

(1966) 05 CAL CK 0006
In the Calcutta High Court

Kamal Prosad Biswas

APPELLANT

Vs

Chandra Shekhor Prosad and Others

RESPONDENT

Date of Decision : 12-05-1966

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 27
Bengal Excise Act, 1909 — Section 20, 22, 22(1), 22(2), 7
Constitution of India, 1950 — Article 166, 166(3), 227
General Clauses Act, 1897 — Section 3(60)(b)

Citation : 70 CWN 807

Hon'ble Judges : D. Basu, J;B. Mukharji, J

Bench : Division Bench

Advocate : N.C. Sen, P. Barman and Shaila Dhar Chowdhury, for the Appellant;Dipak Prokash Kundu for the Opposite Party No. 1 and Somen Bose for the Opposite Party Nos. 2 to 6, for the Respondent

Judgement

P.B. Mukharji, J.—This is an application under Article 227 of the Constitution. It is a grave example of flagrant violation of the principles of natural justice and reveals a serious state of public administration. The short point involved is if a minister who has certified a candidate, can himself sit in judgment and adjudge in revision that candidate's fitness and grant his candidate an excise license under the Bengal Excise Act after setting aside the concurrent orders of the Collector and the Commissioner of Excise.

2. The relevant facts must be set aside at the beginning. Mr. I.D. Jalan, the then Minister-in-charge of the Home (C and E), Judicial and Legislative Department, Writers' Buildings, Calcutta, issued a certificate dated the 15th May, 1963, to Chandra Sekhar Prosad, the first respondent and opposite party No. 1 in this case. The certificate reads as follows :-

I know Shri Chandra Sekhar Prosad, Ex-Commissioner of the Kurseong Municipality. The said Shri Prosad has got experience of excise shop business. He lives at Kurseong and has properties there as well as in the Jalpaiguri district. He

is a reliable merchant to the best of my knowledge and information and I believe he will be able to discharge his duties properly.

Sd./- I. D. Jalan.

This Chandra Sekhar Prosad was the applicant for a licence for an excise shop in Jalpaiguri. Public notice was issued by the Jalpaiguri District Office on or about the 23rd August, 1963. The petitioner Kamal Prosad Biswas made an application on the 29th August, 1963 before the Deputy Commissioner who was the Licensing authority under the statute. Chandra Sekhar Prosad, opposite party No. 1, submitted his application for the same shop licence to the Deputy Commissioner on the 23rd September, 1963. Mr. I. D. Jalan, became the minister of Excise Department of the Government of West Bengal on or about the 10th December, 1963.

3. Numerous applications were made for the licence. On the 28th and the 29th April, 1964, 33 candidates out of 48 were called for interview by the Deputy Commissioner, the licensing authority. It was on the 28th April, 1964, that opposite party No. 1, Chandra Sekhar Prosad made an application using the certificate of the minister. After hearing all the parties and the interview of the candidates, the licensing authority, the Deputy Commissioner of the district made, inter alia, the following order :-

In my opinion the selection therefore should be confined amongst serials 3, 10, 12, 14, 18, 24 & 36 and considering their properties, bank accounts, smartness etc., the following three candidates are recommended in order of merit for settlement of the shop :-

(1) Shri Kamal Prosad Biswas (Sl. No. 3)

(2) Shri Sadhan Kumar Bose (Sl. No. 24)

(3) Shri Sudhir Kumar Kundu (Sl. No. 36)

4. Chandra Sekhar Prosad who was holding the minister's certificate, therefore, failed before the licensing authority. His serial No. was 43. About him, the licensing authority in the said order expressed, inter alia, the following view :-

Serial No. * * * * have no landed properties in their names. It will be risky to settle the shop to any of them as there will be no protection of Government revenue in case of default.

5. Pursuant to that order of the licensing authority, the petitioner paid advance licence fee of Rs. 500/- and obtained his excise licence for the Fulbari Shop and offered a site for the shop for the approval of the Government on or about 25th August, 1964, on which date actual licence was granted to the petitioner Kamal Prosad Biswas.

6. After the licence had been granted, the respondent opposite party Chandra Sekhar Prosad filed a petition of appeal before the Excise Commissioner against

the grant of the licence to the petitioner. This appeal was filed on or about the 6th October, 1964. While the appeal was pending, the petitioner opened his Fulbari Shop at the above site on the 16th December, 1964. Thereafter, on the 11th January, 1965, the Commissioner of Excise Mr. J.C. Majumdar in a careful and well-reasoned judgment dismissed the appeal of Chandra Sekhar Prosad. The Commissioner of Excise in his appellate order came to an important finding of fact. On a consideration of the facts and circumstances and the evidence on the record the Commissioner of Excise in appeal confirmed the order of the Collector of Excise, namely, the Deputy Commissioner in this case who was the licensing authority. So far as the selected petitioner Kamal Prosad Biswas is concerned, the relevant portion of the appellate order of the Excise Commissioner reads as follows :-

After interview of those candidates who appeared before him, the Deputy Commissioner selected the respondent, Kamal Prosad Biswas as the best candidate and he issued the licence in his favour. The respondent is a bona fide displaced person who is in possession of some landed properties and he is aged about 32 years. He had no previous experience of country spirit business when he submitted his application on 29.8.63 for settlement of the shop in question but it appears that he worked as a salesman in the Belocoba C.S. shop with effect from 17.12.63, i.e., for a period of about 7 months before he was selected by the Deputy Commissioner, Jalpaiguri on 1.7.64.

7. The order of the licensing authority, the Deputy Commissioner was challenged on two grounds, of which one was a point of technicality and the other the point of merit.

8. The point of technicality was that the Deputy Commissioner had made only an order of recommendation for settlement but had not actually selected the best candidate. The Excise Commissioner rightly over-ruled the point and held in favour of the petitioner not only on the ground that virtually the effect of the order of the Deputy Commissioner was to grant a licence, but also on the ground that the licence was in fact subsequently issued to him proving the intention of the order.

9. Now the important part of the judgment of the Commissioner of Excise in appeal relating to the respondent, opposite party Chandra Sekhar Prosad reads as follows :-

I next consider the case on its own merits. It is found that the appellant No. 3, Chandra Sekhar Prosad lives in Kurseong, which is about 36 miles away from the C.S. shop in question; and the Deputy Commissioner, Jalpaiguri has remarked that he does not consider Chandra Sekhar Prosad to be fit as it will hardly be possible for him (Chandra Sekhar Prosad) to pay full attention to C.S. Shop business, because he has other pre-occupations. Lastly, the appellant No. 3 has no immovable property in his sole name or in his exclusive possession. He holds some joint properties in the districts of Darjeeling and Jalpaiguri. For security

and protection of Government revenue it is always desirable, if not essential that the licensee should have some immovable property in his sole ownership. Considering all these facts and circumstances, I hold that the Deputy Commissioner, Jalpaiguri was right in having preferred another candidate to the appellant No. 3, Chandra Sekhar Prosad.

Further, in the appellate order, the Excise Commissioner came to the following findings:-

Looking at the case of the respondent, I find that his age is in his favour as he is a young man; his assets are in his favour as he has landed property; and he can also claim to have acquired some experience before he was selected though he had no experience at the time of submitting his application for settlement. The Deputy Commissioner, Jalpaiguri is the local officer. He has full knowledge of and acquaintance with the local conditions and he has selected him after proper and careful consideration.

Finally, the Commissioner of Excise concluded, "All the appeal petitions are, therefore, rejected and the orders of the Deputy Commissioner, Jalpaiguri for settlement of the C.S. Shop at Fulbari Anchal with respondent, Kamal Prosad Biswas are upheld.

10. In this connection it will be appropriate to make a reference at this stage to the fact that after the above order, on the 3rd April, 1965, the Commissioner of Excise had to reject another appeal of opposite party No. 1, Chandra Sekhar Prosad, regarding settlement of another Excise shop being Goirkata Foreign Liquor Trade shop on the ground of adverse records in the D.I.R. Darjeeling.

11. Although the Excise Commissioner dismissed the appeal in the case on the 11th January, 1965, yet a long time was allowed to pass by the opposite party Chandra Sekhar Prosad before he thought of filing a revision petition against the order of the Excise Commissioner. Curiously enough again, it was addressed to the Minister-in-charge of Excise, although u/s 8(3) it is "the State Government" who is the revising authority. No doubt, the Minister-in-charge of Excise was the person who was exercising the revisional jurisdiction u/s 8(3) under the Rules of Business, yet that was not supposed to be known to the opposite party Chandra Sekhar Prosad and one would have expected a formal petition in revision to the State Government as such according to the terms of the statute, and not to the minister himself.

12. Violation of the principles of natural justice and fair hearing began from this stage. Although the minister found that it was his certified candidate who was asking to set aside the order granting licence to the petitioner, he himself chose to hear the revision petition. This was the most unfortunate part of the procedure that the minister adopted. It is all the more regrettable because the minister concerned is himself a lawyer and a Solicitor of this Court and acted as such for many years and was expected to know this elementary procedure for natural justice that one should not adjudge a case in which he himself or his own hand is

involved. The minister in fact heard the lawyer for Chandra Sekhar Prosad and also the lawyer for the petitioner Kamal Prosad Biswas. The first thing that the minister did was to condone the delay on the ground that the delay was not inordinately long and there was no formal limitation. That also has been criticized before us on the ground that in the matter of granting an excise licence delays should be avoided and especially when under a licence, a shop has already been opened, that delay should be a matter of at least some concern and a ground for consideration. The minister tried to get over this significant consideration by the plea that no formal limitation for such revision is prescribed by the Statute or the Rules. That is how the bias first expressed itself. But that is not the material part of the major criticism which has been levelled against the ministerial order in revision. The minister found that the person whom he had certified was "of sufficient educational qualification because he had" read up to the Matriculation standard". He also found that he had landed properties. In spite of the fact that both the Collector of Excise (Deputy Commissioner) and the Commissioner of Excise in appeal have found that Chandra Sekhar Prosad had no property in his own name and that he was unlikely to pay full attention to the shop as he lived in Kurseong. The minister appears to overcome those concurrent findings of fact of the administration by saying that the petitioner held Sulkapara property jointly with his father and that he had valuable house property in his own name at Kurseong. There were no particulars of such alleged valuable house property, what number it bore and where it was situated and what was its Municipal holding; nor was any such detail a matter on the record. Chandra Sekhar Prosad's own evidence as recorded by the Collector of Excise (Deputy Commissioner), did not suggest that he held any landed property in his own names. Now about the alleged experience of the minister's candidate the record is eloquent. Even in his own application before the Collector of Excise, the applicant had stated that he had no experience of excise shop of his own, but he had worked as a salesman-cum-supervisor of his father's business at Bogra, thirty years ago. There was of course no proof except his own statement in that petition. The minister arrived on the fact that he had landed property because of the certificates of "respectable gentlemen" which incidentally included himself. The minister could not incorporate his own personal knowledge about the man he was selecting, as evidence in the case, even if it be true that Chandra Sekhar Prosad had property in his own name and in his own right. It is therefore, unfortunate that these concurrent findings of fact arrived at both by the collector and the Excise Commissioner in appeal were set aside by this observation of the minister - "the finding that the petitioner has no landed property in his own name, does not therefore, appear to be correct." On the records it not only appeared to be correct but was incontrovertible. This is how secondly the bias expressed itself.

13. The minister then overcomes the other difficulties of the orders of both the Col and the Commissioner of Excise by saying that although he lived 36 miles away from the shop, Chandra Sekhar Prosad had promised that if he got a

licence he would stay at the shop. This Court is of the opinion that this kind of reasoning should never have been allowed to overcome the findings of fact. Indeed, the argument of a pot calling a kettle black was adopted by the minister as he tried to suggest in his judgment in revision that the petitioner Kamal Prosad Biswas lived at Jalpaiguri which was a distance of 20 miles from the shop. That is hardly an argument of an unbiased person, sitting in judgment over the decisions of the Collector and the Commissioner of Excise. This is how, thirdly, the bias expressed itself.

14. Lastly, the minister overcomes also the difficulty created by the fact of adverse reports of the police against the candidate whom he had certified, namely, Chandra Sekhar Prosad. This he did by adopting the reason which will appear best in his own language which is as follows :

In support of his second point the learned Advocate for the petitioner has filed a certified copy of the Commissioner's appellate orders dated 31.8.64 in connection with the settlement of the foreign liquor trade licence at Goirkata in which petitioner Chandra Sekhar Prosad figured as an appellant. In these orders the Commissioner has made a reference to the adverse police report against the petitioner but has given no details. The learned Advocate for the respondent could not throw any light on it beyond what the Commissioner has stated in his orders. Unless the particulars are known it is difficult to rely upon it for rejecting revision petition on this ground and there is no such report in the present proceedings except what is contained in the orders in another case. This does not make him ineligible for the licence as no charge was proved against him and he was not convicted for any offence. This objection of the respondent cannot also be entertained.

It is difficult to support this kind of reasoning. The fact on the record is that the minister's candidates had adverse report of police against him. No doubt, that was in another case. But that was also for an excise licence. It was not for the petitioner Kamal Prosad Biswas of this case to give details of this adverse report of the police in connection with another excise licence for which Kamal Prosad Biswas was not a candidate. The minister should have satisfied himself by examination of his candidate who appeared before him and also from the records about the truth or otherwise of the matter. Conviction of an offence isn't necessary to disqualify a person. The question is the suitability of the candidate for getting a licence. The plain and simple point is whether the person against whom such adverse reports of the police exist, should be considered to be a person more suited for obtaining an excise licence than one who has no such adverse reports. It is wrong for the minister to say that that adverse report was not the subject matter of the record in the present case. Indeed it was and reference is made by the Excise Commissioner. In fact, a certified copy of the Commissioner's appellate order dated 31st August, 1964, on this question was actually produced before the minister himself, in this case. This is the fourth instance of bias in this revision proceeding by the minister.

15. What is worse, is the order that the minister made at the end of his "revision". I shall again quote the minister's order in his own language -

In the result I am of the opinion that the orders of the officers below settling the shop with the respondent Shri Kamal Prosad Biswas should be set aside. The question then arises whether after setting aside the impugned orders the matter should be sent back to the Deputy Commissioner for resettlement or a direction should be issued for settlement of the shop with the petitioner. I do not think any useful purpose will be served by remanding the case to D.C. which will give rise to a fresh round of appeal and revision involving considerable delay."

It is again difficult to support the minister's logic on this point. If delay was so much in the mind of the minister, then on that ground alone he should have dismissed the revision application which was filed four months after the Excise Commissioner's order in appeal and when the licence had already been given and the petitioner Kamal Prosad Biswas had already started working the shop. But then there was no delay according to the minister. Why should the minister stop the revision and appeal allowable by the Act and why should he be keen to stop the statutory rights? These are questions of supreme concern and importance in public administration. This is the fifth instance of bias in the minister's order impugned before this Court.

16. Not only did the minister forthwith grant the licence himself to the person in whose favour he had issued his own certificate, he did something worse. He never even gave a hearing to the other two persons who were on the panel of three whom the Excise Collector (Deputy Commissioner) and the Excise Commissioner thought to be the persons serially entitled. Kamal Prosad was placed first and the two other persons were placed second and third. The minister therefore, should not have straightway given the Excise licence to his candidate without hearing the second and third persons in the panel. He never gave an opportunity to the second and the third persons mentioned in the panel. On the contrary, the minister came to the extraordinary conclusion which he expressed in these terms:-

The candidates who were placed 2nd and 3rd in the panel are not interested in the licence as they have not come up before me on revision. So, it is not necessary to consider their cases.

How could those two other candidates come before him when they never had any notice of the revision petition filed before the minister. No copy of the notice was sent to those two persons. Again, the persons named 2nd and 3rd on the panel may have no grievance so long as the licence went to the petitioner Kamal Prosad Biswas who was on the list because they might have considered that he was better than they themselves. But they i.e., Nos. 2 and 3 might have everything to say if the licence instead of going to No. 1, Kamal Prosad Biswas, went to somebody else who was not on the panel at all. This is clear violation of the principles of natural justice. It is the sixth instance of bias in the minister's

order under challenge.

17. These are briefly, the facts of this case. This Court, on the above grounds and reasons, has no hesitation in holding that the minister's order in revision u/s 8(3) of the Bengal Excise Act is in utter breach and disregard of the basic principles of natural justice and fair hearing. We shall summarise our reasons briefly.

18. In the first place, this order of the minister u/s 8(3) of the Bengal Excise Act is tainted with bias and he should have never decided this revision petition. Apart from the inherent findings which are tainted with bias and which we have indicated above, he was biased on the plain fact that he himself was adjudging a person in whose favour he has granted a certificate and in doing so, he set aside the concurrent findings of fact by the Collector of Excise and the Commissioner of Excise, who had already recorded evidence, facts and circumstances of the case. Justice must not only be done, but also appear to be done.

19. This Court hope that it is not necessary at this stage of evolution of law on this point to cite any authorities in support of that proposition. In case a self-confident minister wants and judicial authority, the Supreme Court decision in (1) C.S. Rowjee and Others Vs. Andhra Pradesh State Road Transport Corporation, , may be quoted. The pregnant observation of the Supreme Court in that case appears at pages 972-974. This branch of the law was also expounded by the Supreme Court in (2) Gullapalli Nageswara Rao etc. Vs. The State of Andhra Pradesh and Others, at page 1378 where the Court observed as follows:-

The principles governing the "doctrine of bias" vis-a-vis judicial tribunals are well-settled and they are : (i) no man shall be a judge in his own cause; (ii) justice should not only be done but manifestly and undoubtedly seem to be done. The two maxims yield the result that if a member of a judicial body is "subject to a bias (whether financial or other) in favour of, or against, any party to a dispute, or is in such a position that a bias be assumed to exist, he ought not to take part in the decision or sit on the tribunal"; and that "any direct pecuniary interest, however small, in the subject matter of inquiry will disqualify a Judge, and any interest, though not pecuniary, will have the same effect, if it is sufficiently substantial to create a reasonable suspicion of bias. The said principles are equally applicable to authorities, though they are not Courts of justice or judicial tribunals, who have to act judicially in deciding the rights of others, i.e., authorities who are empowered to discharge quasi-judicial functions.

This principle was reiterated with approval again by the Supreme Court in (3) Mineral Development Ltd. Vs. The State of Bihar and Another, at page 620 : AIR 1960 SC 468 : (1960) 1 SCA 297, where the Supreme Court pointed out to the fact that in that case the then Revenue minister who had made the impugned order had personal bias against the petitioner. The present decision of the minister in deciding in favour of the candidate for whom he has given a certificate and against the person who had been awarded the licence both by the

Collector of Excise and the Commissioner of Excise, clearly comes within the principle enunciated by the Supreme Court and now well-recognised throughout the world. We consider it to be sufficient bias which will taint this proceeding where a person has to adjudge a candidate in whose favour he himself has given a certificate.

20. This is not the only ground of bias for which the order of the minister in revision must be set aside. There are other serious grounds of violation of the principles of natural justice and fair hearing. We shall now consider those grounds.

21. No copy of this revision petition was allowed to be given to the present petitioner before us and yet a notice was given to him to come and resist that revision petition. Indeed, no inspection even of the revision petition was given to the petitioner Kamal Prosad Biswas and yet he was asked to appear before the minister. It is a clear violation of the principle of natural justice and fair hearing as enunciated by the Supreme Court in (4) Fedco (P) Ltd. and Another Vs. S.N. Bilgrami and Others, and also in 1960 (XXIII) SC Journal 235. It was observed by the Supreme Court at page 417 of the above Supreme Court report as follows :-

The requirement that a reasonable opportunity of being heard must be given has two elements. The first is that an opportunity to be heard must be given; the second is that this opportunity must be reasonable. Both these matters are justiciable and it is for the Court to decide whether an opportunity has been given and whether that opportunity has been reasonable.

Applying that test to the facts of this case it is an irresistible conclusion that if a revision petition is made and the other side is not given a copy of that petition or even an inspection of it, then that is no reasonable opportunity. On that point the minority judgment of Subba Rao, J., in that case expressed the point with greater emphasis in the following terms: -

It is not as if the petitioners admitted that they committed the fraud. When they were confronted with the notice, unless the particulars were given to them and documents shown to them, it was not possible for them to know whether a fraud was committed at all, if committed, how was it committed.

Many judicial decisions have laid down, for instance, that reports or documents on which reliance is placed, must be disclosed to the party against whom they are being used. But this case stands on a much stronger footing. It is not a case of reports or documents. It is really a case of the pleading itself - the revision petition and if the person does not get a copy of the pleading then surely it is a case of denial of natural justice and we hold accordingly.

22. The next violation of the principle of natural justice and fair hearing in this branch of the case is that the most necessary and vitally interested parties were not even notified of this revision and were not before the minister when he was

revising this order. They are the two persons Nos. 2 and 3 in the panel which the Collector of Excise (Deputy Commissioner) and the Excise Commissioner in appeal, determined. Before proceeding to grant a licence to the candidate whom the minister himself certified, the minister should at least have seen that he heard the necessary and vitally interested parties. This he did not and committed a breach of the principles of natural justice and the well-settled canons of fair hearing.

23. Lastly, Mr. Sen, appearing for the petitioner has bitterly criticized the minister's order in revision on the ground that it is based on no evidence at all, especially on three points namely, (1) Finding of property, (2) Experience of the ministerial candidate and (3) The fact whether he was convicted of an offence or not. The minister appears to proceed on his own certificate and the certificates of the other gentlemen produced by the opposite party Chandra Sekhar Prosad. But certificates are not by themselves proofs. The person certifying the fact certified has to establish the truth or otherwise of the statements made in the certificate. Either the person certifying or by any other independent evidence the fact certified has to be established. Both the Collector of Excise as well as the Commissioner of Excise came to the definite findings of facts, namely, on property, experience and conviction. It is all the more regrettable in this case because what the Minister was doing was not deciding the case for the first time but was only revising the orders made by the Collector and the Excise Commissioner. In revision the concurrent findings of fact should not as a rule be interfered with unless the findings are based on no evidence and unsupported by facts. See the observations of the Supreme Court in (5) Syed Yakooob Vs. K.S. Radhakrishnan and Others, . But here the situation is otherwise. The facts were recorded by the Collector of Excise. Statements were recorded. That was in the nature of evidence. He investigated these very facts. He is a local man. He recorded certain findings. Those findings were confirmed by the Excise Commissioner in appeal.

24. Therefore, on both the grounds of bias as well as on the ground of violation of the principle of natural justice and fair hearing we have no justice and fair hearing we have no hesitation in setting aside the order of the Minister in revision dated 6th January 1966 and the order of the State Government passed thereupon dated the 29th January 1966.

25. When the application was opened and at a fairly early stage of the hearing Mr. Bose who was appearing as learned Advocate for the opposite parties (1) State of West Bengal, (2) Excise Minister, (3) Excise Commissioner, (4) Deputy Commissioner and (5) Excise Superintendent, realised the difficulty of maintaining the Minister's order in revision. So also did Mr. S.K. Mukharji learned Counsel appearing for opposite party Chandra Sekhar Prosad. Both Mr. Bose and Mr. Mukharji for the opposite parties therefore, stated to this Court that they would not oppose the Rule and would submit to the Rule being made absolute. This fact must be recorded that the learned lawyers" of all the opposite parties

conceded to the Rule being made absolute on the facts of this case. The facts therefore, cannot be reopened. Indeed on behalf of the Government no affidavit in opposition was filed either by the Minister or by the State contesting or challenging any question of facts stated in the petition. But naturally Mr. Sen for this petitioner refused to agree to a consent order in a case of such grave importance for the public administration of the country and he asked for his client for a judgment of this Court deciding the points raised. In that view of the matter we have to consider the last point which was submitted on behalf of the Government by Mr. Bose on the interpretation and scope of revision u/s 8(3) of the Bengal Excise Act, under which this order was made.

26. It was contended for the Government that an order in revision made by the State Government u/s 8(3) of the Bengal Excise Act was not a judicial or quasi-judicial order and that the State Government was not a tribunal to come within Article 227 of the Constitution. In substance the argument for the Government is that the order which the State Government makes a revision u/s 8(3) of the Bengal Excise Act is not only not judicial or quasi-judicial but it is a purely administrative and executive function. On the point of law therefore, it was contended for the Government that this Court should not interfere with that order in revision under Article 227 of the Constitution. This point raises a very important question both of construction of the Bengal Excise Act as well as of constitutional law.

27. The basis of this point however, is the nature of the order which the State Government makes u/s 8(3) of the Act. Section 8 is one of the two Sections under Chapter II of the Bengal Excise Act under the heading "Establishment, Control, Appeal and Revision." The first Section 7 of the chapter deals with Establishment and Control. The second Section 8 is marginally described as "Control, appeal and revision" and reads as follows :-

8. (1) The Collector shall, in all proceedings under this Act, be subject to the control of the Excise Commissioner, and shall, in such matters as the State Government may direct, be subject also to the control of the Commissioner of the Division.

(2) Orders passed under this Act or under any rule made hereunder shall be appealable in such cases, to such authorities and under such procedure as may be prescribed by rule made u/s 85, clause (c).

(3) The State Government may revise any order passed by the Collector, the Excise Commissioner or the Commissioner of a Division or by any officer exercising the powers of an appellate authority under any Rule made u/s 85 clause (c)".

28. There has been a recent amendment of Section 8 by the Bengal Excise Amending Act of 1965 (West Bengal Act XXXIV of 1965). It is not necessary for us to consider that amendment, because the present case is not governed by that amendment, which did not come into force before the 31st December, 1965,

and also because even the amendment in material particulars upon points under discussion does not in any view alter the law.

29. Proceeding with the interpretation of Section 8 of the Act quoted above the first point that strikes the Court is that various orders are the subject matter of Section 8. These matters may include not only administrative matters, but judicial and quasi-judicial matters. They may relate to orders about establishment and control which have nothing to do with judicial or quasi-judicial function. At the same time, they also include what are plainly judicial or quasi-judicial orders. In the first place, therefore, on the construction and the context of Section 8 it has to be found out in each case what the facts are.

30. What are the facts in the present case? The licensing authority is the Collector under the Act who in this case is the Deputy Commissioner, Jalpaiguri. Section 20 of the Act makes it clear that no intoxicant and no portion of the hemp plant from which an intoxicating drug can be manufactured or produced, shall be sold except under the authority and subject to the terms and conditions of a licence granted in that behalf by the Collector. There are certain provisions which follow and with which we are not directly concerned in this application. Applications were made before the Collector. He decided the matter, under the Rules framed by the Government u/s 85 of the Bengal Excise Act. Rules 2, 3, 4, 5 and 6 have been made to deal with appeals. u/s 8(2) of the Bengal Excise Act as quoted above orders shall be appealable to such authorities under such procedure as may be prescribed by the Rule made u/s 85(c). It is therefore necessary to have a look at the Rules. Rule (2) provides as follows:-

An appeal shall lie to the Collector from any order of an officer exercising any power or performing any duty under the Act in subordination to the Collector.

This Rule is followed by a proviso with which we are not concerned. Thereafter Rule (3) provides for appeal to the Excise Commissioner which reads as follows :-

An appeal shall lie to the Excise Commissioner from an original or an appellate order made by -

(a) the Collector, or

(b) the Additional District Magistrate * * * * *".

Now in this case under Rule 3 the opposite party Chandra Sekhar Prosad appealed to the Excise Commissioner from the order of the Collector. That fact has to be borne in mind.

31. Rule 4 provides for an appeal to the Board of Revenue from the order of the Excise Commissioner but with the important proviso that when an order made by a Collector is confirmed by the Excise Commissioner, no further appeal to the Board of Revenue shall lie. In this case therefore, as the Excise Commissioner upheld and confirmed the Excise Collector's order, the opposite party Chandra Sekhar Prosad could not make any appeal to the Board of Revenue. Rules 5 and

6 provide for limitation for the appeal to the Board of Revenue and other procedure for such appeal to the Board of Revenue.

32. On the facts therefore, what the opposite party Chandra Sekhar Prosad did was to invoke Section 8(3) by making a petition for revision before the State Government or the Minister-in-charge of Excise. The Minister-in-charge of Excise is the delegate of the State Government under the Rules of Business to determine the revision. Rule 19 of such Rules of Business provide -

Except as otherwise provided by any other rule, cases shall ordinarily be disposed of by or under the authority of the Minister-in-charge who may, by means of standing orders, give such directions as he thinks fit for the disposal of cases in the department. Copies of such standing orders shall be sent to the Governor and the Chief Minister.

33. These Rules of Business however, will not be material except on a short point which was not really contested by the learned Advocate for the Government. These Rules of Business are framed under Article 166(3) of the Constitution. They can be changed and there can be delegation in special cases. Besides, here the Rules of Business have to be read with Section 8(3) of the Bengal Excise Act which state that "the State Government may revise". Therefore, who of the State Government will revise may always be determined or even changed in appropriate cases as it should have been done in the instant case because the normal delegate Minister for Excise was disqualified to Judge a case of his own nominee, and because to do so will be violating the principles of natural justice which cannot be permitted by Rules of Business. Rules of Business under Article 166(3) of the Constitution cannot be pleaded as an excuse to violate the principles of natural justice that (1) no man should be a Judge in own cause, (2) justice must not only be done but also appear to be done and that (3) where hearing is necessary it should be a fair and reasonable hearing, specially when the Rules of Business can change the normal delegate in the appropriate cases.

34. In our opinion the particular order in the present case u/s 8(3) which the minister has made in revision setting aside the order of the Collector and the appellate order of the Commissioner of Excise is not an administrative order at all. It is a judicial order or at least a quasi-judicial order. Under no circumstances on the facts of this case can this be legally or factually be construed as an executive or administrative order. The words used "Appeal and revision" in Section 8(3) of the Act, prima facie connote a judicial conduct. That connotation may not be decisive in all cases, but prima facie they have a judicial connotation. The State Government which revises orders made in appeal cannot turn round and say that the order of revision converts an appellate order into an executive order. The nature of revision in such a case is so impugned with judicial or quasi-judicial feature that the delegate of the State Government who performs that function of revision u/s 8(3) of the Bengal Excise Act, exercises judicial or quasi-judicial function. The significant words "exercising powers of an appellate authority under any Rule made u/s 85(c)" used in Section 8(3) of the Bengal

Excise Act make such revision by the State a super appellate function and therefore at least quasi-judicial in its nature and not a partly administrative and partly executive order. The fact that no Rules have been made under the Act for regulating the conduct and procedure of revision does not take away the quasi-judicial character of the revision having regard to the basic nature and foundation of such revision u/s 8(3) of the Bengal Excise Act and the express language quoted above limiting such revisions to appellate orders.

35. There are certain authorities which support the view that we are taking on this point. In (6) *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, , this question was elaborately discussed. See the observation of the Supreme Court at pages 405-408. The importance of that decision is that it also dealt with the powers and authorities under the Eastern Bengal and Assam Excise Act and with regard to the orders made by the authorities under that statute. In that case the Supreme Court laid down the guiding principle at page 408 in these words :-

Whether or not an administrative body or authority functions as a purely administrative one or in a quasi-judicial capacity must be determined in each case on examination of the relevant statute and the rules framed thereunder."

36. Applying that principle to the context of this Act, Bengal Excise Act and the Rules made thereunder, I am of the clear opinion and hold that the order impugned is a quasi-judicial order and the minister was acting quasi-judicially or even judicially in determining the revision from the appellate order of the Excise Commissioner which upheld the order of the licensing authority, the Deputy Commissioner.

37. The point again came up for discussion and decision before the Supreme Court in (7) *Laxman Purshottam Pimputkar Vs. State of Bombay and Others*, . There it was held that the State Government's revisional jurisdiction in such context or similar context on facts is a judicial and not an administrative order. See the observation of Mudholkar, J., at pages 441-442 and especially when Mudholkar, J., made the observation at page 442, "when an authority exercises its revisional powers it necessarily acts in a judicial or quasi-judicial capacity.

38. In dealing with a similar question under the Administration of Evacuee Property Act, the Supreme Court in (8) *Bishambar Nath Kohli and Others Vs. State of Uttar Pradesh and Others*, came to the conclusion that the powers of the Custodian-General were unquestionably judicial. See the observation of the Supreme Court at page 575.

39. Two other recent decisions of the Supreme Court may also be referred to in this connection. One is (9) *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, at page 85 : (1965) 2 SCA 868, Subba Rao, J., at page 86 of the Supreme Court decision observed as follows :-

The provisions of a statute may enjoy on an administrative authority to act

administratively or judicially. If the statute expressly imposes a duty on the administrative body to act judicially, it is a clear case of judicial act. But the duty to act judicially may not be expressly conferred, but may be inferred from the provisions of the statute. It may be gathered from the cumulative effect of the nature of the rights affected, the manner of the disposal provided, the objective criterion to be adopted, the phraseology used, the nature of the power conferred, of the duty imposed on the authority and other indicia afforded by the statute, in short, a duty to act judicially may arise in widely different circumstances and it is not possible or advisable to lay down a hard and fast rule or an inflexible rule of guidance.

The other case is the decision of Shah, J., in (10) *Sadhu Singh Vs. Delhi Administration*, where the learned Judge at page 96 expounded the law by saying -

But whether a public authority invested with powers to pass a specified order is required to act judicially must depend upon the scheme of the statute which invests him with that power. The nature of the authority conferred, the procedure prescribed and the nature of the powers exercised will determine the question whether the public authority is required to act judicially.

40. On the basis of the above principles and taking into consideration the language used in Section 8(3) of the Bengal Excise Act in this case and the particular fact that here the State Government through the minister was hearing the statutory revision from the appellate order of the Excise Commissioner under the rules framed u/s 85(c) of the Bengal Excise Act, I have no doubt in my mind that the State Government in performing this revisional work was acting judicially or at least quasi-judicial and within the powers and control of Article 227 of the Constitution of India. I hold accordingly.

41. On the nature of revision it is not necessary for the purpose of this case to decide whether revision is more or less than an appeal and what is the scope or ambit or extent of the powers in revision. What has been criticized by Mr. Sen appearing for the petitioner is that the minister under the cover of revising powers u/s 8(3) of the Bengal Excise Act had no authority to issue a licence straightway. His argument is that under the statute the Licensing Authority is the Collector of Excise and not the minister and the minister by himself issuing the excise licence has violated the very basis of the statute and thereby depriving his client his normal statutory rights to appeal and revision. For this purpose he relied on the Supreme Court decision in the (11) *State of Kerala Vs. K.M. Charia Abdullah and Co.*, and the observation made by Subba Rao, J., at page 1591. It is not necessary to pursue this argument any more having regard to the view we have already taken on the interpretation and construction of Section 8(3) of the Bengal Excise Act. This Court however must record that the argument raised a point of great substance which may have to be decided in an appropriate case in future.

42. Mr. Bose for the Government, however in support of his contention that the order of the State Government in revision u/s 8(3) of the Bengal Excise Act is an administrative and not a judicial or quasi-judicial order, finally relied on the provision of Section 22 of the Bengal Excise Act saying that the Government had the power to grant to any person on such condition and for such period, the exclusive privilege of selling any country liquor as provided therein. Therefore, according to him, it was really an executive power that the Government was exercising u/s 8(3) of the Act. We have no hesitation in rejecting that argument. There are many reasons for not accepting this contention. In the first place, Section 8(3) of the Act speaks of revision. When that revision is directly concerned with the appellate order of the Excise Commissioner, no question of executive or administrative function of the State Government u/s 8(3) in such revision can arise. It is a judicial or a quasi-judicial function. Besides, Section 22 of the Act has two important qualifications one is the proviso to Section 22(1) which speaks that before the Government grants such exclusive privilege notice must be given of the intention of grant of such exclusive privilege and that objection made by any person residing within the area affected must be considered before an exclusive privilege is granted. That imposes the requirement of public notice and petition of objection and consideration of such objection. But the more important qualification is u/s 22(2) of the Bengal Excise Act which says expressly -

No grantee of any privilege under sub-section (1) shall exercise the same unless or until he has received a licence in that behalf from the Collector or the Excise Commissioner.

Therefore, mere grant of the exclusive privilege u/s 22(1) will not entitle the grantee to exercise his function unless and until he has received a licence from the Collector. In order to get a licence from the Collector or the Excise Commissioner, as the case may be, he has to comply with the requirements of the statute and the rules made thereunder. Therefore, the powers of the State Government to grant exclusive privilege u/s 22(1) of the Act cannot be construed to make the otherwise judicial work of revision u/s 8(3) of the Act on the facts of this case, administrative.

43. For the reasons stated above, we set aside the order of the minister dated 6th January 1966 and also the order of the State Government passed thereupon dated 29th January 1966. We make the Rule absolute with costs assessed at six gold mohurs.

D. Basu, J.

44. Agreeing with the order proposed by my Lord I would like to add a few words on the two principal questions raised in this case, namely, (a) whether the impugned order of the State Government is a quasi-judicial order and (b) whether such order is liable to be quashed on the ground of bias on the part of the Minister-in-charge who exercised the power of revision conferred by Section

8(3) of the Bengal Excise Act, 1909.

45. On the first question, it has been argued on behalf of the State Government that the statutory provision in Section 8(3) or the Rules framed thereunder do not prescribe any procedure to be followed in exercising the power of revision so conferred, from which a quasi-judicial obligation may be deducted. It is true that the statute does not expressly lay down any procedure to be followed in that sub-section but it is now established by a series of decisions of the Supreme Court that the absence of an express imposition of a quasi-judicial obligation in a statute is not conclusive on the point and that such obligation may be inferred from other circumstances. In a recent judgment delivered by me in the case of (12) Baleswar Singh Vs. Commissioners for the Port of Calcutta and Others, . I have dealt with the evolution of the law on this point in India and have shown how, starting with the extreme proposition, enunciated in the case of (13) Province of Bombay Vs. Kusaldas S. Advani and Others, , that the text of the statute or the rules thereunder provides the exclusive source of a quasi-judicial obligation, our Supreme Court has been proceeding towards the other extreme namely, that even in the absence of express provision in the relevant statutory provision the nature of the rights affected or the nature of the function itself may give rise to a quasi-judicial obligation and, the latest cases of the Supreme Court being mentioned in that judgment, I consider it unnecessary to reiterate the story of that evolution herein.

46. So far as the appellate function is concerned, the proposition that an appellate function is inherently quasi-judicial in nature rests on the high authority of Lord Haldane's observation in the case of (14) Local Government Board v. Arlidge, 1915 AC 120 (132, 150) -

When the duty of deciding an appeal is imposed, those whose duty it is to decide it must act judicially. They must deal with the question referred to them without bias, and they must give to each of the parties the opportunity of adequately presenting the case made * * * * *

That this principle applies even where the appellate function is vested not in a Court but in administrative authority is also well-established on the authority of cases such as (15) The King v. Tribunal of Appeal, (1920) 3 KB 334, (16) Rex v. Minister of Transport, (1934) 1 KB 277, and the like. Coming now to India, - in the first case of (6) Nagendra Nath Bora v. Commissioner of Hills Division, (supra), it was held that the appellate function, whether it has to be exercised by judicial or administrative authority, must be exercised quasi-judicial. The question before us is whether this principle would extend to the function of revision and, particularly, when such power is vested in an administrative authority. In (6) Nagendra Nath's case (ibid), the relevant provision dealt with was sub-section 3(9) of the Eastern Bengal and Assam Excise Act (1 of 1910) which runs as follows:-

The Appellate authority, the Excise Commissioner or the District Collector, may

call for the proceeding held by any officer or person subordinate to it or him or subject to its or his control and pass such orders thereon as he may think fit.

The implications of this provision were analyzed by the Supreme Court and, extending the principles enunciated by Lord Haldane in (14) Local Government Board v. Arlidge, (supra), it was held by B.P. Sinha, J., that the principles apply also the function of revision conferred by statute even though it was vested in an administrative authority, in the following words, inter alia,

Where there is a right vested in the authority created by statute, be it administrative or quasi-judicial, to hear appeals and revision it becomes its duty to hear judicially that is to say, in an objective manner impartially after giving reasonable opportunity to the parties concerned in the dispute, to place their respective cases before it.

The words "pass such orders thereon as it or he may think" were relied on to contend that it was a discretionary power which was to be exercised on subjective consideration and not objectively, in which case only it could have been held to be a quasi-judicial function, but this contention was negated. Mr. Bose, appearing on behalf of the State Government, failed to point out any decision of the Supreme Court where the foregoing observations have been questioned or explained." On the other hand, we have got the following cases in which similar powers of revision vested, by other statutes, in administrative authorities have been held to be quasi-judicial (7) Laxman Purushottam Pimputkar v. State of Bombay, AIR 1964 SCR 436 (442); (9) Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, ; (8) Bishambar Nath Kohli and Others Vs. State of Uttar Pradesh and Others, . The last of these cases related to Section 27 of the Administration of Evacuee Property Act which conferred a revisional jurisdiction upon the Custodian-General from orders made by his subordinates. Even though the section did not prescribe any time limit within which the power of revision might be exercised and the power might exercised suo motu, the Court observed as follows :-

The Custodian-General may call for the record in a proceeding from the subordinate officer at any time and pass such order in relation thereto as may be called for to do justice to the parties affected by the proceeding. Powers of the Custodian-General are unquestionably judicial * * * * *.

Mr. Bose has contended that the principles laid down in the foregoing cases are not applicable for two reasons:- First, he relied on the decision reported in (10) Sadhu Singh Vs. Delhi Administration, . This was a case under the Defence of India Rules and the question was whether the power of review conferred by Rule 30A(8) of the said Rules required the authority to proceed quasi-judicial. This question was answered in the negative on the ground that the entire proceeding under the Defence of India Rules was founded on the subjective determination of the prescribed authority as to the need for detaining a person on any of the grounds mentioned in the Rules, such as the maintenance of public order and the

like. It is common place to point out that the very expression "quasi-judicial obligation" is based on the assumption that the function has got to be exercised objectively. Where the statute empowers the authority to proceed subjectively or the function is such, - for instance, the matter of deportation, - that it can be exercised only on the subjective determination of the authority concerned, the inference of a quasi-judicial obligation would be out of place. The case before us, is however, not of that nature as I shall explain just now.

47. The next argument advanced by Mr. Bose is that Section 8(3) of the Excise Act is a wide provision and may possibly include the revision of administrative and ministerial orders of the subordinate authorities mentioned therein. There are two answers to this contention. First, in the instant case, we are not called upon to pronounce any view upon the wide question whether in every case that the power under sub-section (3) is invoked, the proceeding would be quasi-judicial but only whether the impugned order which set aside the appellate order of the Excise Commissioner passed under sub-section (2) of Section 8 was a quasi-judicial order. But even though that is unnecessary, I might say that I have got grave doubts as to whether sub-section (3) was enacted to provide a remedy against ministerial orders which might be otherwise corrected by the State Government without the aid of any specific statutory provision. The reason is clear. Section 7(1) of the Act says -

The administration of the Excise Department and the collection of the excise revenue within a district shall ordinarily be under the charge of the Collector.

Sub-section (2) then says :-

The State Government may by notification applicable to the whole of West Bengal or to any specified local area -

(a) appoint an officer who shall, subject to such control as the State Government may direct, have the control of the administration of the Excise Department and the collection of the excise revenue * * * * *

By a notification issued under this power, the State Government (Excise Manual, p. 7, Part II) notified as follows :-

There shall be an Excise Commissioner, who shall have the control of the administration of the Excise Department and the collection of the excise revenue, subject to the general control of the State Government.

If so, the entire revenue administration is subject to the general control of the State Government. It does not therefore, require any specific statutory authority to empower the State Government to correct mere ministerial administrative orders or mistake in the records, not being judicial, committed by any subordinate of the excise administration, including the Excise Commissioner, the Collector or any other authority, as may be appointed under clause (b) of sub-section (2) of Section 8. In my view, the scope of sub-section (3) of Section 8 is not very far off from the scope of sub-section (2) of Section 8. Sub-section (2)

says :-

Orders passed under this Act or under any rule made hereunder shall be appealable in such cases, to such authorities and under such procedure as may be prescribed by rules u/s 85, clause (c).

Hardly anybody would suggest that rectification of ministerial orders would be a matter of appeal under this sub-section. The very fact that the word "appeal" is used indicates that there is a party who is aggrieved and who wants relief on appeal from a higher authority, because his rights have been affected. In the words of Lord Parmoor in (14) Local Government Board v. Arlidge, (1915) AC 120 -

* * * * * if the order is one which affects the rights and property of the respondent, the respondent is entitled to have the matter determined in a judicial spirit and in accordance with the principles of substantial justice.

48. In my view, the powers of revision conferred by sub-section (3) were similarly aimed at giving relief to a party aggrieved as has happened in the case before us.

49. It was next contended that the very function of granting or refusing a license under the Excise Act is a matter of absolute discretion with the State Government or its subordinate authorities as specified in the statute, inasmuch as nobody has got a natural right to deal in intoxicants. Without entering into this large and basic question, I may simply say that even though there may have been some controversy as to whether the function of licensing as such is quasi-judicial from the initial stage of granting or refusing licence, it is now settled that the cancellation or revocation of licence, once granted, is a quasi-judicial function, except where the statute makes it exercisable on subjective considerations. The reason is very simple, namely, that a person in whose favour a licence has been granted already has got certain rights of whatever weight they may be (17) Shivji Nathubhai Vs. Union of India (UOI) and Others, , and the cancellation or revocation is certainly to affect him, sometimes even in his right of property. Take, for instance, the very case before us. In this case, the petitioner not only applied for licence and got an order favourable to him from the Collector at the first instance and that order was confirmed by the appellate authority, i.e. the Excise Commissioner, but the petitioner paid the advance licence fee for security deposit of Rs.500/-, and was formally granted a licence; he offered a site for the shop for approval which was approved, and he opened his shop on 16.12.1964. The revision petition was filed by the opposite party not less than six months thereafter and the impugned order of the State Government canceling the licence of the petitioner was passed beyond a year therefrom. I have no hesitation in holding that, apart from any other consideration, the very cancellation of the petitioner's licence invoked the doctrine of quasi-judicial obligation, and a stronger reason still is that what was sought to be set aside in revision was itself an appellate order. Once it is established by the authorities

cited by me that the appellate function per se is a quasi-judicial function, there is no doubt that the State Government, while seeking to revise such order, must be stamped with the same character and the same obligation.

50. Passing now to the second branch of the question raised in this case, - once it is held that the function performed by the State Government in passing in impugned order was quasi-judicial, it must follow from the decisions quoted earlier that the function must be exercised impartially, that is, free from bias towards either of the parties involved in the dispute. There are certain sermons inscribed in gold on the walls of the sanctuary of justice built up by common law Judges through the ages and anybody who ventures to enter into that sanctuary can ill afford to overlook these sermons on pain of forfeiting his right of entry therein. Some of these sermons are based on the Latin maxim "Nemo debet esse judex in propria causa," which means that "no one should be a Judge in his own cause" and from this Latin maxim, the English Judges have evolved their own expressions which sound like gospel, - to be remembered by anybody dealing with Anglo-Saxon justice. One of these is "Judges, like Caesar's wife, should be above suspicion," as expressed by Bowen, LJ in (17) *Leeson v. General Council of Medical Education*, (1889) 43 Ch.D. 366 (385). Another is the celebrated dictum of Lord Hewart, C.J., in (18) *Rex v. Sussex*, (1924) 1 KB 256 (259), which has been approved by the House of Lords in (19) *Frankin v. Minister of Town and Country Planning*, (1947) 2 All ER 289 (HL) -

* * * * it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.

From these dicta have been evolved the doctrine of bias which, as eminent Judges have said, cannot be exhaustively enumerated.

51. The grounds on which a judicial or quasi-judicial decision is liable to be vitiated by bias have been classified under three broad heads : (1) The Judges having a legal interest in the subject matter of the litigation. (2) The Judge having a pecuniary interest in the case though not in the party. (3) The Judge having a personal bias in favour of a party or against the other, and this is the ground with which we are concerned in this case. In such cases the principle on which the Court acts is not whether the Judge has been actuated in coming to his decision by his personal affinity towards a party or his prejudice against the other but whether there is in the mind of the litigant "a reasonable misapprehension that he would not get a fair trial" (20) *Cottle v. Cottle*, (1939) 2 All ER 535. Stronger was the earlier dictum of Lord Esher, M.R., in (21) *Eckersley v. Mersey Docks and Harbour Board*, (1894) 2 QB 667 (671) -

* * * the doctrine which is applied to Judges * * * that not only must not they be biased, but that even though it be demonstrated that they would not be biased they ought not to act as Judges is a matter where the circumstances are such that people - not necessarily reasonable people - would suspect them of being biased.

It may not out of place to refer, in this context, to the facts in the celebrated House of Lords decision in the case (22) *Dimes v. Grand Junction Canal*, (1852) 3 HLC 759. A public company brought a bill in equity against a landowner in a matter involving the interests of the company which was heard by the Vice-Chancellor who granted relief to the company. On appeal, the order was confirmed by the Lord Chancellor, - Lord Cottenham, - who was a shareholder in the company. The decree was impugned before the House of Lords after Lord Cottenham had retired and the House, presided over by another Lord Chancellor (Lord St. Leonards), set aside the decree. Lord Campbell, C.J., who spoke for the Judges who were consulted by the House of Lords, in this case, gave his opinion in these memorable words :-

No one can suppose that Lord Cottenham could be in the remotest degree, influenced by the interest he had in this concern; but it is of the last importance that the maxim that no man is to be a Judge in his cause should be held sacred * *. This will be a lesson to all inferior tribunals to take care not only that in their decrees they are not influenced by their personal interest but to avoid the appearance labouring under such an influence," (p. 793, *ibid*).

Such doctrines of natural justice are not confined to "Courts" but are applicable "to every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals", (23) *Lapointe v. L' Association*, (1906) AC 535 (539); (24) *Ranger v. G. W. Ry.*, (1854) 5 HLC 72 (89); (14) *Local Government Board v. Arlidge*, (1915) AC 120 (132; 138).

52. Coming now to the facts of this case, we find that on 18.5.66 Mr. I.D. Jalan who was then minister-in-charge of the Home, Judicial and Legislative Department of the Government of West Bengal, granted a Certificate to the Petitioner as follows :-

The said Shri Prasad has got experience of excise shop business. He lives at Kurseong and has properties there as well as in the Jalpaiguri district. He is a reliable merchant to the best of my knowledge and information, and I believe he will be able to discharge his duties properly.

It is quite clear that it is not a usual character certificate as may be granted to anybody and everybody by a man in status, - sometimes to save himself from botheration. It is a specific testimonial recommending the fitness of the opposite party No. 1 for the purpose of running an Excise shop so that he might obtain a licence whenever the opportunity might present itself. In short, it might be said that - whatever be the degree of interest, - the minister was interested to find this man placed in charge of a liquor shop on being granted a licence therefor. It was only a few months thereafter that public notice was issued on the 23rd August 1963 by the Jalpaiguri district Excise Office for settlement of the disputed spirit shop and after the licence had been granted to the petitioner to the exclusion of the opposite party No. 1 and that was confirmed in appeal, as stated at the outset, that the matter was brought in revision before Mr. Jalan who at

that time happened to be the Excise Minister, - by an application presented by the opposite party No. 1 on 10.5.65, which application was addressed not to the State Government but to the Minister-in-charge of Excise. The question is whether, apart from the results, there could have been any reasonable misapprehension in the mind of the petitioner who was certainly interested in the order which was sought to be set aside in revision. There can be only one answer, namely, that when the certificate granted by the minister himself was one of the materials relied on in revision and which was, in fact, acted upon him as the revisional authority in making an order in favour of the opposite party No. 1, - as an ordinary mortal the minister was likely to be biased and if the petitioner had such apprehension it cannot be said to be an unreasonable apprehension.

53. At one stage it was faintly suggested that the power of revision under subsection (3) of Section 8 was vested in the State Government so that the bias on the part of the minister might not be a relevant consideration. But it has now been established in a series of cases, particularly relating to the Motor Vehicles Act, that when statutory functions, including quasi-judicial, are vested in the State Government, they may be allocated to the ministers by Rules of Business framed under Article 166(3), for the reason that the "State Government", as defined under the General Clauses Act, 1897, means "the Governor" (Section 3(60)(b)). If so, the Rules of Business made under clause (3) of Article 166 may provide how this function so conferred by the statute may be allocated to a minister (25) Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, ; (26) Nehru Motor Transport Co-operative Society Ltd. and Others Vs. The State of Rajasthan and Others, . It has further been held that in such a case if the Minister-in-charge who exercises such statutory function is actuated by malice or bias in respect of a quasi-judicial function, the order, even though it is formally issued in the name of the State Government, is vitiated and becomes invalid. It is needless to refer to the number of cases on this point starting from Nageswara Rao's case, (ibid). It would suffice to refer to the case of (27) The Andhra Pradesh State Road Transport Corporation, Hyderabad and Another Vs. Sri Satyanarayana Transports (Private) Ltd., Guntur and Others, , where the question of bias of the minister while exercising the function u/s 69(d)(2) of the Motor Vehicles Act was considered.

54. I may mention incidentally that though Mr. Bose did not invoke the "doctrine of necessity" in justifying the act of Mr. Jalan in deciding this revision petition though he had formally granted a certificate in favour of the party who moved him in revision, it was argued that there was no provision in the Rules of Business for delegating a function from one minister to another. That might be so, but, as has been pointed out in various decisions, the Rules of Business as such do not constitute a constitutional or statutory document. They are, along with the entire cabinet procedure, founded on convention and the whole thing is informal. The Rules of Business can, accordingly, be changed by the Governor at

any time and without any formality. Nor is there anything in Article 166(3) to prevent the Governor from deputing a particular minister to discharge a particular function, by an ad hoc order. So far as Mr. Jalan is concerned, - as soon as he found that the fact of the certificate having been granted by him or the fact of his knowledge of the affairs of one of the parties in the lis before him might affect his judicial status or might raise a reasonable apprehension in the minds of the other party in question, his first and only duty was to lay down his pen at once. That is what Blackburn, J., suggested in (28) R. v. Rand, (1866) LR 1 QB 230 (232). A Judge who refused to do so would have, at Roman Law, found himself liable in damage ex delicto (vide Justinian, Institutes, Lib. IV, V (p. 515 of Sandars Ed.). Mr. Jalan might have then brought the matter before the Chief Minister or the Governor, as the case may be for having the revision petition disposed of by some other authority. But it is not our business to point out how things might have been done thereafter.

55. It suffices for our purpose to hold that the impugned order has been vitiated by bias on the part of the Minister-in-charge and, therefore, it should be set aside. Accordingly, I agree with the order passed by My Lord.