respondent No. 1 bringing to his notice the offer made by the Respondent No. 3 and seeking his decision as to whether such offer by Respondent No. 3 could be accepted or a fresh auction is to be held. In the meantime it appears the petitioner had deposited his bid money in two instalments on 15.4.1968.

4. On April 22, 1968 the Additional District Magistrate Respondent No. I recorded the following order in the records: "In view of the petition of Sri Bhakti Ram Bhalotia offering Rs. 51,000/- a re-auction should be done in the interest of Government Revenue. Before doing this Mr. Bhalotia submits a written undertaking immediately that he will start the bid with Rs. 51,000/-" such undertaking having been furnished on April 25, 1968 the Additional District Magistrate approved the fresh auction in respect of the said ferry; a fresh public notice was given on terms similar to the earlier one referred to hereinbefore although there was a material change this time for the proposed term of the lease. It appears that on the date fixed for such fresh auction the Respondent No. 3 alone appeared to submit his bid and offered the promised sum of Rs. 51,000/- which again was accepted by the Sub-Divisional Officer subject to the approval of the appropriate authority on May 10, 1968. It appears that this bid also was not finally accepted by the Additional District Magistrate as by an order dated May 14, 1968 he directed that the proposal should be sent to the Commissioner Burdwan Division with a request to approve it although on the Bid-sheet itself the Additional District Magistrate on May 15, 1968 appended a note to the effect "approved."

5. In the mean time it appears that the present petitioner raised objection to the Respondent No. 1's direction for a fresh auction and he insisted upon his bid being accepted by the Additional District Magistrate such objection having been overruled by the Additional District Magistrate the present petitioner moved an application under Rule 3 of the West Bengal Boards Miscellaneous Rules before the Commissioner Burdwan Division. The Commissioner Burdwan in disposing of the said application passed the order now impugned before us on July 18, 1968.

6. The Commissioner in disposing of the said application came to the conclusion that the Respondent No. 1 had not clearly stated whether he accepted or rejected the bid held on 15.4.68, that the said respondent might have rejected the petitioner's petition for settlement in his favour on the basis of the said bid on April 27, 1968 but even prior thereto on April 22, 1968 had ordered re-auction, that the Respondent No. 1 had not assigned any reason nor had actually refused to accept the bid dated 15.4.1968 on the aforesaid findings he comes to the conclusion that the order for re-auction by the Respondent No. 1 is ultra vires and not in consonance with the rules and accordingly the Commissioner directed that neither of the two auctions can be approved but there should be a fresh auction after formally rejecting both the bids dated 15.4.68 and 10.5.68.

7. It is the propriety and legality of the aforesaid order of the Commissioner which is being disputed by Mr. Mitter appearing on behalf of the petitioner. According to Mr. Mitter the Commissioner came to a correct conclusion to this extent that the order for re-auction dated April 22, 1968 passed by the Respondent No. 1 and the consequent auction held on May 10, 1968 were ultra vires and illegal. Mr. Mitter, however contends that the Commissioner went obviously wrong in holding that the highest bid offered by his client on April 15, 1968 had not been accepted. According to Mr. Mitter the Commissioner ought to have held that the proceeding for the auction held on April 15, 1968 came to a final conclusion when his client's highest bid was accepted by the Sub-Divisional Land Reforms Officer on April 15, 1968 and as such the Commissioner should have held that his client was entitled to get the lease executed in his favour. The Commissioner went wrong in ordering a third auction by rejecting both the earlier auctions; reasons assigned by Mr. Mitter to support the above contention of his is that when the Sub-Divisional Land Reforms Officer was duly authorised by the Additional District Magistrate to conduct the auction he and he alone was competent to accept or to refuse to accept the offer of the highest bidder u/s 9 of the said Act; therefore in the present case when he accepted the highest offer the auction was complete; no doubt he had made a reservation that such acceptance was subject to approval by the authorities but the reservation was uncalled for and was of no effect and should therefore be ignored. This in short is the contention of Mr. Mitter to support his client's case as made out in this court. Mr. Jitendra Kumar Sen Gupta appearing on behalf of the Respondent No. 3 had contested the claim of Mr. Mitter. According to him even if the Sub-Divisional Land Reforms Officer was authorised to conduct auction still the Respondent No. 1 does not lose his jurisdiction to accept or refuse to accept an offer made in

such an auction conducted by the Sub-Divisional Land Reforms Officer. In the second place Mr. Jitendra Kumar Sengupta contends that on the facts of the present case there was no unqualified authorisation of the Sub-Divisional Land Reforms Officer but the right to accept or refuse to accept an offer was reserved by the Respondent No. 1 as it appears from the terms set out in the auction notice and when it was so reserved the Respondent No. 1 was competent to refuse to accept an offer even if such offer be the highest offer. Thirdly Mr. Sen Gupta contends that even if it be assumed that the Sub-Divisional Land Reforms Officer was the only competent authority to accept or refuse to accept an offer there had been no unqualified and final acceptance of such offer because he himself made a reservation that the acceptance is subject to an approval by the authorities and then forwarded the same to the Respondent No. 1 for such approval.

8. Apart from the aforesaid contentions Mr. Sen Gupta appearing on behalf of the Respondent No. 3 has raised a very pertinent objection as to the maintainability of the present application under Article 227 of the Constitution before us which has also been adopted by Mr. Bose who appears for the Respondents 1 and 2; according to the learned Advocate for the respondents the Commissioner in disposing of the application of the petitioner under Rule 3 of the Boards Misc. Rules was not acting as a tribunal subordinate to this Court and this court has no jurisdiction to revise any order passed in any such proceeding. According to them the Commissioner was not exercising any judicial or quasi-judicial powers while revising the orders of the Respondent No. 1 in the matter of conducting an auction u/s 9 of the said Act-it was according to them purely administrative and as such the present application before us is wholly misconceived. If this preliminary objection of the Respondents succeeds it would be unnecessary for us to go into the rival contentions of the parties on the merits.

9. Mr. Mitter, however, in meeting this preliminary objection contends that section 7 of the said Act provides that the control of all public ferries would be vested in the Magistrate of the Districts subject to the direction of the Commissioner. He contends that section 7 confers upon the Commissioner the jurisdiction and powers to issue directions and under the circumstances a direction can be issued in exercise of judicial or quasi-judicial powers. Mr. Mitter could not seriously dispute the contention of Mr. Sengupta that neither the Magistrate of the District nor the person authorised by him while exercising powers u/s 9 in accepting or refusing to accept an offer of an action is acting either judicially or quasi-judicially; that however according to Mr. Mitter, does not mean that functions which the Commissioner would be discharging would necessarily be administrative. Mr. Mitter contends that when a bid of a bidder is refused he has a right to raise a dispute before the Commissioner which the Commissioner is to dispose of in exercise of his powers u/s 7; such a dispute raises a lis between a bidder and a bidder or a bidder and the auctioning authorities; in such circumstances it must necessarily be held that while adjudicating on such a lis he is discharging judicial or quasijudicial functions which would make him a tribunal

within the meaning of article 227 of the Constitution; there is no dispute that if he is a tribunal he is subordinate to this court. Mr. Mitter in support of this contention has relied on two of the Supreme Court's decisions in the cases of (1) Waryam Singh and Another Vs. Amarnath and Another, , (2) Associated Cement Companies Ltd. Vs. P.N. Sharma and Another, and has also relied on a Bench decision of this court in the case of (3) Md. Golam Ali Mina and Another Vs. Land Acquisition Collector and Another, .

10. It must however be noted that none of the learned Advocate had contended that rule 3 of the West Bengal Boards Misc. Rules has any statutory force or that the appeal referred to therein constitutes any statutory right of appeal in law. As a matter of fact a similar set of rules framed by the Board of Revenue viz the Bengal Government Estates Manual was held to be not statutory by Sinha J. (as his Lordship then was) in Civil Revision 882 of 1953 (disposed of by him on July 14, 1955). It is for this reason also that Mr. Mitter had made a great endeavour to base his contentions on the provisions of section 7 of the said Act.

11. We must therefore proceed on the basis that Rule 3 of the West Bengal Boards Misc. Rules is not statutory and as such cannot be relied on to confer any statutory right of appeal or a corresponding statutory obligation of adjudication. And we go on to consider Mr. Mitter's contention that section 7 of the said Act confers upon the petitioner a right to raise a dispute with a corresponding obligation on the Commissioner to resolve such a dispute and as such the Commissioner in discharging such an obligation acts as a quasi-judicial tribunal. The whole question therefore centres round the controversy as to whether Section 7 confers upon the Commissioner any obligation discharge whereof could be judicial or quasi-judicial. The provisions of the Act make it clear that there exists no trapping or external indication of a court for the authority discharging its function u/s 7. To this extent it can safely be held that the authority established u/s 7 of the said Act lacks the test of being a tribunal exercising judicial or quasi-judicial function. Mr. Mitter, however, is right in his contention that existence or nonexistence of such trapping is no longer held to be a decisive factor in deciding whether the authority established is really judicial or quasi-judicial. Existence of such trapping may assist us to hold that it is so, but its non-existence does not necessarily mean that the authority without such trapping would not be discharging judicial or quasi-judicial function.

12. But in our opinion the basic test is whether the statute had cast any obligation to adjudicate; the statute must provide for raising a dispute or lis before the authority set up by it and cast an obligation on such authority to adjudicate over such dispute or lis, it is only then that the authority can be said to be acting judicially or quasi-judicially. This is the principle which the Supreme Court has now laid down in the case of (2) Associated Cement Co. v. P.N. Sarma (supra) and followed by this Court in the case of (3) Md. Golam Ali v. L.A. Collector. Mr. Mitter no doubt relies on a decision of the Supreme Court in the case of (4) Board of High School and Intermediate Education, U.P., Allahabad Vs.

Ghanshyam Das Gupta and Others, to contend that from the nature of the duties cast by the statute it may very well be deduced that an authority called upon to discharge such duties must necessarily act judicially or quasi-judicially. But in our opinion that does not abrogate from the principles referred to hereinbefore that the duty cast must primarily be a duty to adjudicate, in order to make the authority on which the duty is cast a tribunal.

13. In our opinion, however section 7 of the said Act does not satisfy this primary test. The provisions of the Bengal Ferries Act 1885 primarily provide for regulating maintenance of ferries both public and private. Part 1 of the said Act makes provisions for maintenance of public ferries. Section 8 vests the superintendence of a public ferry in the Magistrate of the District or such other Officer that the State Government may appoint. Section 9 of the Act provides that such ferries may be leased out by auction by the Magistrate with the approval of the Commissioner. The said section further provides the procedure for holding auction and execution of a lease to make the settlement final. Section 13 confers the right of cancellation on the Magistrate and Section 14 confers the right to surrender on the lessee. Section 7 which precedes all these sections runs as follows:—"The Control of all public ferries shall be vested in the Magistrate of District subject to the direction of the Commissioner."

14. In our opinion this section only provides for administrative overall control over public ferries by the Commissioner by authorising him to issue such directions from time to time as he may consider necessary and proper for due maintenance of such ferries. In our opinion it will be difficult to accept the contention of Mr. Mitter that by the provisions as aforesaid the statute gave a right to a bidder to raise a dispute before the Commissioner on acceptance or rejection of a particular bid. In our opinion the said provision confers no obligation on the Commissioner to adjudicate any such dispute or lis. Whether the Commissioner would or would not while exercising his powers of issuing direction interfere with any particular case of acceptance or rejection of a bid is not the material consideration. The material consideration in our opinion is whether the statute makes it obligatory to adjudicate such a dispute or not. If the statute imposes such an obligation either expressly or by necessary implication on the Commissioner, he must necessarily be a judicial or quasi-judicial tribunal. But in our opinion provisions of section 7 nowhere imposes any such obligation nor does it confer any right upon the petitioner to raise any dispute or lis before such authority.

15. In dealing with this question we cannot but refer to the decision of House of Lords in (5) Ridge v. Baldasin (1964) AC 40. By this decision the House of Lords redefined the principles of natural justice and tests for determining when a proceeding can be said to be judicial or quasi-judicial. This decision in substance abrogated the gloss that was superadded by the decision in (6) Nakkuda Ali's case (1951) AC 66. In Nakkuda Ali's case it was held that the body should have not only legal authority to determine questions affecting the rights of subject but

there must be superadded to that characteristics the further characteristics that the body has the duty to act judicially. The latter limitation of superadded characteristics was disapproved by the House of Lords on the authority of earlier decisions. House of Lords therefore reaffirmed the position that duty to act judicially can be inferred from the nature of the power and need not be superadded by the: Statute. Although the Supreme Court proceeded on the decision of Nakkuda Ali's case in the case of (7) Province of Bombay Vs. Kusaldas S. Advani and Others, , the latter decision of House of Lords in the case of (5) Ridge v. Baldasin (supra) has been approved by the said court in the case of (2) Associated Cement Company v. P.N. Sarma (supra): and that was also the underlying principle laid down in the case of (4) Board of High School and Intermediate Education U.P. v. Ghanashyam Das Gupta (Supra). But even on these decisions the primary test still remains viz. that the body must have the authority and obligation in law to determine disputes affecting the rights of the subject which on our findings is lacking in the present case.

16. After we had reserved our judgment for consideration, Mr. Banerjee who is appearing with Mr. Mitra for the petitioner, has drawn our attention to a Single Bench decision of this Court in the case of (8) Gour Hari Mondal Vs. St. of W. Bengal and Others, . This decision undoubtedly supports the petitioner. In this decision his Lordship (Bijayesh Mukherji, J.) at first proceeded on an assumption that such orders "are without doubt of quasi-judicial nature recorded by the tribunal below viz. the Commissioner"; in the later part of it he goes on to observe.

17. "The impugned orders are said to be departmental orders recorded by an executive officer. If that is so, they are beyond the reach of Article 227. But that is not so. Indeed that cannot be so. What goes before hearing by the higher authority, a forum in the nature of an appellate Tribunal, the order directing remit, the taking of evidence, if necessary, a judgment as it were recording a decision as to the valued rights of the parties-and that too after hearing lawyers-make the orders judicial or quasi-judicial recorded by a tribunal clothed with powers judicial or quasi-judicial too."

18. In other words the learned Judge proceeds upon the view that the Commissioner acts as a tribunal having all the trappings of a Court. But with all respect we are unable to find any provision in law which has conferred any such trapping: he speaks of appeal and a forum of appeal: it is well established principle that right of appeal must come from a statute or any authority equivalent to a Statute (vide (9) Meenakshi v. Subramaniya (1887) 14 I.A. 160). But there is no law providing any appeal to the Commissioner; we have already observed that neither of the parties has taken any stand on Rule 3 of the Board's Miscellaneous Rules as having any statutory force; learned Judge has referred to and relied on Board's order dated April 2, 1960 as a statutory instrument but even if it be assumed to be so, that provides for neither the appeal nor the trappings of a court. We are of the opinion that the Commissioner

simply by choosing to act judicially cannot convert himself into a judicial or quasi-judicial tribunal unless the law imposes such an obligation upon him. His Lordship expressed the view that the order that the Collector passes is judicial or quasi-judicial: with greatest respect such a view seems unacceptable on the provisions of the Statute. It appears from the judgment that attention of the learned Judge was never drawn to the provisions of the Bengal Ferries Act 1885. The Statute in Part I provides for management and maintenance of public ferries. It is left to the discretion of the Collector subject to any direction by the Commissioner. Section 9 of the Act only provides that if it is to be settled with others, it has got to be done by a public auction. Even then the Collector or the officer authorised to hold the auction is not bound to accept the highest bid. That is left to the absolute discretion of the Collector or the officer authorised obviously to be decided on consideration of expediency in the primary interest of service maintenance whereof is vested in such an authority. In our opinion this consideration of policy and expediency is dominant in the matter of exercise of powers u/s 9 as aforesaid and such exercise of powers can never be judicial or quasi-judicial (10) vide R. v. Manchester Legal Aid Committee Ex. p. R.A. Branch & Co. Ltd. (1952) 1 All E.R. 480. This is so notwithstanding the requirement of the law that he is to give reason for rejecting the highest bid. (Vide (11) Radeshyam Khare and Another Vs. The State of Madhya Pradesh and Others, .) We are therefore unable to share the view expressed in (8) Gourhari Mondal v. State of West Bengal (Supra) that the Collector or the Commissioner acts as judicial or quasi-judicial tribunal amenable to our jurisdiction under Art. 227 of the Constitution.

19. On the conclusion as above we must hold that the Commissioner in exercising his powers u/s 7 does not act as a Tribunal subordinate to this Court whose decision would be amenable to our supervision under Article 227 of the Constitution. In this view the preliminary objection raised by Mr. Sengupta must succeed and we are not called upon to decide any of the points raised on merits. The Rule is accordingly discharged. There would, however, be no order for costs.

A.C. Gupta, J.

20. I entirely agree and would only add a few words on the question, whether the order complained of is revisable under Article 227 of the Constitution. The relevant provisions of the statute have been set out and analysed in the judgment of my learned brother which I need not repeat. The impugned order is clearly not one passed by a "tribunal" amenable to the jurisdiction of this Court under Article 227 of the Constitution. In (2) Associated Cement Companies Ltd. Vs. P.N. Sharma and Another, , Bachawat, J. has held that the word Tribunal in Article 227 bears the same meaning as in Article 136 of the Constitution. In a series of decisions beginning with (12) The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi, , followed by (13) Durga Shankar Mehta Vs. Thakur Raghuraj Singh and Others, and then the Associated Cement Companies" case, referred to

above, it has been held that the expression tribunal as used in Article 136 does not mean the same thing as a Court but includes within its ambit all adjudicating bodies that are constituted by the State and are invested with judicial as distinguished from purely administrative or executive functions. The point was elaborated in the judgment of Gajendragadkar, C.J., in (2) Associated Cement Companies" case as follows:-"Tribunals which fall within the purview of Article 136(1) occupy a special position of their own under the scheme of our Constitution. Special matters and questions are entrusted to them for their decision and in that sense, they share with the courts one common characteristic; both the courts and the tribunals are "constituted by the State and are invested with judicial as distinguished from purely administrative or executive functions". (Vide (13) Durga Shankar Mehta Vs. Thakur Raghuraj Singh and Others,). They are both adjudicating bodies and they deal with and finally determine disputes between the parties which are entrusted to their jurisdiction..... As in the case of courts, so in the case of tribunals it is a State's inherent judicial power which has been transferred and by virtue of the said power it is a State's inherent judicial functions which they discharge. Judicial functions and judicial powers are one of the essential attributes of a sovereign state, and on consideration of policy, the state transfers its judicial functions and powers mainly to the courts established by the Constitution, but that does not affect the competence of the state by appropriate measure, to transfer a part of its judicial powers and functions to tribunals by entrusting to them the task of adjudicating upon special matter and disputes between parties."

21. The order complained of in the instant case shows that it was passed upon an application made by the present petitioner under Rule 3 of the West Bengal Board's Miscellaneous Rules, 1955. Mr. Mitter appearing for the petitioner did not claim that the said rules have a statutory origin and conceded that they were only executive instructions. Mr. Mitter however, contended that though the order is stated to have been made under Rule 3 of the said rules, u/s 7 of the Bengal Ferries Act, 1885 the Commissioner had jurisdiction to pass a similar order and that as such we should treat the impugned order as one made by the Commissioner in exercise of his power u/s 7 of the Act. According to Mr. Mitter the power of the Commissioner to issue directions u/s 7 includes the power of judicial determination of any dispute raised by a subject whose rights are affected by any act of control exercised by the District Magistrate in respect of a public ferry. Neither in the Bengal Ferries Act nor under the Rules framed thereunder, however, there is any provision requiring the Commissioner to adjudicate on any dispute affecting the rights of the subjects. As pointed out by my learned brother, section 7 only vests the Commissioner with an overall administrative control over public ferries in a division.

22. Assuming however, that section 7 of the Act conferred a right to a bidder to raise a dispute before the Commissioner on the acceptance or rejection of a bid, there can be no question that the Commissioner has to proceed judicially in the sense that he must observe certain fundamental rules of justice and fairplay in

resolving the dispute. This is a position firmly established on the decision of the House of Lords in (5) Ridge v. Baldwin, 1964 AC, 40 which has been approved by our Supreme Court in the Associated Cement Companies" case and it is not necessary here to dilate on the point. That however, does not imply that in such cases the Commissioner acts as a tribunal. If the Commissioner functioning u/s 7 has to consider proposals and objections at some stage before he reaches his decision and at that stage has to proceed judicially in the sense as stated above, it cannot be said that the Commissioner acts as a tribunal if the tests of a tribunal as laid down by the Supreme Court are not satisfied. It would appear from the analysis of the various provisions of the Bengal Ferries Act appearing in the judgment of my learned brother that the control of public ferries under the Act is guided wholly by considerations of policy and expediency. A direction issued in this regard by the Commissioner on the District Magistrate u/s 7 is not a judicial decision and is by its very nature different from a decision given by a tribunal or a court through at some stage prior to his giving the direction he may have to proceed judicially. Regarding such decisions of an administrative authority, this is what Gajendragadkar, C.J. says in (2) Associated Cement Companies" Case:- "In every State there are administrative bodies or authorities which are required to deal with the matters within their jurisdiction in an administrative manner and their decisions are described as administrative decisions. In reaching their administrative decisions, administrative bodies can and often do take into consideration question of policy. This is not unlikely that even in the process of reaching administrative decision the administrative bodies or authorities are required to act fairly and objectively and would in many cases have to follow the principle of natural justice; but the authority to reach decisions conferred on such administrative bodies is clearly distinct and separate from the judicial power conferred on courts, and the decisions pronounced by administrative bodies are similarly distinct and separate in character from judicial decisions pronounced by courts". Whether a Writ of certiorari or any other appropriate Writ or order under Article 226 of the Constitution would be available against the impugned order is not a matter we are called upon to consider in this case. Reliance was ultimately sought to be placed on the decision in Gour Hari Mondal Vs. St. of W. Bengal and Others, in support of the claim that the Commissioner in making the order complained of was functioning as a tribunal. It appears that the order of the Commissioner that came up for consideration in the aforesaid case was one made under Rule 3 of the Board's Miscellaneous Rules. In the case before us, Mr. Mitter for the petitioner did not contend that these Rules have any statutory force, nor in Gour Mondal's case there is any indication that the Rules have a statutory origin. The reasons that prompted Bijayesh Mukherji, J. in Gour Mondal's case to hold that the Commissioner in making an order under Rule 3 acts as a tribunal have been quoted in the judgment of my learned brother; from the reasons stated it appears that Mukherji, J. based his conclusion on the fact that the Commissioner in exercising his powers under Rule 3 proceeded in a manner similar to that followed by a court or a statutory tribunal. It is clear however that the Commissioner discharging his functions

either u/s 7 of the Bengal Ferries Act or under Rule 3 of the Board's Miscellaneous Rules cannot be said to be acting as a tribunal because in neither case the tests of a tribunal as laid down by the Supreme Court are satisfied; there is no provision requiring the Commissioner to adjudicate on the rights of the subjects and vesting him with the judicial powers of the State. An administrative authority does not convert itself to a tribunal by donning some of the trappings of a court.

I concur in the order proposed by my learned brother.