

(1968) 05 AHC CK 0031

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 4636 of 1966 connected with Writ Petition No"s. 179, 3389 and 4644 of 1966

Haji Manzoor Ahmed and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 24-05-1968

Acts Referred:

Constitution of India, 1950 — Article 136, 136(1), 226
Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 3, 3(1), 3(3), 7F

Citation : AIR 1970 All 467 : (1968) 38 AWR 524 : (1968) 38 AWR 483

Hon'ble Judges : R.S. Pathak, J;K.B. Asthana, J;Jagdish Sahai, J

Bench : Full Bench

Advocate : S.N. Kacker, B.P. Srivastava and Sridhar, in C.M.W. No. 4636, Gopal Behari, in W.P. No. 3389, K.C. Saxena, in W.P. No. 4644 and S.N. Kacker, in W.P. No. 179, for the Appellant; Ambika Prasad, for the Respondent

Final Decision : Disposed Of

Judgement

Jagdish Sahai, J.—The question referred to us reads:

"Whether the State Government is in law liable to state the reasons for an order refusing to interfere u/s 7-F of the Rent Control and Eviction Act with an order of the Commissioner passed u/s 3(3) of the Act?"

2. The relevant and necessary facts of the case are:--

The petitioners, Haji Manzoor Ahmad and Dr. Maqbool Ahmad, are the landlords of premises No. CK 66/3 situate in Mohalla Benia Bagh, in the city of Varanasi. The respondents Nos. 4 to 7, that is, Sarvasri Sher Andil Khan, Moghal Khan, Abdullah Khan and Mannan Khan, are the tenants in possession of the premises aforesaid (hereinafter referred to as the premises). The respondents Nos. 1 to 3 are the State of Uttar Pradesh, the Commissioner, Varanasi Division, Varanasi and the Rent Control and Eviction Officer, Varanasi.

3. The petitioners made an application u/s 3 of the U.P. (Temporary) Control of Rent and Eviction Act (hereinafter referred to as the Act) for permission to eject the respondents Nos. 4 to 7 from the premises. The respondents Nos. 4 to 7 filed an objection and on 10-7-1964 the Area Rationing Officer, Rent Control, Varanasi, dismissed the petitioners' application. The petitioners filed a revision application before the Commissioner, Varanasi Division, who by his order dated 31-7-1964 remanded the case back to the Rent Control and Eviction Officer, Varanasi. After remand the Rent Control and Eviction Officer by his order dated 21-5-1966 granted permission to the petitioners to file a suit for the ejectment of the respondents from the ground floor only, but rejected the application with regard to the upper storey. The petitioners filed a revision application against the aforesaid order of the Rent Control and Eviction Officer before the Commissioner, Varanasi Division and so did the respondents Nos, 4 to 7.

The learned Commissioner heard both the revision applications together and by an order dated 18-7-1966 dismissed the petitioners' revision application and allowed that of the respondents Nos. 4 to 7, thus revoking the permission granted by the Rent Control and Eviction Officer. The petitioners then filed a revision application under (Section 7-F of the Act before the State Government. That revision application was rejected by the State Government, according to the petitioner on 3-10-1966. The petitioners have filed Annexure "G" to the Writ Petition treating it as an order passed by the State Government rejecting their revision application. It reads:--

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4. The petitioners have approached this Court under Article 226 of the Constitution of India and have prayed that the order of the State Government be quashed. The main ground that was urged before the learned single Judge at the time of the hearing of the instant writ petition was that the State Government was bound to pass a reasoned order and inasmuch as annexure "G" to the writ petition does not contain the reasons, the order of the State Government is liable to be quashed.

5. The only question which we are called upon to consider is whether the State Government while exercising its power u/s 7-F of the Act is required to pass a speaking and reasoned order.

6. Section 3 of the Act is headed as restrictions on eviction and provides that no suit shall, 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 the grounds contained in Clauses (a) to (g) of that section. From that it follows that if the cause of action for the suit is founded on any of the grounds contained in Clauses (a) to (g) of Section 3 of the Act, no permission of the District Magistrate is "necessary and the landlord can go to a Civil Court without the permission of the District Magistrate, but if the proposed civil suit is based on any other ground, the landlord must first obtain the permission of the District Magistrate. The order of the District Magistrate is revisable by the Commissioner. The power of the District Magistrate and the Commissioner and the procedure to be followed by them, are contained in the same provision i.e., Section 3 of the Act.

7. Sub-section (2) of Section 3 of the Act reads: --

"Where any application has been made to the District Magistrate for permission to sue a tenant for eviction from any accommodation and the District Magistrate grants or refuses to grant the permission, the party aggrieved by his order may, within 30 days from the date on which the order is communicated to him, apply to the Commissioner to revise the order." Sub-sections (3) and (4) of Section 3 of the Act provides:--

"(3) The Commissioner, shall hear the application made under Sub-section (2), as far as may be, within six weeks from the date of making it, 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 the proceedings held before him alter or reverse his order, or make such other order as may be just and proper.

(4) The order of the Commissioner under Sub-section (3); shall, subject to any order passed by the State Government u/s 7-F, be final."

Sub-section (4) of Section 3 of the Act makes the order passed by the Commissioner under Sub-section (3) final though subject to any order passed by the State Government u/s 7-F of the Act. This would show that the proceedings which emanate with an application before the District Magistrate for permission to sue become final or close with the passing of the order by the Commissioner, Those proceedings are not continued before the State Government when it is seized of the matter. It is significant that the powers of the State Government are not contained in the same provision in which those of the District Magistrate and the Commissioner are contained but in a separate provision, i.e., Section 7-F of the Act which is headed as "Revision to State Government" reads:

"The State Government may call for the record of any case granting or refusing to grant permission for the filing of a suit for eviction referred to in Section 3 or requiring any accommodation to be let or not to be let to any person u/s 7 or directing a person to vacate any accommodation u/s 7-F and may make such order as appears to it necessary for the ends of justice."

8. It would be noticed that Sub-sections (2), (3) and (4) of Section 3 of the Act,

which deal with the revision application before the Commissioner and his powers in respect thereof are couched in very different words from Section 7-F of the Act which deals with the revision proceedings before the State Government and its powers to deal with the matter. Whereas Sub-section (2) of Section 3 of the Act confers on "the party aggrieved" the right to file a revision application before the Commissioner within thirty days from the date on which the order is communicated to him, no such right is conferred upon a party by Section 7-F of the Act. Again, whereas the Commissioner is bound to hear revision application filed before him and cannot decline to decide it on merits, the State Government is not bound to send for the record of the case even though moved by a party and may refuse to interfere. It would be noticed that it is not stated in any statutory provision that from the order of the Commissioner a revision would lie to the State Government. In fact, there is no reference to the Commissioner's order in Section 7-F of the Act. The language of Section 7-F of the Act permits the State Government to send for the record of the case and pass an order itself no sooner the matter is decided by the District Magistrate and without waiting for the Commissioner's order. The word "may call for the record of any case granting or refusing to grant permission" comprehend such a course.

9. It would be noticed that neither the District Magistrate nor the Commissioner can pass an order suo motu. The District Magistrate can grant permission or refuse to grant one only when an application is made to him. This is apparent from the words "where any application has been made to the District Magistrate for permission to sue a tenant" occurring in Section 3(2) of the Act. The Commissioner cannot send for the record of the case suo motu and can exercise his jurisdiction only when a competent revision application is filed before him. Both Sections 3 and 7-F occur in the same Act and have been framed by the same legislature and yet their language is so different from each other. Section 7-F of the Act does not confer on a party the right to file a revision application. It only confers on the State Government the jurisdiction to call for the record of any case; clearly, therefore, a party has no right as such to invoke the jurisdiction of the State Government u/s 7-F of the Act. No doubt, the State Government often acts on being moved by a party. The law does not preclude it from receiving a request from a party that it may send for the record of the case and examine it itself. The circumstance that it can act even when a party moves it does not mean that the party has a right to file a revision application. All that it means is that the party brings to the notice of the State Government the facts of the case and the State Government suo motu takes action.

10. The power of the State Government is discretionary. Section 115, C.P.C. is couched in language very similar to the one used in Section 7-F of the Act. The words used there are: "the High Court may call for the record of any case" and "..... may make such order in the case as it thinks fit." But it is settled law that the exercise of the powers u/s 115, C.P.C., is discretionary with the High Court. (See *Sita Ram Sahu and Others Vs. Kedarnath Sahu*, and *Sheo Kumar Dwivedi and Others Vs. Thakurji Maharaj Brijman and Another*, .

11. Usually whenever the U.P. Legislature has given the right to a party to apply in revision, it has said so in clear words. For example Section 10(3) of the U.P. Sales Tax Act Section 12 of the U.P. Vrihat Jot Kar Adhiniyam, 1963 and Section 46 of the U.P. Encumbered Estates Act, which read:--

"10(3) (i), Sales Tax Act -- The revising Authority or any additional revising Authority may, for the purposes of satisfying itself as to the legality or propriety of any order made by any appellate or assessing authority under this Act, in its discretion, call for and examine either on its own motion or on the application of the Commissioner of Sales Tax or the person aggrieved, the record of such order and pass such order as it may think fit:"

"12(1). U, P. Vrihat Jot Kar Adhiniyam. 1963. -- The Board of Revenue may, on their own motion or on application, call for the record of any proceeding by whom the case or appeal was decided if it appears to have exercised jurisdiction not vested in it by law or to have acted in the exercise of its jurisdiction illegally or with substantial irregularity and may pass such order in the case as they think fit:"

"46(1). U. P. Encumbered Estates Act--Any court empowered under Sub-sections (1), (2) and (2-A) of Section 45 to hear an appeal under this Act "may of its own motion, or on the application of any person concerned, call for the record of proceedings"

12. I am satisfied that the powers exercised by the State Government u/s 7-F of the Act are discretionary and no party can invoke them as of right. I find support from Brij Kishore and Another Vs. Rent Control and Eviction Officer and Others, and Gyan Chand Bhatia Vs. Rent Control and Eviction Officer and Another, .

13. It would be noticed that the Commissioner is required by Section 3(3) of the Act to satisfy himself 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. His approach, therefore, is purely objective and that of a Judicial Tribunal or of an authority which has to bring a judicial approach to the matter before it. It is clear from the use of the words "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" that he can interfere with the order of the District Magistrate either granting the permission or refusing to grant it only if he is satisfied that the order of the District Magistrate is not correct or not legal or not proper or that the proceedings before him are not regular. His jurisdiction, therefore, though called revisional by law, is almost appellate.

The Commissioner has to satisfy himself that the District Magistrate has properly dealt with the case and his jurisdiction is confined to the examination of the record and the proceedings before the District Magistrate. There are, however, no such restrictions on the power of the State Government. Section 7-F of the Act does not confine the State Government to the examination of the record and the

order passed by the District Magistrate or the Commissioner nor is its jurisdiction confined to the examination of the regularity or otherwise of the proceedings before the District Magistrate and the Commissioner. All that Section 7-F requires the State Government to do is to send for the record of the case and make such order as appears to it necessary for the ends of justice. Even the restrictions imposed on the powers of the High Courts u/s 115, C.P.C., are absent in Section 7-F of the Act. It cannot, therefore, be doubted that the powers conferred upon the State Government by Section 7-F are of the widest amplitude and are not hedged in by any conditions or restrictions. It is free to pass any order which appears to it necessary in the interest of justice on any ground relevant for the decision of the case.

14. It may again be pointed out that whereas the Commissioner's powers are confined only to altering or revising the order of the District Magistrate or passing such other order "as may be just and proper", the State Government's powers are not confined only to altering or revising the order of the District Magistrate or of the Commissioner. It is significant that whereas, while dealing with, the powers of the Commissioner, the words used are "making such other order as may be just and proper", while dealing with the powers of the State Government the expression used is "make such order as appears to it necessary for the ends of justice." The use of the words "may be just and proper" clearly indicates that the approach must be objective.

In the words "may make such order as- appears to it necessary for the ends of justice" occurring in Section 7-F of the Act, one clearly finds an element of subjectivity, a wider sweep and a freedom, not found in the powers of the Commissioner. The legislature deliberately did not use the words "such other order as may appear to him necessary for the ends of justice" while dealing with the Commissioner's powers. The Commissioner's order has to take its roots in the record and the case of the parties. I have already said earlier that both Sections 3 and 7-F fall in the same Act and have been framed by the same legislature and yet the legislature has in its wisdom adopted different language in the two provisions. The only conclusion from this can be that the scope of the two provisions is not identical.

15. It has been contended that inasmuch as the State Government Acts in respect of a matter decided u/s 3 of the Act by the District Magistrate and the Commissioner, the nature of the jurisdiction of the State Government cannot be different from that of the District Magistrate and the Commissioner, I have already held earlier that the process before the State Government is a different one from the one before the District Magistrate and the Commissioner and the two jurisdictions are not identical. The legislature in its wisdom could make the powers of the State Government and its jurisdiction different from those of the District Magistrate and the Commissioner and this is what it has done by using different language in the two provisions.

16. For the reasons given above, I am satisfied that the powers of the State

Government u/s 7-F of the Act are different in their magnitude and contents from the powers of the Commissioner exercised u/s 3 of the Act. The mere fact that the powers of the Commissioner and those of the State Government have been described as revisional by the Act would not make the scope and the contents of the two powers the same.

17. Again, the circumstance that Section 3(4) of the Act makes the order of the Commissioner final and further circumstances that even though the powers of the District Magistrate and the Commissioner are contained in Section 3 of the Act. the powers of the State Government have been provided for in a separate provision, i.e., Section 7-F of the Act. lead to the conclusion that the process started before the State Government is a completely different process from the one started before the District Magistrate and concluded before the Commissioner.

18. In *Shri Bhagwan and Another Vs. Ram Chand and Another*, the Supreme Court had to consider the provisions of Sections 3 and 7-F of the Act. It was held by the Court that the State Government while exercising powers u/s 7-F of the Act must act according to the principles of natural justice. As to whether or not the proceedings before the State Government are purely quasi-judicial, *Shri Bhagwan and Another Vs. Ram Chand and Another*, appears to be silent. It is true that with regard to the powers of the District Magistrate and the Commissioner, the Supreme Court has clearly said that they exercise quasi-judicial functions. This is apparent from the following passages falling in the judgment of *Shri Bhagwan and Another Vs. Ram Chand and Another*,

1. "In our opinion, it is impossible to escape the conclusion that these provisions unambiguously suggest that the proceedings before the District Magistrate as well as before the Commissioner are quasi-judicial in character."

2. "That is why we think the Act must be taken to require that in exercising their respective powers u/s 3(2) and Section 3(3), the appropriate authorities have to consider the matter in a quasi-judicial manner, and are expected to follow the principles of natural justice before reaching their conclusions."

It is significant that the aforesaid observations are confined to the District Magistrate and the Commissioner and do not extend to the State Government. It was contended before us that the following passage occurring in that judgment indicates that the State Government also performs purely quasi-judicial functions:--

"Thus we are satisfied that when the District Magistrate exercises his authority u/s 3(2) and the Commissioner exercises his revisional power u/s 3(3), they must act according to the principles of natural justice. They are dealing with the question of the rights of the landlord and the tenant and they are required to adopt a judicial approach.

If that be the true position in regard to the proceedings contemplated by

Subsection 3(2) and Sub-section 3(3), it is not difficult to hold that the revisional proceedings which go before the State Government u/s 7-F must partake of the same character. It is true that the State Government is authorised to call for the record suo motu, but that cannot alter the fact that the State Government would not be in a position to decide the matter entrusted to its jurisdiction u/s 7-F, unless it gives an opportunity to both the parties to place their respective points of view before it. It is the ends of justice which determine the nature of the order which the State Government would pass u/s 7-F, and it seems to us plain that in securing the ends of justice, the State Government cannot but apply principles of natural justice and offer a reasonable opportunity to both the parties while it exercises its jurisdiction u/s 7-F." In this passage their Lordships have only held that the State Government must hear the parties. As far as my understanding of this passage or of *Shri Bhagwan and Another Vs. Ram Chand and Another*, as a whole goes it was not held by the Supreme Court that the powers exercised by the State Government are purely quasi-judicial. In any case, I am unable to find any declaration of law in this judgment to the effect that the functions of the State Government u/s 7-F of the Act are purely curial or quasi-judicial and not a hybrid mixture of quasi-judicial and administrative.

19. The Supreme Court has not in *Shri Bhagwan and Another Vs. Ram Chand and Another*, or any other case that has been brought to our notice, said anything with regard to the State Government being required to record a speaking and reasoned order while taking action u/s 7-F of the Act.

20. It has been contended that the State Government is a Tribunal and inasmuch as against its order an appeal may be filed before the Supreme Court of India under Article 136 of the Constitution of India, it is absolutely necessary that the State Government must pass a speaking and reasoned order so that the same may be examined by the Supreme Court. Before Article 136 can apply, the decision must be a judgment or a decree or a determination or sentence or an order within the meaning of Article 136(1) of the Constitution of India and must have been passed or made by a court or a Tribunal having judicial functions.

21. In *Jaswant Sugar Mills Ltd., Meerut Vs. Lakshmidhar and Others*, , their Lordships laid down that to make a decision, or an act judicial, the following criteria must be satisfied:---

"(1) It is in substance a determination upon investigation of a question by the application of objective standards to facts found in the light of pre-existing legal rules;

(2) It declares rights or imposes upon parties obligations affecting their civil rights; and

(3) that the investigation is subject to certain procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of facts by means of evidence if a dispute be on question of fact, and if the dispute be on question of law on the presentation of legal argument, and a decision

resulting in the disposal of the matter on findings based upon those questions of law and facts."

22. In my opinion the State Government is not required to record evidence, It does not declare rights. It has only to see that the eviction of the tenant is not unreasonable. (See M. Padmanabha Setty Vs. K.P. Papiiah Setty, . It has also to take into consideration larger public interest; for instance even though the need of the landlord may be greater than that of the tenant, the State Government may cancel an order granting permission to the landlord to sue on the ground that the alternative accommodation for the tenant would not be possible to be provided for. The State Government may be pressed with the problem of rehabilitating a large number of refugees in a particular town, of setting persons uprooted due to defence or war measures or epidemic or other calamities. In that case it may like to reserve all the available accommodation for the use of the persons to be rehabilitated or those uprooted and may for that reason think it proper that a particular landlord or landlords in general should not be allowed to eject a particular tenant or tenants in general and thus create the difficulty for the administration to find out suitable accommodation for the tenant or tenants who may have very good grounds for being provided with an accommodation.

It may like to encourage landlords to rebuild houses by demolishing old though tenanted ones so that more commodious and modern flats capable of accommodating a large number of houseless person be constructed. That is a matter of policy and the State Government would be within its powers in permitting a suit for ejectment even though the Commissioner and the District Magistrate had good reasons to hold that the needs of the tenant were such that he should not be evicted. That is why the powers given u/s 7-F are of the widest amplitude and are unhedged by any conditions or restrictions. Like the Commissioner the State Government is not confined to the examination of the findings and the orders passed by the District Magistrate and the Commissioner and enquiring whether those orders are legal and proper and whether the proceedings before the District Magistrate or the Commissioner were regular. The language of Section 7-F is so wide that even in a case where the orders of the Commissioner and the District Magistrate may be legal and just, the State Government may interfere in larger public interest or on matters of policy. The legislature could not have used language of the widest amplitude unhedged by any restrictions or conditions while dealing with the powers of the State Government u/s 7-F of the Act unless it clearly intended to confer wide and vast powers on the State Government.

The language of Section 3(2) and (3) is very different from that of Section 7-F of the Act though the two provisions have been framed by the same legislature and fall in the same Act. It is, therefore, not possible to hold that they provide for exactly the same thing. The State Government, in my opinion, can and some times has to take into consideration matters of policy and expediency as also of administrative convenience while passing orders u/s 7-F of the Act. It is difficult

to say that it is bound to act only by applying objective standards to facts found in the light of pre-existing legal rules and in view of the case set up by the landlord and tenant and that considerations of policy or expediency or administrative convenience are beyond the scope of Section 7-F of the Act. The tenant under the Act has no right to possession. He has only a statutory immunity from eviction under certain circumstances. (See *M. Padmanabha Setty Vs. K.P. Papiiah Setty*, and AIR 1949 124 (Federal Court)) All that the State Government has to decide is whether or not permission should be granted to the landlord for filing a suit for ejectment on grounds other than those contained in Clauses (a) to (g) of Section 3 of the Act.

The landlord retains full ownership and dominion over the premises. The decision of the State Government cannot and does not affect his right of ownership and dominion. It cannot deal with the question of rent. It cannot reduce or remit the rent. It cannot go into the question of title to the property. The landlord can terminate the tenancy under the provisions of the Transfer of Property Act. He can apply to the authorities to release the accommodation in his favour. It would be noticed as is evidenced from Clauses (a) to (g) of Section 3(1) of the Act that in cases where the right of the landlord is invaded, the State Government has no jurisdiction, and permission to sue is not required. The landlord can file a suit in a civil Court without a permission. Again, it is only with regard to a suit for eviction of a tenant that permission is required. In respect of all other suits against the tenant no permission is necessary and the State Government has no jurisdiction in such matters. The State Government has only to see whether permission should be accorded for the eviction of a tenant in cases not covered by Clauses (a) to (g) of Section 3(1) of the Act.

Therefore, the State Government deals with the rights of the landlord and the tenant only in the limited sense of permitting or refusing to permit the filing of a suit on grounds other than those contained in Clauses (a), to (g). As the preamble and the enacting clauses of the Act would show, it is a temporary measure and was enacted to meet the challenge thrown by shortage of accommodation and the abnormal conditions created by the World War II, and not to adjudicate upon the respective rights of the landlord and the tenant. The functions of the State Government are limited to permit or not to permit eviction under certain circumstances. It cannot ignore the practical exigencies prevailing in the town in which permission to evict is sought. It has to keep in view practical arrangements so that society as such and individuals do not suffer due to shortage of accommodation and unforeseen conditions that have temporarily come into existence. The Act is in the nature of a temporary expedient for a passing phase and for such time till we recover ourselves from the after-effects of the war and return to normal times.

23. There may be occasions where landlords may make out, on the ground of their needs and legal rights, as unanswerable case for the eviction of their tenants and yet the State Government may, as a policy, refuse permission

because that may result in acute shortage of accommodation.

24. It is, therefore, obvious that in dealing with a matter u/s 7-F of the Act the State Government cannot completely ignore considerations of policy, expediency and convenience and its approach cannot be purely judicial. It has also to be administrative.

25. Again, it was pointed out by the Supreme Court in *Associated Cement Companies Ltd. Vs. P.N. Sharma and Another*, that "the main and the basic test however, is whether the adjudicating power which a particular authority is empowered to exercise, has been conferred on it by a statute and can be described as a part of the State's inherent power exercised in discharging its judicial function." Considering the scheme of the Act and the statutory provisions contained in it, it appears to me that while exercising powers u/s 7-F of the Act the State Government does not discharge judicial functions nor does it exercise State's inherent power of administering justice between man and man. The State Government is not governed by any rules of limitation as the Commissioner is. The revision application before the Commissioner must be filed within 30 days from the date on which the order of the District Magistrate is communicated to the revisionist and he must dispose of that application, within six weeks of its being filed. There is no time limit fixed for the State Government either to take seisin of a matter or to dispose it of. This complete freedom from rules of limitation usually applicable to judicial proceedings also suggests that the State Government does not perform judicial functions of the State and has not the trappings of a Court or a judicial tribunal.

I have already said earlier that no party has a right as such to invoke the jurisdiction of the State Government u/s 7-F of the Act. This would again show that it is not a Court or a Tribunal exercising judicial functions. If it were a judicial Tribunal or a Court, an aggrieved party would have a right to approach it. The State Government can, by statute, be made a Tribunal exercising judicial functions, but for that there must be either express provision or that must be the result by necessary implication. The normal functions of the State Government are not judicial. In my opinion the scheme of the Act., as disclosed by its preamble and various provisions, is not to make the State Government a Court or judicial Tribunal to adjudicate upon rights of the parties. It does not find a place in the normal hierarchy of authorities set up by the Act to decide the question whether or not to accord permission to a landlord to sue a tenant. As said earlier, that hierarchy ends with the Commissioner, proceedings before whom become final. It has only been given an overall control or a power similar to veto. No doubt it must act in good faith and fairly listen to both sides for that is a duty lying upon everyone who decides anything. But clearly the State Government is not bound to treat the question relating to grant or refusal to grant permission as though it were a trial. The process before it is a different one from that before the District Magistrate and the Commissioner.

26. Under these circumstances I am unable to hold that the State Government is

a Court or a Tribunal within the meaning of Article 136 of the Constitution of India, nor can I persuade myself that the orders which it passes u/s 7-F are decrees or orders or determinations or sentences within the meaning of that provision.

27. I am not called upon to decide in this case whether the Commissioner and the District Magistrate are Tribunals within the meaning of Article 136 of the Constitution and I express no opinion in respect of it.

28. The question, however, requiring consideration is as to what exactly is the nature of the functions of the State Government u/s 7-F of the Act. I have said above that it does not exercise purely judicial functions nor is it a Court. In my opinion the State Government exercises a hybrid mixture of administrative and quasi-judicial functions. There is no doubt that it has to consider a proposal and an objection in the sense of there being a request by the landlord for permission to sue a tenant and an objection by the tenant that he should not be permitted to be sued. It is also true that in that sense there is a lis. But it has also to consider the question relating to grant or not to grant permission from the point of view of policy and expediency. The law does not provide the grounds of interference by the State Government. The matter coming for determination before it is to be settled by discretion involving no law. It has not to settle any legal issues nor has it to ascertain any law. The considerations of abstract law are foreign to its jurisdiction. It is not constrained to view the matter as merely a contest between the landlord and the tenant to be decided solely on considerations personal to them.

The legislature has clothed it with the power to view the matter in a larger context and to determine it on considerations of wider range which may in no sense be called judicial. It has to keep in mind as to what would be the result of its decision on the housing problem in the town in which permission is sought. Under the normal law of the land the landlord has the undisputed right of evicting his tenant. Therefore, if the State Government were to be governed only by the law or by legal principles, the provision for the landlord to seek permission would not have been framed. The State Government has to consider whether in the circumstances prevailing in a particular town it would permit the landlord to sue the tenant. It may also have to consider on occasions whether in view of shortage of accommodation and the difficulty for the tenant to find another accommodation it would be proper or not to permit the landlord to assert his legal rights by filing a suit for the ejectment of the tenant. It has to balance the need of the landlord and the tenant not on the scales of absolute legal rights, but on that of expediency, policy and exigencies prevailing in the town in which permission is sought.

Properly analysed, the consideration of needs has its roots in convenience and not law and has to be determined on practical considerations. The State Government may have to consider whether the landlord is interested in seeking permission to eject the tenant with a view to let out the premises on a higher rent and thus

exploit the unfortunate situation of house shortage resulting from the World War II and rise to prices. But in deciding all these matters it is not so much the right of the parties that has to be taken into consideration as considerations of policy and expediency. The legal position is well settled. A landlord has a right to eject a tenant and a tenant cannot dispute that right, but the Act has imposed restrictions on the right due to the extraordinary situation that has arisen. It has conferred on the State Government powers of the widest amplitude. Therefore, in granting permission or in refusing to do so, considerations of policy may in certain cases prevail over considerations of pure legal rights of the parties.

29. The decision of the State Government is not appealable or revisable by any other authority. It has to act on considerations of policy, administrative convenience and expediency as also on practical exigencies prevailing in the town in which the permission is sought. I have already held that it is not a Court or a Tribunal within the meaning of Article 136 of the Constitution. The exercise of its functions is discretionary and no party as of right can approach it. It does not decide any question of title or rights. The law does not require it to record reasons or to pass a speaking order. That being the position, I am unable to hold that it is required to pass a speaking and reasoned order.

30. Perhaps it would be proper if the State Government did so, so that the party who has lost before it knows the reason for its decision. A speaking and reasoned order would also dispel any suspicion of arbitrariness in the order of the State Government. But it is quite a different thing to lay down that the law requires its orders to be speaking and reasoned ones.

31. In *State of Madras Vs. A.R. Srinivasan*, the Supreme Court observed as follows:--

"The proceedings are, no doubt quasi-judicial; but having regard to the manner in which these enquiries are conducted we do not think an obligation can be imposed on the State Government to record reasons in every case."

32. In *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, it was held that even if the order is not a speaking and reasoned order, it would not stand vitiated.

33. For these reasons I am of the opinion that the State Government is not bound to record a speaking and reasoned order while exercising its power u/s 7-F of the Act,

34. Learned counsel for the petitioners have placed before us several decisions of the Supreme Court and have submitted that on the basis of those authorities it must be held that the State Government must record a speaking and a reasoned order.

35. I proceed to consider these authorities one by one. The first case is *Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others*, . There a right of appeal to the Central Government had been expressly conferred by

statute upon an aggrieved party. As the Supreme Court pointed out, the Central Government, which was the appellate authority, had to adjudicate upon rights of parties in a civil matter, A procedure for the manner in which the appeal was to be disposed of was also given in Section 111 of the Indian Companies Act. The jurisdiction of the Central Government was not discretionary and it could be invoked as of right by a person aggrieved and the Central Government could not refuse to interfere if a case for interference had been made out. It was a regular tribunal of appeal. There are no similar provisions in the Act. This case, to my mind is clearly distinguishable,

36. The next case relied upon is Sardar Govindrao and Others Vs. State of Madhya Pradesh, . The question before their Lordships in this case was whether the provisions of Section 5(3) of the C.P. and Berar Revocation of Land Revenue Exemption Act, 1948 made it obligatory on the part of the State Government to make a suitable grant of money or pension in case it was proved that the applicant had lost the exemption under the Act and was a descendant from a former Ruling Chief. Hidayatullah, J., (as he then was) was of the opinion that u/s 5 (3) of the C. P. and Berar Revocation of Land Revenue Exemption Act the State Government had a mandatory duty to grant pension if and when grounds for it had been made out. His Lordship rejected the contention that the State Government had an absolute discretion in the matter. In fact it would appear from Section 5 of the C. P. and Berar Revocation of Land Revenue Exemption Act that any person adversely affected was entitled to apply to the Deputy Commissioner of the district for the award of a grant of money or pension and the Deputy Commissioner was bound (the word used is shall) to forward the application to the Provincial Government. Therefore, the person adversely affected had a right as such to approach the Provincial Government through the Deputy Commissioner. The provisions of the Act are very different from the C. P. and Berar Revocation, of Land Revenue Exemption Act and in my opinion, this case is also distinguishable,

37. The third and fourth cases relied upon are Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI), and the judgment of the Supreme Court in Civil Appeals Nos. 2596 and 2597 of 1966. Bharat Raja Vs. The Union of India (UOI) and Others, . These were cases of grant of mining lease under the provisions of Mines and Minerals (Regulation and Development) Act, 1957. In these cases applications for grant of lease in mining manganese ore were rejected. Revision applications against those orders were rejected by the Central Government under Rule 55, Mineral Concession Rules, 1960. The cases went up to the Supreme Court in the form of appeals by special leave under Article 136 of the Constitution. Their Lordships were of the opinion that the Central Government was a Tribunal within the meaning of Article 136 of the Constitution. These cases were governed by Rule 54, Mineral Concession Rules, 1960, which provided that "any person aggrieved by any order made by the State Government may within two months from the date of the communication of the order to him apply to the Central Government for the revision of the order." A

court-fee was prescribed for the said revision. The aggrieved party had a right as such to approach the Central Government. Rule 55 expressly said that "provided that no order shall be passed against an applicant unless he has been given an opportunity to make his representations against the comments, if any received from the State Government or other authority." The Supreme Court held that the Central Government acted as a judicial Tribunal, It observed as follows in *Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI)*,

"A perusal of the said provisions makes it abundantly clear that the State Government exercising its powers under the Act and the Rules made thereunder deals with matters involving great stakes; presumably for the said reason, the Central Government is constituted as an authority, to revise the order of the State Government. Rules 54 and 55 lay down the procedure for filing a revision against the order of the State Government and the manner of its disposal. Under Rule 54, a revision application has to be filed with the prescribed court-fee; and under Rule 55, the Central Government, after calling for the records from the State Government and after considering any comments made on the petition by the State Government or other authority, as the case may be, may make an appropriate order therein. The proviso expressly says that no order shall be made unless the petitioner has been given an opportunity to make his representations against the said comments. The entire scheme of the rules posits a judicial procedure and the Central Government is constituted as a tribunal to dispose of the said revision."

In its judgment in *Civil Appeals Bharat Raja Vs. The Union of India (UOI) and Others*, the Supreme Court observed:--

"From the above. It will be amply clear that in exercising Its powers of revision under Rule 55 the Central Government must take into consideration not only the material which was before the State Government but comments and counter-comments, if any, which the parties may make regarding the order of the State Government, In other words, it is open to the parties to show how and where the State Government had gone wrong, or why the order of the State Government should be confirmed. A party whose application for a mining lease is turned down by the State Government is therefore given an opportunity of showing that the State Govt. had taken into consideration irrelevant matters or based its decision on grounds which were not justified. In an application for revision under Rule 55 it will be open to an aggrieved party to contend that the matters covered by subsection (3) of Section 11 were not properly examined by the State Government, or that the State Government had not before it all the available materials to make up its mind with respect thereto before granting a licence."

The provisions in the Act are wholly dissimilar to those of Rules 54 and 55 aforesaid. The State Government u/s 7-F of the Act has not been constituted as a regular authority to revise. No one can approach it as of right. Its jurisdiction is discretionary and the process before it is different from the process before the District Magistrate and the Commissioner who have been appointed regular

authorities under the Act to permit or not to permit the filing of a suit. The proceedings before the District Magistrate and the Commissioner become final or close after the Commissioner has disposed of the matter, Clearly the statutory provisions with which we are concerned are very different from those in the two cases mentioned above. In my opinion, therefore, these cases are clearly distinguishable.

38. The last case is the judgment of the Supreme Court in Civil Appeal No. 657 of 1967, Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI), and Civil Appeals Nos. 2596 and 2597 of 1966 = Bharat Raja Vs. The Union of India (UOI) and Others, and for the reasons already recorded while dealing with those cases is distinguishable.

39. For the reasons mentioned above I would answer the question referred to us by saying that the State Government is not required in law to record its reasons in its order u/s 7-F of the Act in a case of grant or refusal to grant permission to a landlord to sue a tenant.

Asthana, J.

40. I have had the benefit of reading the opinions of my brothers Jagdish Sahai and Pathak. I have not been able to persuade myself to agree with the views of my brother: Jagdish Sahai with the greatest respect to him and am inclined to agree with the views of brother Pathak. I would, however, like to make certain observations on some aspects of the matter.

41. If ever there was any doubt as to the nature and character of the powers vesting in the State Government u/s 7-F of the U. P. (Temporary) Control of Rent and Eviction Act (hereinafter called the Act) the matter has now been put beyond the pale of controversy by the Supreme Court by their decision in the case of Shri Bhagwan and Another Vs. Ram Chand and Another, . The Supreme Court has declared that the jurisdiction exercised by the State Government u/s 7-F of the Act is quasi-judicial.

42. It is difficult to agree with the submission of the learned Senior Standing Counsel that the order passed by the State Government u/s 7-F of the Act is an administrative order because it does not involve any decision as to the rights of the parties. All the decisions of this Court which held that the power and jurisdiction conferred on the State Government u/s 7-F of the Act is administrative stand overruled and are no longer good law in view of the declaration of the Supreme Court in the case of Shri Bhagwan and Another Vs. Ram Chand and Another, . Chief Justice Gajendragadkar of the Supreme Court speaking for the Court clearly and precisely laid down in Shri Bhagwan and Another Vs. Ram Chand and Another, that the revisional proceedings which go before the State Government u/s 7-F must partake of the same character as the proceedings which are held before the District Magistrate exercising his authority u/s 3 (2) and the revisional proceedings held before the Commissioner u/s 3(3) of the Act. The District Magistrate as well as the Commissioner deal with the

question of the rights of the landlord and the tenant and they are required to adopt a judicial approach and while exercising their power they must act according to the principles of natural justice.

It follows, therefore, that in exercising its revisional jurisdiction u/s 7-F of the Act the State Government deals with the question of the rights of the landlord and the tenant and in doing so it is required to adopt a judicial approach and it must act according to the principles of natural justice. The references which have come up before us were necessitated because of the decision of the Supreme Court in *Shri Bhagwan and Another Vs. Ram Chand and Another*, and all of our brothers who have sent up the references interpret the decision of the Supreme Court in *Shri Bhagwan and Another Vs. Ram Chand and Another*, as overruling the view of the Division Benches of our Court that the State Government exercised administrative powers u/s 7-F of the Act. In effect the contention of the learned Senior Standing Counsel that the State Government is not required to pronounce a speaking order or give its reasons in the order itself the powers being administrative, amounts to this that the various references made which have been put before us in the Full Bench were uncalled for. The very question that has been referred to us whether the order u/s 7-F is required to be speaking order containing the reasons in support of the conclusion of the State Government arises on the basis that the State Government performs a quasi-judicial function u/s 7-F of the Act. The attempt of the Senior Standing Counsel to show that the State Government performs an administrative function u/s 7-F of the Act was, therefore, futile because of the clear declaration of the Supreme Court that the function of the State Government is quasi-judicial and also because of the reference orders passed in the various writ petitions.

43. An argument raised by, the learned Senior Standing Counsel that even if the function was quasi-judicial the order passed by the State Government u/s 7-F of the Act need not ex facie state the reasons in support of the final conclusion and it would not be bad because of the omission to do so as the reasons therefore would be contained in the departmental file, has no legs to stand upon inasmuch as the Supreme Court in Civil Appeal No. 657 of 1967 (SC) has observed that it was not open to the Court to look into the records of the Government and from the nothings contained in it to spell out the reasons for the order of the Government which itself did not state the reasons. Their Lordships of the Supreme Court in that case criticised the procedure followed by the High Court in summoning the Government records and then spelling out the reasons in support of the conclusions of the Government and characterised such a procedure, as irregular. The decision in that case was based on the hypothesis that the reasons in support of the order had to be recorded and disclosed to the parties concerned. The reasons could not be gathered from the nothings made in the files of the Government and that the recording of the reasons and disclosure thereof is not a mere formality. As I understand the position it is incumbent upon the Government or the authority who functions quasi-judicially to pronounce a speaking order so that the party whose rights are adversely affected comes to

know the basis why the Government or the authority concerned has not been able to accept its case.

44. It would be seen that under Article 226 of the Constitution the High Court has the power and jurisdiction to judicially review the orders of the State Government or the orders of any statutory authority affecting the rights of the citizen, whether fundamental or not, and if the order sought to be reviewed is not a speaking order it would create great practical difficulty to the High Court in proper performance of its constitutional duties under Article 226 of the Constitution as the petitioner before the High Court who is aggrieved by that order would not be in a position to demonstrate the un-constitutionality of the impugned order by attacking the reasoning or the grounds on which it was founded as neither he nor the Court will know what were the basis of the impugned order. Indeed certain observations of Denning, L. J. in *re. Gilmore's Application* (1957) 1 All ER 796 are significant. The learned Law Lord was considering a petition for quashing of the order of the Medical Appellate Tribunal by a writ of certiorari. It was found that the error of the Tribunal did not appear on the face of the order, that is to say, it was not a speaking order. The writ Court thereupon had made a reference and gathered the findings of facts and the reasons for the order of the Tribunal therefrom.

On appeal Denning, L.J. In this connection observed that even if it had not been open to the Court to have recourse to that document, the Tribunal could not, by failing to find the material facts, be permitted to defeat an application for certiorari. These observations of Denning, L.J. are very apt and relevant. Such a situation as was faced by the learned Law Lord in 1957 1 AER 796 (*Supra*) will always arise before this High Court in a petition under Article 226 of the Constitution impugning the order of the State Government passed u/s 7-F of the Act, wherein the Government omits to disclose *ex facie* any reasons for its conclusions, thus indirectly depriving the citizen of his relief and preventing this Court from properly exercising its jurisdiction under Article 226 of the Constitution unless and until this Court were to ask the Government to state its reasons and thus complete the record. Such a procedure would be cumbersome and defeat the very purpose of the exercise of the powers under Article 226 as there would be unnecessary delay for giving the necessary relief to the aggrieved citizen.

Moreover, such a procedure would also be fraught sometimes with dangerous consequences inasmuch as where will be the guarantee that the speaking order pronounced by the Government on the, directions of the Court was not an afterthought? Faced with this situation the learned Senior Standing Counsel in the course of his argument did concede that it would be proper on the part of the State Government always to give reasons but submitted that the omission to give reasons would not vitiate the order. I am unable to appreciate this line of argument. This concession of the learned Senior Standing Counsel implies that it would be improper on the part of the State Government not to give reasons in

support of its conclusions while deciding a case u/s 7-F of the Act. What is proper the law will always countenance, what is improper the law will discountenance. If that be so, an order which is not a speaking order and does not give reasons for the conclusion arrived at will be an improper order and will stand discredited in the eye of law.

45. The learned Senior Standing Counsel then fell back upon the language of Section 7-F of the Act. He submitted that in its wide sweep the provisions of that section conferred upon the State Government a power to pass any order which it thinks necessary to secure the ends of justice and- there being no limitation on the power of the State Government it can pass any order it likes which in its opinion is just and proper. It may be so, but it is difficult to agree with the inference drawn by the learned Senior Standing Counsel from the above statement of law. He seemed to canvass that since it is open to the State Government to pass an order u/s 7-F of the Act without any impediment or fetter created by the limitations of the material on record in respect of the case of the parties, its conclusion must always be regarded as just and since by law such a power is vested in the highest organ of the State that by itself will be a guarantee that the order must have been passed on just considerations. Even conceding for a moment that the State Government would always pass an order which is necessary to secure the ends "of justice, that would not mean that the order need not demonstratively show the considerations prevailing with the State Government which will sustain its claim that it passed that order as that appeared to it necessary to secure the ends of justice.

46. As I read the language used in Section 7-F of the Act there is implicit in it certain amount of limitation of the exercise of the powers by the State Government under that section. After eliminating the clauses with which we are not concerned, the provisions of Section 7-F will read as follows:--

"The State Government may call for the record of any case granting or refusing to grant permission for the filing of a suit for eviction referred to in Section 3 and may make such order as appeared to it necessary for the ends of justice.

47. The phraseology at the first flush appears to be conferring upon the State Govt. an absolute power untrammelled and uncontrolled by any objective limitations and it could be argued that the exercise of the power is subjective to some extent. But on a close examination and deeper considerations it will be revealed that it is not so. This Court in the case of Radhakant v. State of Uttar Pradesh 1956 ALJ 104 repelled the attack on the vires of this section grounded on the alleged conferment of an unguided, uncontrolled and apparently arbitrary power of interference with the orders under Sections 3, 7 and 7-F of the Act, and held that the provisions of the section were not invalid as such language was used by the legislature with a view to cover numerous circumstances and facts on which the propriety of the orders would depend, it not being possible for the legislature to lay down all of them. The argument advanced on behalf of the State that it was open to the State Government to pass any order in the exercise

of its discretion and the law did not contemplate the giving of reasons by the State to justify the exercise of its discretion in a particular manner has hardly any tenability.

The section requires for the Calling of record of the case granting or refusing to grant permission to the landlord to file a suit for eviction of the tenant. That would be the first step taken by the State Government. This can be done suo motu by the Government or on being invited to do so by a party interested. The submission of the learned Senior Standing Counsel that an aggrieved party has not been given a right to file a revision under the said section does not impress me as I think it is implicit in the language used that an aggrieved party can always by an application invoke the revisional jurisdiction of the State Government. The purpose behind the calling for the record of the case obviously is that the State Government is to acquaint itself with the facts and circumstances of the case. A perusal of the record summoned by the State Government thus is imperative. After the record has been perused and pros and cons of the case had been studied then the stage arises for formation of its opinion by the Government on, the question whether to vary, rescind or modify the order or leave the order as it is undisturbed. The State Government may or may not grant an oral hearing to the parties concerned, that is, the landlord and the tenant, but in accordance with the principles of natural justice it must at least invite written representations from them and consider the representation, if any, filed before it.

The opinion then has to be formed by the State Government on what appears to it on the facts and circumstances of the case to be necessary for the ends of justice. In other words the State Government in exercise of its revisional jurisdiction u/s 7-F has to find out what the justice of the case requires in the light of the facts and circumstances made out from the record. The determination necessarily would be objective being based on the materials on record and not subjective being based on some theoretical or abstract concept of justice unconnected and uninhibited by the limitations of the material on record. Viewed in this context it is not permissible to the State Government to travel outside the record of the case and base its verdict on some policy of administrative expediency as that would amount to taking recourse to extra judicial considerations which is foreign to the exercise of judicial power.

48. It has already been noticed by me above that the State Government u/s 7-F is under a duty to act judicially, therefore, it has to assess the evidence on record furnished by the parties, then by a process of reasoning arrive at its findings and base its verdict thereon. The mechanism of this process must be seen and felt. Since the State Government does not hold any hearing in the glare of publicity as is done in the law Courts where in the course of arguments and counter-arguments many a disputed points are thrashed out and the working of the mind of the Judge is revealed in the presence of the parties interested, the only way the State Government can reveal the application of its judicial mind is by

pronouncing a speaking order, that is, by giving its reasons in justification of its verdict in the very order conveying that verdict. If that were not done there would be no means to know that the State Government considered the pros and cons of the case before it and brought to bear upon the controversies involved a judicial approach in recording its final conclusion. It will be true then to say that the object behind a speaking order or reasoned order is to show that there has been no arbitrariness to the exercise of judicial function.

49. It was next suggested by the learned Senior Standing Counsel that when the language of Section 3 (3) conferring a power of revision on the Commissioner is compared with the language used in Section 7-F, the intention of the legislature becomes manifest. The learned counsel submitted that while the Commissioner's power to interfere with the order of the District Magistrate is circumscribed and he cannot interfere unless he is not satisfied with the correctness, legality or propriety of the order or as to the regularity of the proceedings held by the District Magistrate, the State Government has been vested with an absolute discretion to refuse to interfere even if all such defects are present in order impugned before it. The argument was that while the Commissioner has to record reasons for his dissatisfaction before he can interfere the State Government need not record its reasons for not interfering with the order of the Commissioner as it has an absolute discretion not to interfere. This argument of the learned Senior Standing counsel begs the question.

The State Government who forms its opinion in the secrecy of the Secretariate without holding its proceedings in an open forum in the glare of publicity and without the presence of the parties concerned, yet at the same time being under a duty to act judicially, even assuming it has a discretion in the matter, it must justify the exercise of discretion in a particular manner and pronounce a speaking order so that it can be known from the perusal of the order that the manner in which the State Government has exercised its discretion was necessary for the ends of justice. To my mind the brief discussion above brings out clearly that after all the power vesting in the Government u/s 7-F is not so wide and uncontrolled as it was made out to be. If the District Magistrate and the Commissioner in the exercise of their powers u/s 3 of the Act have to record findings and give reasons for their order which is conceded by the learned Senior Standing Counsel, it follows then according to the ratio of the decision of the Supreme Court in *Shri Bhagwan and Another Vs. Ram Chand and Another*, that the State Government is also bound to give reasons in support of its order as the nature and character of the exercise of the power u/s 7-F is similar and partakes of the same character as the exercise of power by the District Magistrate and the Commissioner u/s 3 of the Act.

50. Another contention of the learned Senior Standing Counsel was that it is only in those cases where an appeal will lie to the Supreme Court that St has been Insisted upon by the Supreme Court that the statutory authority or the Tribunal shall state its reasons in support of its conclusions and since the State

Government is not a Tribunal when deciding cases u/s 7-F of the Act, no appeal will lie to the Supreme Court under Article 136 of the Constitution and the State Government need not then state its reasons for the order passed in exercise of Its powers u/s 7-F. On the other hand the learned counsel for the petitioners urged that the State Government while exercising its jurisdiction u/s 7-F would be a Tribunal within the meaning of Art 136 of the Constitution. A large number of cases decided by the Supreme Court were cited before us by the learned counsel for the parties. I do not think the questions involved on this part of the argument in the case necessarily call for any decision in answering the question which has been referred. But I must observe with respect to brother Pathak that his conclusion on this aspect of the matter is well reasoned and that may be the correct position in law.

51. I have already pointed out above that the requirement of pronouncing a speaking order or giving a reasoned order is inherent in the exercise of quasi-judicial power. I consider the principles of natural justice besides providing that a party whose rights are affected by the verdict of an authority under a duty to act judicially, not only should know the case against it and be afforded an opportunity to meet the case, also imply a right in such a party to know the reasons why his case has not been accepted and why the verdict has gone against him. It is the reason in support of a judicial verdict which gives a meaning and vitality to the verdict. Reason is the very soul of all judicial process. It is the reason which sustains the verdict. A judicial verdict bereft of the reason in support thereof will be not better than a mere dead letter. It will not be in conformity with the principles of natural justice and will be meaningless for the person affected. A judicial verdict without revealing the reason therefore will tend to destroy the faith and the confidence of the common man in the dignity of the rule of law on which is based the grand edifice of our Constitution.

52. On the approach which I have endeavoured to discuss above, it is not possible to make any distinction between an order passed by the State Government u/s 7-F affirming the impugned order or setting it aside or modifying it. In both the cases the requirement of the law, in my judgment, is that a speaking order has to be pronounced containing the reasons in support of it. The learned Senior Standing Counsel in this connection tried to urge that when the superior authority affirms the order of the subordinate authority it need not state its reasons therefor. I am not aware of any such general rule of law. It all depends on the facts and circumstances of each case. The Supreme Court itself has in some of the cases observed that while affirming the order of the superior Court or authority need not give full reasons.

The Superior Court or authority may approve and adopt the reasons of the subordinate Court or authority and justify its verdict of affirmance on that basis. It is implicit in this approach of the Supreme Court that even an order of affirmance has to be supported by its own reasons given by the superior authority affirming the order. In a particular case when will an order passed by

the State Government u/s 7-F of the Act fulfil the requirements of a speaking order or a reasoned order, is not the question which has been referred to us and I need not dilate upon that question. I must make it clear that I have not examined any of the orders passed by the State Government u/s 7-F in the four petitions from which references have come before us with a view to find out whether they answer the requirements of a speaking order or a reasoned order. That would be for the Bench who finally dispose of those petitions to consider.

53. My answer to the question referred is the same as the answer proposed by brother Pathak.

Pathak, J.

54. I deeply regret my inability to agree with my brother Jagdish Sahai. If this case had been before us some time ago I may have found myself largely in agreement with him. Indeed in *Mrs. K.L. Sahgal Vs. State of U.P. and Others*, I took the view, after a review of the authorities in point, that the power conferred upon the State Government u/s 7-F of the U. P. (Temporary) Control of Rent and Eviction Act (which for convenience I shall refer to as "the Act") is administrative in nature. But since then the Supreme Court has held in *Shri Bhagwan and Another Vs. Ram Chand and Another*, that the jurisdiction exercised by the State Government u/s 7-F of the Act is quasi-judicial. There was considerable argument before us whether that is what the Supreme Court has laid down. For my part, I find it difficult to come to any other conclusion. I shall proceed to indicate why.

55. In *Shri Bhagwan and Another Vs. Ram Chand and Another*, the Commissioner made an order u/s 3(3) of the Act declining permission to the appellants to sue the respondents for ejectment. The State Government u/s 7-F of the Act directed the Commissioner to revise his order because it thought that the need of the appellants for the accommodation was genuine. On the basis of permission granted consequently the appellants filed a suit for ejectment. The suit was decreed. An appeal by the respondents was dismissed by the first appellate Court. A second appeal filed by them was allowed by Dhavan, J., on the ground that the jurisdiction exercised by the State Government was quasi-judicial in nature and the State Government should have given a hearing to the respondents before setting aside the Commissioner's order. The appellants appealed to the Supreme Court.

56. The Supreme Court proceeded to draw a distinction between bodies required to act judicially or quasi-judicially in deciding questions entrusted to them by the Statute and bodies which reached their decision in an administrative manner and were justified in taking into account considerations of policy. It observed that while administrative bodies may in acting fairly and objectively follow the principles of natural justice and did not make them tribunals and did not impose on them an obligation to follow the principles of natural justice. "On the other hand", it continued, "authorities or bodies which are given jurisdiction by

statutory provisions to deal with rights of citizens, may be required by the relevant statute to act judicially in dealing with matters entrusted to them". It adverted to its decision in AIR 1966 SC 1595 and to the decision of the House of Lords in *Ridge v. Baldwin* 1964 AC 40 and observed that the test prescribed by Lord Reid in his speech in *Ridge* 1964 AC 40 (supra) afforded valuable assistance in dealing with the vexed question before the Supreme Court. The Court posed the following question:

"What is the nature of the proceedings taken before the State Government u/s 7-F and what is the character of the jurisdiction and power conferred on the State Government by it; are the proceedings purely administrative and can the State Government decide the question and exercise its jurisdiction without complying with the principles of natural justice."

The Supreme Court examined the provisions of the Act bearing on the grant of permission to sue for ejectment. It considered the different sub-section of Section 3 and also Section 7-F. It held that;

"the jurisdiction conferred on the District Magistrate (under Section 3(1)) to deal with the rights of the parties is of such a character that principles of natural justice cannot be excluded from the proceedings before him," and

"..... the proceedings before the Commissioner (under Sub-sections (2) and (3) of Section 3) are quasi-judicial,"

and later reiterated:

"We are satisfied that when the District Magistrate exercises his authority u/s 3(2) and the Commissioner exercises his revisional powers u/s 3(3) they must act according to the principles of natural justice. They are dealing with the question of the rights of the landlord and the tenant and they are required to adopt "a judicial approach".

(Emphasis (here into " ") mine). And, immediately following this, the Supreme Court concluded:

"If that be the true position In regard to the proceedings contemplated by Subsection (2) of Section 3 and Sub-section (3) of Section 3 it is not difficult to hold that the revision proceedings which go before the State Government u/s 7-F "must partake of the same character". (Emphasis (here into " ") mine).

57. Thus, holding that the District Magistrate u/s 3(1), the Commissioner u/s 3(3) and the State Government u/s 7-F exercise jurisdiction of the same character, namely a quasi-judicial jurisdiction, the Supreme Court went on to hold that:

"The State Government cannot but apply principles of natural justice and offer a reasonable opportunity to both the parties while it exercises its jurisdiction u/s 7-F".

58. From the question which the Supreme Court posed for decision, its observations flowing from the analysis of the statutory provisions relating to that question, and the reasoning upon which It reached its ultimate conclusion it seems Inescapable that in the opinion of the Supreme Court the State Government acts quasi-judicially when exercising the jurisdiction conferred by Section 7-F. If any doubt remains, it is dispelled by the express inability of the Supreme Court to agree with the decision of this Court in Murlidhar Vs. State of U.P. and Others, where it was held that "the function of the State Government when acting u/s 7-F is administrative and not quasi-judicial". After the decision of the Supreme Court in Shri Bhagwan and Another Vs. Ram Chand and Another, I am bound to hold that the jurisdiction of the State Government u/s 7-F is quasi-judicial in character.

59. On the footing that the State Government acts quasi-judicially u/s 7-F the next question is whether it is bound to state its reasons for the order made by it.

60. Now. there are four petitions before us. They fall into two classes. While in one class the State Government has reversed or varied the order of the Commissioner, in the other it has refused to Interfere with the Commissioner's order. In none of the cases has the State Government stated its reasons for the order. If the State Government is bound to state its reasons, then the further question before us is whether the State Government is bound to state its reasons in all cases or only where it reverses or modifies the order of the Commissioner. Now, quite recently, the question, has engaged the attention of the Supreme Court in a number of cases.

61. In Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others, per Shah, J., the Supreme Court held that the nature of the appellate proceedings before the Central Government u/s 111 of the Companies Act, 1956 was judicial in character, and quashed the orders passed by the Central Government on the view that "there has been no proper trial of the appeals, no reasons having been given in support of the orders by the Deputy Secretary, who heard the appeals," Some pertinent observations were also made by the Supreme Court in Sardar Govindrao and Others Vs. State of Madhya Pradesh, . The Court said:

"The next question Is whether Government was justified in making the order of April 26, 1955? That order gives no reasons at all. The Act lays upon the Government a duty which obviously must be performed in a judicial manner The appellants were also entitled to know the reason why their claim for the grant of money or a pension was rejected by Government and how they were considered as not falling within the class of persons who it was clearly intended by the Act to be compensated in this manner. Even in those cases where the order of the Government is based upon confidential material this Court has insisted that reason should appear when Government performs curial or quasi-judicial functions (See Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others,

62. At this stage, I may refer to the decisions of the Supreme Court in *Nandram Hunatram, Calcutta Vs. Union of India (UOI)* and *Another*, where the argument was rejected that the impugned order was bad because no reasons were stated. That decision was explained later by the Supreme Court in *Bharat Raja Vs. The Union of India (UOI) and Others*, in the following terms:

".....it was plain as a pike-staff that the State Government had no alternative but to cancel the lease; the absence of any reasons in the order on review could not possibly leave anybody in doubt as to whether (what the?) reasons were. As a matter of fact in the setting of facts, the reasons were so obvious that it was not necessary to set them out. There is nothing in this decision which is contrary to *Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI)*, What the decision says is that the reasons for the action of the State were so obvious that it was not necessary, on the facts of the case, to repeat them in the order of the Central Government."

The question converged to a sharp, focus before the Supreme Court in *Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI)*, *Subba Rao, J.* explained the necessity for disclosing reasons in a quasi-judicial order. In the case before it the Central Government had rejected a revision application under Rule 55 of the Mineral Concession Rules 1955. He observed:

"..... Our Constitution posits a welfare State In the context of a welfare State, in administrative tribunals have come to stay. Indeed, they are the necessary concomitants of a welfare State. But arbitrariness in their functioning destroys the concept of a welfare State itself. Self-discipline and supervision exclude or at any rate minimize arbitrariness. The least a tribunal can do is to disclose its mind. The compulsion of disclosure guarantees consideration. The condition to give reasons introduces clarity and excludes or at any rate minimizes arbitrariness; it gives satisfaction to the party against whom the order is made; and it also enables an appellate or supervisory Court to keep the tribunals within bounds. A reasoned order is a desirable condition of judicial disposal."

The conception of exercise of revisional jurisdiction and the manner of disposal provided in Rule 55 of the Rules, are indicative of the scope and nature of the Government's jurisdiction. If Tribunals can make orders without giving reasons, the said power in the hands of unscrupulous or dishonest officers may turn out to be a potent weapon for abuse of power. But, if reasons for an order are to be given, it will be an effective restraint on such abuse, as the order, if it discloses extraneous or irrelevant considerations, will be subject to judicial scrutiny and correction. A speaking order will at its best be a reasonable and its worst be at least a plausible one. The public should not be deprived of this only safeguard." Dealing with the point that the principle was not uniformly followed by the courts, where appeals and revisions were often dismissed in limine without giving any reasons, he said;

"There is an essential distinction between a Court and an administrative tribunal."

A judge is trained to look at things objectively, uninfluenced by consideration of policy or expediency: but, an executive officer generally looks at things from the stand-point of policy and expediency. The habit of mind of an executive officer so formed cannot be expected to change from function to function or from act to act. So it is essential that some restrictions shall be imposed on tribunals in the matter of passing orders affecting the rights of parties; and the least they should do is to give reasons for their orders. Even in the case of appellate Courts invariably reasons are given, except when they dismiss an appeal or revision in limine and that is because the appellate or revisional Court agrees with the reasoned judgment of the subordinate Court or there are no legally permissible grounds to interfere with it. But the same reasoning cannot apply to an appellate tribunal for as often, as not the order of the first tribunal is laconic and does not give any reasons. That apart, when we insist upon reasons, we do not prescribe any particular form or scale of the reasons. The extent and the nature of the reasons depend upon each case. Ordinarily, the appellate or revisional tribunal shall give its own reasons succinctly; but in a case of affirmance where the original tribunal gives adequate reasons, the appellate tribunal may dismiss the appeal or the revision, as the case may be, agreeing with those reasons. What is essential is that reasons shall be given by an appellate or revisional tribunal expressly or by reference to those given by the original tribunal. The nature and the elaboration of the reasons necessarily depend upon the facts of each case. In the present case, neither the State Government's nor the Central Government's order discloses the reasons for rejecting the application of the appellant. In the circumstances the Central Government's order is vitiated, as it does not disclose any reasons for rejecting the revision application of the appellant." It appears that Subba Rao, J. held (a), that a quasi-judicial order made by a tribunal must state the reasons for the order and (b) that the reasons must be stated even where it merely affirmed the order of the inferior authority. As to the latter, it seems he intended to confine the rule to those cases where the order of the inferior authority did not itself disclose any reasons. Mudholkar, J. and Bachawat, J., the other two learned Judges constituting the Bench impliedly agreed that a quasi-judicial order should disclose the reasons but held that no such disclosure was necessary where it merely affirmed the order of the inferior tribunal. They observed:

"The reason for rejecting the revision application appears on the face of the Impugned order. The revision application was rejected, because the Central Government agreed with the reasons given by the State Government in its order, dated December 19, 1961, and the application did not disclose any valid ground for interference with the order of the State Government. In our opinion, the Central Government, acting under Rule 55, was not bound to give in its order, fuller reasons for rejecting the application,"

and further

"For the purposes of an appeal under Article 136, orders of Courts and tribunals

stand on the same footing. An order of Court dismissing a revision application often gives no reasons, but this is not a sufficient ground for quashing it. Likewise, an order or an administrative tribunal rejecting a revision application cannot be pronounced to be invalid on the sole ground that it does not give reasons for the rejection."

When reliance was placed by learned counsel upon the observations of Shah J. in *Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others*, (which I have extracted above), they said:

"..... the Central Government reversed the decision appealed from without giving any reasons; nor did the record disclose any apparent ground for reversal In this context. Shah J. made the observation quoted above, and held that there was no proper trial of the appeals and the appellate order should be quashed. Hidayatullah, J. at p. 370 of the Report (SCR) = (at p. 1684 of AIR), pointed out that there was no reason for the reversal and the omission to give reasons led to the only inference that there was none to give. There is a vital difference between the order of reversal by the appellate authority in that case for no reason whatsoever and the order of affirmance by the revising authority in the present case. Having stated that there was no valid ground for interference, the revising authority was not bound to give fuller reasons. It is impossible to say that the impugned order was arbitrary, or that there was no proper trial of the revision application,"

To the same effect are the observations of Gajendragadkar, C.J. in *State of Madras Vs. A.R. Srinivasan*, . Now, it will be apparent from the ratio in *M.P. Industries Ltd. Vs. Union of India and Others* (UOI), that the necessity for disclosing the reasons for a quasi-judicial order has been made to rest on broadly two grounds. One is the need to guard against arbitrariness on the part of the authority making the order. The other is the need to ensure an effective judicial scrutiny of the order. The latter ground was considered in greater depth by the Supreme Court in the next case. *Bharat Raja Vs. The Union of India (UOI) and Others*, . In *Bhagat Raja Vs. The Union of India (UOI) and Others*, the appellant challenged an order of the Union of India u/s 30 of the Mines and Minerals (Regulation and Development) Act, 1957, refusing to interfere with an order of the Government of Andhra Pradesh u/s 10(2) of that Act Examining the contention that it was incumbent on the Central Government to give reasons for Its order, Mitter, J., who delivered the judgment of the court, said:

"The decisions of tribunals in India are subject to the supervisory powers of the High Courts under Article 227 of the Constitution and of appellate powers of this Court under Article 136. It follows without saying that both the High Court and this Court are placed under a great disadvantage if no reasons are given and the revision is dismissed curtly by the use of the single word "rejected", or "dismissed". In such case, this court can probably only exercise its appellate jurisdiction satisfactorily by examining the entire records of the case and alter

giving a hearing come to its conclusion on the merits of the appeal. This will certainly be a very unsatisfactory method of dealing with the appeal. Ordinarily, in a case like this, if the State Government gives sufficient reasons for accepting the application of one party and rejecting that of the other as it must, and the Central Government adopts the reasoning of the State Government this court may proceed to examine whether the reasons given are sufficient for the purpose of upholding the decision. But, when the reasons given in the order of the State Government are scrappy or nebulous and the Central Government makes no attempt to clarify the same, this court in appeal may have to examine the case de novo without anybody being the wiser for the review by the Central Government. If the State Government gives a number of reasons some of which are good and some are not, and the Central Government merely endorses the order of the State Government without specifying those reasons which according to it are sufficient to uphold the order of the State Government, this Court, in appeal, may find it difficult to ascertain which are the grounds which weighed with the Central Government. In such circumstances, what is known as a "speaking order" is called for."

On the question whether an order of the superior authority merely affirming the order of the inferior authority must state its reasons he explained:

"As has already been said, when the authority whose decision is to be reviewed gives reasons for its conclusion and the reviewing authority affirms the decision for the reasons given by the lower authority, one can assume that the reviewing authority found the reasons given by the lower authority as acceptable to it but, where the lower authority itself fails to give any reason other than that the successful applicant was an old lessee and the reviewing authority does not even refer to that ground, this court has to grope in the dark for finding into reasons for upholding or rejecting the decision of the reviewing authority. After all a tribunal which exercises judicial or quasi-judicial powers can certainly indicate its mind as to why it acts in a particular way and when important rights of parties of far-reaching consequence to them are adjudicated upon in a summary fashion, without giving a personal hearing where proposals and counter-proposals are made and examined, the least that can be expected is that the tribunal should tell the party why the decision is going against him in all cases, where the law gives a further right of appeal."

Now, here therefore it was clearly laid down that no reasons need be specifically given if the order of the revising authority merely affirms the order under review. But that is subject to a proviso, and that is that the order under review sets out the reasons and the reviewing authority mentions that it is for those reasons that it affirms the order. If the order under review does not give any reasons, or if it does and that is not referred to by the reviewing authority, then the reviewing authority is bound to disclose its own reasons. That in my opinion, is what the Supreme Court held, for as it later observed in the same judgment:

"Take the case where the Central Government sets aside the order of the State

Government without giving any reasons as in *Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others*, . The party who loses before the Central Government cannot know why he had lost it and would be in great difficulty in pressing his appeal to the Supreme Court and this court would have to do the best it could in circumstances which are not conducive to the proper disposal of the appeal. Equally, in a case where the Central Government merely affirms the order of the State Government. "It should make it clear in the order itself as to why it is affirming the same". It is not suggested that the Central Government should write out a judgment as Courts of law are wont to do. But we find no merit in the contention that an authority which is called upon to determine and adjudicate upon the rights of parties subject only to a right of appeal to this court should not be expected "to give an outline of the process or reasoning by which they find themselves in agreement with" the decision of the State Government" (Emphasis (here in " ") mine),

63. In the next case. Civil Appeal No. 657 of 1967, D/- 17-8-1967 (SC), the Supreme Court pronounced on another aspect of the same problem. It held that it was not open to the High Court under Article 226 of the Constitution to look into the records of the Government and from the "noting" contained in it to spell out the reasons for the order of the Government which itself did not state the reasons. It said:

"In our view the procedure followed by the High Court was irregular. It is not for the High Court to give reasons which the Government might have, but has not chosen to give, in support of its conclusion. Since no reasons were given in support of the order passed by the Central Government, the order was *ex facie* defective, and the defect could not be remedied by looking into the file maintained by the Government and constructing the reasons in support of that order. The reasons in support of the order had to be recorded and disclosed to the parties concerned by the Central Government, the reasons could not be gathered from the "notings" made in files of the Central Government. Recording of reasons and disclosure thereof is not a mere formality. The party affected by the order has a right to approach this Court in appeal, and an effective challenge against the order may be raised only if the party aggrieved is apprised of the reasons in support of the order."

64. Having regard to what the Supreme Court has laid down in the aforesaid cases I am constrained to hold that the view expressed by this court in *Vinod Chandra Maheshwari v. State of Uttar Pradesh* 1965 ALJ 740 and *Bhagwati Prasad v. State of Uttar Pradesh* 1965 ALJ 961 does not reflect the true position in law. In the former case it was held that although the State Government is to act quasi-judicially u/s 7-F It was not required to give any specific findings. Support for the conclusion was taken from the example of criminal revisions and criminal appeals heard by the High Courts and liable to summary dismissal without giving reasons. As pointed out by the Supreme Court in *M. P. Industries Ltd.* AIR 1960 SC 671 a Tribunal exercising quasi-judicial jurisdiction cannot be

placed on the same footing as Courts exercising purely judicial powers. In Bhagwati Prasad 1965 ALJ 961 (supra) the Court adopted the same reasoning as in Vinod Chandra Maheshwari 1965 ALJ 740 (supra).

65. Before closing this part of the judgment, I may refer to what was said by Denning, L.J. in 1957 1 All ER 796. An order of the Medical Appellate Tribunal was brought before the Court of Appeal for quashing by certiorari. The error of the tribunal did not appear on the face of the order. The Court of Appeal was compelled to refer to a document which formed part of the record but was merely mentioned in the order. It was compelled to do so in order to gather the findings of facts and the reasons for the order of the Tribunal. Denning, L.J. observed that even if it had not been open to the Court to have recourse to that document, the tribunal could not, by failing to find the material facts, be permitted to defeat an application for certiorari. He referred to the power of the Court to order an inferior tribunal to complete the record and cited the observations of Abbott C.J. in *Williams v. Lord Bagot* (1824) 4 D & KB 315:

"If an inferior court send up an incomplete record we may order them to complete it If we do not order or allow the officers of the court below to make a perfect record, which unquestionably they are at liberty to do, it will be in their power, by making an imperfect record, to defeat a writ of error whenever it shall be brought. The power of doing that lies in their hands, unless we prevent it."

66. He also referred to *R. v. Warnford*. (1825) 5 D & KB 489. The courts in England appear to have taken the course that where the inferior court or tribunal does not disclose the findings and reasons for the order made by it, the superior court exercising certiorari jurisdiction, can compel it to complete the record by stating the findings and the reasons.

67. The respondents say that the aforesaid pronouncements of the Supreme Court must be confined to authorities which are tribunals within the meaning of Article 136 of the Constitution, inasmuch as the requirement that the reasons should be stated proceeds upon the consideration that the impugned order is open to appeal to the Supreme Court and that the omission to state the reasons precludes the Supreme Court from effectively exercising its jurisdiction. The contention, in my opinion, is not well founded. From *M. P. Industries Ltd. Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI)*, onward, the Supreme Court, it seems to me, placed the necessity for giving reasons on two broad grounds. The first, arose out of the need to exclude or minimize arbitrariness on the part of the authority making the order, and the second arose upon the need to make the order amenable to effective judicial scrutiny by the Supreme Court. It does appear that in some of its decisions, especially *Bhagat Raja Bharat Raja Vs. The Union of India (UOI) and Others*, , the Supreme Court laid emphasis almost entirely on the second of the two grounds. The two grounds may also be said to be inter-related, in the sense that the second is intended to achieve the object underlying the first. But I am inclined to the view that even if

the order is not open to appeal to the Supreme Court it is necessary that it should state its reasons.

It may be that the authority is not a tribunal within the meaning of Article 136(1) of the Constitution. That I believe, makes little difference. What is relevant, I think, is that the order is made in the exercise of a quasi-judicial jurisdiction. As regards such an order, the party against whom it is made is entitled to know the reasons upon which it has been made. And that is apart from the consideration that it enables him to challenge the order in appeal before the Supreme Court. The need for disclosing reasons in quasi-judicial orders arises from the ancient maxim integrated into our judicial system, that justice must not only be done but must also appear to be done. It is a principle arising out of the recognition that judicial tribunals must inspire public confidence and safeguard against the suspicion of arbitrariness and partiality. That is an objective which, speaking for myself, I consider to be an essential condition to the functioning of all courts and "tribunals, judicial or quasi-judicial. It is the glory of the rule of law that it is founded upon reasons. And reasons as opposed to arbitrary whim distinguishes the rule of law from the rule of men.

68. But even If, as the respondents contend, the pronouncements of the Supreme Court mentioned above must be confined to tribunals within the meaning of Article 136(1) of the Constitution I have no hesitation in holding that the State Government exercising jurisdiction u/s 7-F of the Act is such a tribunal

69. It was at one time recognised as settled law that a tribunal falls within the ambit of Article 136(1) if it derives authority from the sovereign power of the State and if it is invested with any part of the judicial functions of the State as distinct from purely administrative or executive functions if it further enjoys the "trappings of a Court." That was the view expressed in *The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi* and *The Bharat Bank Employees' Union, Delhi*, and later in *Durga Shankar Mehta Vs. Thakur Raghuraj Singh and Others*, . It was reiterated in *Jaswant Sugar Mills Ltd., Meerut Vs. Lakshmidhanda and Others*, ,.

70. In *Jaswant Sugar Mills. Jaswant Sugar Mills Ltd., Meerut Vs. Lakshmidhanda and Others*, the Supreme Court examined the question whether a Conciliation Officer, who was empowered under clause 29 of a Government Order under the U.P. Industrial Disputes Act to grant permission to an employer to alter the conditions of service to the prejudice of the workmen during a pending dispute or to discharge or punish them during such dispute, was a tribunal for the purposes of Article 136(1). The Supreme Court referred to the absence of "the trappings of a court" in the Conciliation Officer. It pointed out that he was not required to sit in public, no formal pleadings were contemplated before him, and he was not empowered to compel the attendance of witnesses nor restricted in making an enquiry to evidence which the parties brought before him. He was not capable of delivering an effective judgment or an award affecting the rights of the parties. He was not invested with powers similar to those of the civil courts under the

CPC for enforcing the attendance of any person and examining him on oath, compelling production of documents, issuing commissions for the examination of the witnesses and other matters. These considerations prevailed with the Supreme Court in holding that the Conciliation Officer was not a tribunal. But since then the law declared by the Supreme Court has taken a wider sweep. In Associated Cement Companies Ltd. Vs. P.N. Sharma and Another, the Supreme Court explained that the presence of all or some of the trappings of a court is really not a decisive consideration, that the main and the basic test was

"whether the adjudicating power, which a particular authority is empowered to exercise, has been conferred upon it by a statute and can be described as a part of the State's inherent power exercised in discharging its judicial function."

It held that the applying this test, the State Government, deciding an appeal under Sub-rules (5) and (6) of Rule 6 of the Punjab Welfare Officers Recruitment and Conditions of Service Rules (1952) was a tribunal. It pointed out that the judicial power of the State

"..... has been conferred on the State Government by a statutory Rule and it can be exercised in respect of disputes between the management, and its Welfare Officers. There is, in that sense, a lis; there is affirmation by one party and denial by another, and the dispute necessarily involves the rights and obligations of the parties to it. The order which the State Government ultimately passes is described as its decision and it is made final and binding. Besides, it is an order passed on appeal."

71. Now, an order made by the State Government u/s 7-F of the Act has been held by the Supreme Court in Lala Shri Bhagwan Shri Bhagwan and Another Vs. Ram Chand and Another, to affect the rights of the landlord and the tenant. Section 3(1) confers upon the tenant a statutory immunity against eviction in the absence of the grounds specified in the sub-section and of permission from the District Magistrate to sue for ejectment. The right of the tenant to that statutory immunity is the subject of proceedings before the District Magistrate and the Commissioner u/s 3 of the Act and before, the State Government u/s 7-F of the Act. The jurisdiction exercised by each of these authorities partakes of the same nature. It was pointed out in Shri Bhagwan and Another Vs. Ram Chand and Another, that there was a dispute between the landlord and the tenant in those proceedings, and there can be little doubt that the order of the State Government u/s 7-F is binding between the parties and finally adjudicates upon the right of the tenant to statutory immunity against eviction. Moreover, the jurisdiction of the State Government is of a revisional character. It may be mentioned that when considering the relevant provisions of Section 3 and Section 7-F of the Act in Shri Bhagwan and Another Vs. Ram Chand and Another, the Supreme Court expressly referred to its decision in the Associated Cement Companies Ltd. Vs. P.N. Sharma and Another, I am of opinion that the test laid down in the latter case for determining whether a body is a tribunal within the

meaning of Article 136(1) of the Constitution is fully satisfied by the State Government acting u/s 7-F of the Act.

72. In my judgment, from the pronouncements of the Supreme Court, the following rules emerge:

"Where an order of an inferior authority is carried in appeal or revision before a superior authority, and in disposing of the appeal or revision the superior authority makes an order in the exercise of quasi-judicial jurisdiction:

(1) In all cases where the superior authority interferes with the order of the inferior authority, the order of the superior authority must set out its reasons.

(2) In cases where the superior authority merely affirms the order of the inferior authority and,

(a) where the order of the Inferior authority does not set out its reasons, the superior authority must disclose its reasons in its order;

(b) Where the order of the inferior authority sets out the reasons;

(i) Where the superior authority finds the reasons of the inferior authority acceptable to it it need not specify the reasons in its order but may merely refer to the reasons given by the inferior authority or give an outline of the process of reasoning by which it finds itself in agreement with the inferior authority;

(ii) Where the superior authority does not find the reasons of the inferior authority acceptable to it the superior authority must set out its own reasons in its order.

73. I would answer the question referred to the Full Bench in the different cases accordingly.

74. BY THE COURT: In the opinion of the majority, where an order of an inferior authority is carried in appeal or revision before a superior authority, and the superior authority in disposing of the appeal or revision makes an order in the exercise of quasi-judicial jurisdiction:

(1) In all cases where the superior authority interferes with the order of the inferior authority the order of the superior authority must set out its reasons.

(2) In cases where the superior authority merely affirms the order of the inferior authority, and

(a) where title order of the Inferior authority does not set out its reasons, the superior authority must disclose its reasons in its order;

(b) where the order of the Inferior authority sets out the reasons, and

(i) where the superior authority finds the reasons of the inferior authority acceptable to it, it need not specify the reasons in its order but may merely refer to the reasons given by the inferior authority or give an outline of the process of

reasoning by which it finds itself in agreement with the inferior authority:

(ii) where the superior authority does not find the reasons of the inferior authority acceptable to it the superior authority must set out its own reasons in its order.

75. The questions referred to the Full Bench in these cases are answered accordingly.

76. The cases will now be listed before a learned Single Judge for decision.