

(1965) 02 AHC CK 0036

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3549 of 1961

Mrs. K.L. Sahgal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-02-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 151

Constitution of India, 1950 — Article 226, 227

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 3, 3(1), 3(3), 3(4), 7

Citation : AIR 1965 All 465 : (1965) 35 AWR 185

Hon'ble Judges : S.N. Dwivedi, J; R.S. Pathak, J; B. Dayal, J

Bench : Full Bench

Advocate : B.N. Sapru and A. Prasad, for the Appellant; M.N. Shukla and Sr. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Pathak J.

1. The question before this Bench for its opinion is:

"When the State Government deals with a proceeding u/s 3 of the U.P. (Temporary) Control of Rent and Eviction Act u/s 7-F of the same Act, does the State Government act administratively or in a judicial or quasi-judicial capacity?"

2. The petitioner is in occupation of a portion of a house, No. 7/152, Swarup Nagar, Kanpur, as the tenant of the fourth respondent, Mrs. Kalindri Mitter, who is the owner of that house. Mrs. Mitter applied u/s 3 (1) of the U.P. (Temporary) Control of Rent and Eviction Act to the Rent Control and Eviction Officer, Kanpur for permission to sue the petitioner for her eviction. The Rent Control and Eviction Officer granted permission. The petitioner applied in revision to the Commissioner, Allahabad but the latter upheld the grant of permission. Then the petitioner applied to the State Government. On June 27, 1961, the State

Government, acting u/s 7-F, considered the application and revoked the permission granted to Mrs. Mitter. It appears that subsequently, upon a review application by Mrs. Mitter, the matter was reconsidered by the State Government, and by its order of October 12, 1961, Mrs. Mitter was permitted to file a suit for the petitioner's eviction.

3. The petitioner moved this Court under Article 226 of the Constitution challenging the jurisdiction of the State Government to make the order of October 12, 1961, the challenge being founded principally on the ground that having once passed the order of June 27, 1961, there was no power in the State Government to reconsider it and to pass a different order. The petition came on for hearing before our brother Oak and he, being of the opinion that the earlier decisions of this Court on the nature of the powers of the State Government u/s 7-F required further consideration in view of the decision of the Supreme Court in *Laxman Purshottam Pimputkar Vs. State of Bombay and Others*, and of our brother Dhavan in *Ram Chand v. Bhagwan Das* 1963 Cri L J 752 referred the aforesaid question to a larger Bench for its opinion. The case was then listed before a Bench of our brothers Gupta and Tripathi, and they directed that the question should be considered by a Full Bench.

4. Judicial tribunals, it is now commonly recognised, may exercise both judicial and administrative powers. So also administrative bodies may enjoy not only administrative but also quasi-judicial powers. Whether a proceeding or an order is quasi-judicial or administrative must be determined by reference to the nature of the function discharged. It is of no great moment that the proceeding has been taken or the order made by an administrative tribunal or a judicial body. In drawing the line between administrative orders and judicial or quasi-judicial orders, it has been observed :

"Administrative law is concerned with the operation and control of the powers of administrative authorities, with emphasis on function rather than on structures."

5. The problem is one of ascertainment of the nature of the function. How then is this problem to be approached ? In his celebrated article on "Administrative Tribunals and the Courts" (1933) 49 L Q R 94, 419 Mr. D.M. Gordon, Q. C., pointed out that judicial functions involve the decision of rights and liabilities, so that an investigation is a material part of the functions, whereas non-judicial functions may be either ministerial duties or administrative powers. Ministerial duties, he observes, are exercised by taking active, often coercive measures, and administrative powers by meting out policy and expediency, with an unfettered discretion; a judicial body administers justice through the agency of, and in accordance with, legal evidence. When a body is acting ministerially it has no power to consult its own wishes. When it is acting administratively its standards are subjective and it follows its own wishes.

But when it is acting judicially it professes to be bound in theory by fixed legal objective standards. It is when an authority has a duty to decide matters

judicially, or has certain quasi-judicial powers, that its decision is liable to be reviewed in the ordinary courts. Whether a function is judicial or quasi judicial may be identified by reference to the incidents attaching to its exercise. Those incidents have been broadly summarised by saying that there is a duty in the tribunal to act judicially. It is easy enough to ascertain this if the statute conferring jurisdiction contains such clear requirement. But often the statute is silent and the question has to be decided by reference to a number of circumstances. Over the years, the Courts have evolved various tests for determining whether there is a duty to act judicially. They are not conclusive, and indeed having regard to the complexity of different situations which necessitate the conferment of widely differing jurisdiction in modern life, they cannot be. They are always subject to a contrary intention expressed in the statute or contained in it by necessary implication.

6. The Courts in England trace the development of the law from *Cooper v. Wandsworth Board of Works* (1863) 14 C B N S 180 and even earlier, until they come to the principles formulated in the historic passage by Atkin, L. J. in *Rex v. Electricity Commissioners, Ex parte London Electricity Joint Committee* 1924 1 K B 171 at p. 205:

"Wherever any body, of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

From that milestone, the Courts in England proceeded to apply the principles in case after case. Some exceptions to the rule, notably the decision of Goddard, L. J. in *Reg. v. Metropolitan Police Commr. Ex parte Parker* 1953 2 All E. R. 717, provoked a reconsideration of the entire law on the subject, and the House of Lords by majority in *Ridge v. Baldwin* 1964 A. C. 40 held that in order to oblige a body to follow the principles of natural justice it was sufficient to show that it had legal authority to determine questions affecting the rights of subjects; and, if was observed, that in the further characteristic that the body must have a duty to act judicially Atkin, L. J. included a condition not called for at all.

7. In India, the law evolved by judicial precept accepted the principles adumbrated in 1924 1 K. B. 171 (*supra*), and from *Province of Bombay Vs. Kusaldas S. Advani and Others*, , onwards the Supreme Court has consistently followed those principles down the years. In *Province of Bombay Vs. Kusaldas S. Advani and Others*, the Supreme Court stated the law in the following terms (Per Das J. at p. 260):

"(i) that if a statute empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other there is a *lis* and *prima facie*, and in the absence of anything in the statute to the contrary it is the

duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and (ii) that if a statutory authority has power to do any act which will prejudicially affect the subject, then although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially."

So far as the Courts in India are concerned, these principles are well accepted. The difficulty arises, as always, in the application of the principles. Where the case falls under the first principle and it is possible to discern from the language of the statute that the nature of the function which resulted in the impugned order is the determination of the rights Between two contesting parties and there is, therefore, a lis between them, and there is nothing in the statute to suggest the contrary, the function is quasi-judicial. So also under the second principle where the statute requires the authority to act judicially in a proceeding between the authority and the citizen the nature of the function can be pronounced quasi-judicial. But there are many cases where the statute does not explicitly lay down a duty upon the authority to act judicially. It is in such cases that the Court must examine all relevant circumstances. The duty to act judicially, as pointed out by Wanchoo, J. in Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, .

"will depend on the express provisions of the statute read along with the nature of the rights affected, the manner of the disposal provided, the objective criterion if any to be adopted, the effect of the decision on the person affected and other indicia afforded by the statute."

This was re-emphasised by the Supreme Court in The Board of Revenue, U.P. and Others Vs. Vidyawati and Another, .

8. The U.P. (Temporary) Control of Rent and Eviction Act, 1947, provides for the control of the letting and rent of accommodation and the prevention of the eviction of tenants therefrom. When the relationship of landlord and tenant comes into existence, then subject to contract the landlord enjoys the right to terminate the tenancy and upon the termination of the tenancy he is entitled to sue the tenant for eviction. Except on the existence of certain grounds, set out in Clauses (a) to (g) of Section 3 (1), that Sub-section impose a bar upon the right of the landlord to file such suit, the bar being raised if the District Magistrate grants permission to file the suit. If the District Magistrate grants permission, the embargo placed by the sub-section upon the exercise of the landlord's right to sue his tenant for eviction stands removed. The right of the landlord to sue his tenant for eviction was therefore now placed by the statute at the option of the District Magistrate who was empowered to decide whether or not that right should be exercised. Unless the intervention of the District Magistrate was sought by the landlord and permission was obtained from him the landlord could not file the suit. The District Magistrate u/s 3 (1) would either grant permission to the

landlord or withhold it. If he granted permission, the tenant would be aggrieved by the order granting permission. If permission was withheld, the landlord would be aggrieved. The party aggrieved by the order was entitled by Sub-section (2) to apply to the Commissioner to revise the order. Sub-section (3) sets out the powers of the Commissioner upon such application. It reads:

"(3) The Commissioner shall hear the application made under Sub-section (2)... and he may, if he is not satisfied as to the correctness, legality or propriety of the order passed by the District Magistrate or as to the regularity of proceedings held before him, alter or reverse his order, or make such other order as may be just and proper."

9. Then follows Sub-section (4), which says :

"(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."

It is clear from Sub-section (3) of Section 3 that the Commissioner is required by the statute to examine the correctness, legality or propriety of the order of the District Magistrate granting permission or declining to grant it. He is also required to examine the regularity of the proceedings held before the District Magistrate. He must sit in judgment over the findings of the District Magistrate. He must scrutinise whether any fault can be found with the regularity of the proceedings. If he is satisfied that the correctness, legality or propriety of the order of the District Magistrate cannot be sustained or that the proceedings before the District Magistrate were not regular, he is empowered to alter the order of the District Magistrate or reverse that order or make such other order as may be just and proper.

10. These considerations, it seems to me, must be kept in mind when construing the powers of the State Government which we have been called upon to examine.

Section 7-F provides :

"7-F. 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 appears to it necessary for the ends of justice."

It is clear from the provisions of Section 7-F that the State Government acts suo motu. No right has been given to a person, either landlord or tenant, to apply to the State Government for the exercise of its jurisdiction under that section. It is open to the State Government to call for the record of the case in which an order has been passed either by the District Magistrate u/s 3 (1) granting or refusing to grant permission for the filing of a suit for eviction or by the Commissioner u/s 3(3) granting or refusing to grant such permission. The State Government will then examine the material contained in the record. That material will include all that the landlord and tenant may have placed before the relevant authority in proceedings u/s 3. The State Government, however, is not confined to the

consideration of that material. There is nothing in Section 7-F which so confines it. If the State Government was required by the section to examine the correctness, legality or propriety of the order of the District Magistrate or the Commissioner or the regularity of proceedings held before either of them, it could be logically inferred that the State Government was bound to confine itself to the material on the record, because in the absence of a power enabling it in this behalf, no authority empowered to revise an Order by reference to its correctness, legality or propriety or with reference to the regularity of proceedings on which the order is based can ordinarily arrive at its decision upon material which is not contained in the record. The jurisdiction conferred upon the State Government, u/s 7-F is not limited so. If it were, the" State Government would only be another authority in the hierarchy of authorities comprising the District Magistrate at the base and the State Government at the apex, with the latter exercising revisional jurisdiction. On the contrary, it seems to me that the jurisdiction vested in the State Government u/s 7-F could be described, in a sense, as original jurisdiction. The powers of the State Government are very wide. It can make such order as appears to it necessary for the ends of justice. In making that order it is not even necessary for it to decide whether the order of the District Magistrate or the Commissioner should be confirmed or quashed. It is not bound to determine whether the order granting permission or withholding permission is correct, legal or proper or whether the proceedings leading to the order are regular. Even if the order of the District Magistrate or of the Commissioner is not quashed or modified by the State Government, no incongruity will result from the existence of an order of the State Government which is inconsistent with an order on the record of the Commissioner or the District Magistrate. The order of the District Magistrate u/s 3 (1) is subject to the order passed by the Commissioner u/s 3(3), and the order of the Commissioner is, by virtue of Section 3 (4), subject to any order which the State Government may pass u/s 7-F. The State Government may consider the material on the record of the case and also take into consideration matters of policy and expediency, and then decide what order would be appropriate in the ends of justice. There is an unfettered discretion in the State Government to decide upon the nature and content of such order. No limitation has been imposed by the statute, and none, it seems to me, can be implied. When all these considerations are kept in mind, it cannot be said that the State Government u/s 7-F is called upon to determine the rights of contesting parties--though its order may affect such rights--nor is there any duty upon it to act judicially. It is true that the statutory provision contemplates that the order made by the State Government should be one which it considers necessary for the ends of justice. But that is merely for the purpose of indicating that the order should not be arbitrary. It cannot be said that merely because an order has to be passed for the ends of justice it is a quasi-judicial order. What is just and what is unjust is not a matter falling for consideration exclusively within the province of Courts or authorities exercising quasi-judicial powers.

11. It is said that the jurisdiction of the Commissioner u/s 3(3) is quasi-judicial in nature and that, therefore, the jurisdiction of the State Government u/s 7-F must necessarily be quasi-judicial also. There is no warrant for that conclusion. If the jurisdiction conferred by that provision upon the State Government was revisional in nature then the circumstance that the jurisdiction of the Commissioner was quasi-judicial could have led to that conclusion. But we have not been shown anything, either in constitutional or legislative principle, to prevent the Legislature from conferring purely administrative jurisdiction of the kind I have discussed above over a record which already contains a quasi-judicial order.

12. There is, in my judgment, nothing in the decisions of the Supreme Court cited before us which militates against the view taken by me.

13. In *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, , the question for consideration was whether orders passed in appeals u/s 9 of the Eastern Bengal and Assam Excise Act, 1910, were quasi-judicial or administrative orders. The provisions of Section 9, which have been set out in the majority judgment delivered by B.P. Sinha, J., provided for appeals against orders passed under the Act or any rule made thereunder to the Excise Commissioner, where the order was passed by the District Collector or the other Collector, and to the Appellate Authority, where the order was passed by the Excise Commissioner, and in other cases to authorities prescribed by the State Government. Sub-section (3) of Section 9 provided :

"(3) The Appellate Authority, the Excise Commissioner or the District Collector may call for the proceedings held by any officer or person subordinate to it or him or subject to his or its control and pass such order thereon as it or he may think fit." This provision was considered as conferring the power of revision. It was held that the several authorities mentioned in Section 9 exercised quasi-judicial powers. But, upon a close examination of the majority judgment, it will be apparent that the decision rested principally upon the consideration that if regard was had to the rules made under the Act along with Section 9 then alone could it be said that the jurisdiction was quasi-judicial. It was pointed out that Section 9 had laid down a regular hierarchy of authorities, one above the other, with the right of hearing appeals or revisions, but the necessity of recording reasoned orders arose because of the context of the subject-matter and the rules. It was specifically observed that if it were not for the rules, and the provisions of the Act alone were considered, much could have been said in support of the contention that the authorities were merely administrative bodies and that their orders were not amenable to the jurisdiction of the High Court under Articles 226 and 227 of the Constitution. Then the provisions contained in the rules set out a procedure in respect of appeals which approximated to that followed by Courts of justice when entertaining appeals.

Other considerations which influenced the Supreme Court included the circumstance that the Excise Appellate Authority was vested with jurisdiction

parallel to that of the High Court, so that whereas the High Court enjoyed superior jurisdiction in respect of predominantly civil cases the Excise Appellate Authority enjoyed such jurisdiction in respect of predominantly revenue cases. There was also no distinction between the grounds on which the appellate authorities could interfere on appeal and in revision. It was upon all these factors proceeding from a review of the provisions of the Act and the rules framed thereunder that the authorities mentioned in Section 9 of the Act were held to be subject to the power of supervision and control vested in the High Court. It is true that the language of Section 9 (3), which has been held to confer revisional jurisdiction, is closely analogous to the provisions of Section 7-F of the U.P. (Temporary) Control of Rent and Eviction Act, but, as I have pointed out above if that provision had stood alone and had not been considered in conjunction with the rules, it is extremely doubtful whether it would have been held to confer quasi-judicial power.

14. *Radeshym Khare and Another Vs. The State of Madhya Pradesh and Others*, , was a case where the question arose whether an order passed by the State Government u/s 53-A of the C. P. and Bearar Municipalities Act, 1922, appointing a Government servant as an Executive Officer of a Municipal Committee and vesting him with the powers and duties of the Committee to the exclusion of the Committee and its office-bearers was an administrative or a quasi-judicial order. The Supreme Court held that the order was administrative and not quasi-judicial, and one of the considerations which prevailed with it in coming to this conclusion was that under the relevant statutory provision conferring the powers on the State Government in this behalf there was nothing to show that the State Government was bound to take action on any occasion and exercise those powers,

15. The next case to which we have been referred is *Shivji Nathubhai Vs. Union of India (UOI) and Others*, . That was a case where the appellant was granted a mining lease under Rule 54 of the Mineral Concession Rules, 1949, and the third respondent, whose application for such lease had earlier been rejected, applied for review to the Central Government under the Rules. The review application was allowed and the State Government was directed to grant a mining lease to the third respondent in respect of part of the area covered by the lease granted to the appellant, the result being that the appellant's lease in respect of that part was cancelled. This was done without notice to the appellant and accordingly he questioned the order granting review. The Supreme Court held that the proceedings upon the review application were quasi-judicial and that the appellant was entitled to be heard before any order was passed in those proceedings. It was influenced in coming to this decision by the circumstance that the lease having been granted to the appellant certain rights had been created in his favour and that inasmuch as the statutory rule expressly granted a right to a party aggrieved to make a review application it necessarily followed that the person in whose favour the order sought to be reviewed had been made had also a right to represent his case before the reviewing authority and that,

therefore, when the rule gave a right to an aggrieved party to apply for review a lis was created between him and the party in whose favour the grant had been made. It was expressly pointed out by the Supreme Court that there was no provision in the rules or in the Act which gave any power to the Central Government to review suo motu the order of the State Government granting a lease. This is of significance when we consider the provision in the case before us.

16. Reference has also been made on behalf of the petitioner to Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunhunwala and Others, where the Supreme Court held that the Central Government in dealing with an appeal u/s 111 of the Indian Companies Act, 1956, is required to act judicially. That decision followed from the considerations, among others, that in exercising its appellate power to order registration of a transfer of shares the Central Government was subject to limitations similar to those imposed upon the exercise of the power of the Court in a petition for that relief u/s 155, the Central Government had to decide whether in exercising their power the directors were acting oppressively, capriciously or corruptly or in some way mala fide, that the decision had manifestly to stand those objective tests and had not merely to be founded on the subjective satisfaction of the authority deciding the question. The Supreme Court pointed out that the question before the Central Government could not be determined on grounds of expediency. All these considerations are absent when we consider Section 7-F of the U.P. (Temporary) Control of Rent and Eviction Act.

17. Then follows the decision in P.J. Irani Vs. The State of Madras, , on which great reliance has been placed on behalf of the petitioner. A lease of a certain property had been given to J.H. Irani, the father of P.J. Irani. Irani was also interested in taking a lease of the adjacent property, No. 1, Blackers Road. That property was in the occupation of the second respondent whose term of lease ensured up to 1st May 1947. A lease, commencing from 2nd May 1947, was given in respect of the same property to Irani. Before the term of the lease in favour of the second respondent expired, the Madras (Lease and Rent Control) Act, 1946, came into force. Under that Act tenants in possession of accommodation could not be evicted therefrom except by proceedings taken under the Act and on stated grounds which did not include the mere expiry of the term. Consequently, when the lease of the second respondent expired he continued in occupation and declined to hand over possession to Irani. Irani brought a suit for eviction against the second respondent but that was dismissed on finding that the property fell within the scope and protection of the Act. During the pendency of an appeal by Irani he applied to the State Government for exemption of the premises from the operation of the Act by virtue of a provision which, empowered the State Government to exempt any building from the provisions of the Act.

The Government ultimately acceded to the application and granted exemption. The second respondent succeeded in having the order of exemption quashed by the High Court. Irani took the dispute to the Supreme Court, and the contentions

raised on his behalf were that the order of exemption was executive and not quasi judicial and, therefore, not amenable to certiorari and even if it was quasi-judicial it was neither mala fide nor based upon grounds wholly extraneous for the purpose of the enactment and, therefore, could not be quashed. The Supreme Court repelled the contention that the order granting exemption was an executive or administrative order not amenable to certiorari, but this decision was reached on the ground that it an order was passed for reasons not falling within the purpose for which the power was conferred it would be one discriminatory to the second respondent's fundamental right to seek protection of the laws and, besides, even if the order did not violate Article 14, if it was beyond the powers conferred on the Government it could be set aside as an ultra vires order vitally affecting a person's right to statutory protection against eviction. Apparently, therefore, the basis on which the Supreme Court held the order of exemption as open to judicial review was that cases could arise where the order either violated a fundamental right or was otherwise ultra vires. The Supreme Court did not consider the question in this case whether the order of exemption was quasi-judicial or administrative. The question which arises before us was not the question before the Supreme Court.

18. The decisions in Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, and The Board of Revenue, U.P. and Others Vs. Vidyawati and Another, are clearly distinguishable. In the former case the Supreme Court held the order cancelling the results of the respondent in an examination and debarring him from appearing at the examination in a future year was quasi-judicial because the provisions of the relevant rule showed that the committee passing the order would have to depend upon the materials placed before it and to satisfy itself upon those materials that the facts were established which enabled it to take action in the matter, and that the effect of the decision was such as to possibly blast the career of a young student for life and in any case to attach a serious stigma which could damage him in later life. In the latter case, the decision of the Supreme Court was that the order of the Board of Revenue upholding the Collector's order directing realisation of stamp duty was quasi-judicial because the decision turned upon a consideration of the instrument liable to stamp duty and the provisions of the Act applicable to it, the point raised for the consideration of the Collector would come before him as being a difficult point of law, and the decision could result in payment of a large amount as deficit stamp duty and larger amounts as penalty. From the nature of the duty to be performed in such circumstances it was clear that the Board was bound to decide the matter judicially.

19. In Chimandas Bagomal Sindhi Vs. Jogeshwar and Another, the Supreme Court held that Clause 23 (1) of the Central Provinces and Bearar Letting of Houses and Rent Control Order, 1949, contemplated, a quasi-judicial inquiry, but that was because it became necessary for the Deputy Commissioner, upon the language of the sub-clause, to determine whether a person belonging to one of the categories set out in it was entitled to claim its benefit as against the

contentions of the landlord against such a claim as well as the landlord's claim which he could make for his own personal occupation. The proviso to the sub-clause expressly gave the landlord a right to plead that he needed the house for his own occupation in opposition to the claim of the applicant for an allotment order under the sub-clause. It will be noticed at once that the provisions of the sub-clause are in marked contrast to those of Section 7-F before us which does not contain any provision entitling the parties to appear before the State Government and raise opposing claims.

20. As regards the decision in *K.S. Ramamurthi Reddiar Vs. The Chief Commissioner, Pondicherry and Another*, I fail to see how that can help us in the determination of the question before us. All that was held by the Supreme Court in that case was that it was not open to the Government as an executive authority to direct a quasi-judicial or judicial authority to decide a particular matter before it in a particular manner, and therefore it could not be said that such quasi-judicial or judicial authority was under the control of the Government. When I have held that the State Government u/s 7-F is not bound to sit in judgment over the Commissioner's order u/s 3(3), the question of the State Government exercising such control over him does not arise.

21. Much emphasis has been laid by the petitioner on the decision of the Supreme Court in *Laxman Purshottam Pimputkar Vs. State of Bombay and Others*. Upon a careful analysis of that decision it seems to me that it can afford no assistance to the petitioner. The decision of the Collector u/s 12 of the Bombay Hereditary Offices Act, 1874, had to be supported by reasons in writing and therefore, could be made only after holding an enquiry which implied a hearing by the Collector to the contesting parties and the consideration of oral and documentary evidence adduced by them. An order of the Collector u/s 12 affected the rights of the parties to property and was further open to challenge before the Commissioner and the State Government under the Act. Upon these considerations the Supreme Court held that the Collector's order was quasi-judicial and not administrative. Having held that the order of the Collector was quasi-judicial the Supreme Court held that it could be rectified and modified or set aside by the Commissioner in appeal or by the State Government in revision u/s 79. Our attention has been invited to the dictum of Mudholkar, J. who delivered the judgment of the Court, to the effect that when an authority exercises its revisional power it necessarily acts in a judicial or quasi-judicial capacity. But regard must be had to the fact that Section 79, which conferred revisional jurisdiction upon the State Government, provided that the State Government could call for and examine the record of the proceeding of any officer for the purpose of satisfying itself as to the legality or propriety of any order passed and reverse or modify the order as it deemed fit or order a new enquiry.

Consequently, before passing an order the State Government was required to determine whether the order of the officer was legal and proper. It is in this

context that the dictum must be understood. The provision before us, Section 7-F of the U.P. (Temporary) Control of Rent and Eviction Act, does not require the State Government to sit in judgment over the correctness, legality or propriety of the order u/s 3. It is not required to exercise a supervisory or revisional jurisdiction. But even assuming that the language of Section 7-F can be construed as conferring revisional jurisdiction, then it must be remembered that when the Supreme Court rendered its decision in Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, where a similar provision was referred to as conferring revisional jurisdiction, that Court expressed the view, in its majority judgment, that the jurisdiction would not have been quasi-judicial but for the provision of the rules. In the absence of the rules, the statutory provision would probably not have been held to confer quasi-judicial powers.

22. That the powers exercised by the State Government u/s 7-F are administrative and not quasi-judicial was the view taken by this Court in Narottam Saran Vs. Govt. of the State of Uttar Pradesh and Another, Sheikh Rafiuddin v. Govt. of U. P. 1956 Cri L J 329 and Virendra Swarup Johri v. State of U. P. 1962 Cri L J 672. Our brother Dhavan held to the contrary in 1963 Cri L J 752 (supra), but, in view of considerations to which I have adverted above, I must record my respectful disagreement with him. Thereafter, a Bench of this Court in Murlidhar Vs. State of U.P. and Others, reiterated the view that the powers u/s 7-F are administrative and not quasi-judicial.

23. In my opinion, when the State Government deals with a proceeding u/s 3 of the U.P. (Temporary) Control of Rent and Eviction Act u/s 7-F of that Act, the State Government acts administratively and not in a judicial or quasi-judicial capacity.

24. B. Dayal J.--I agree.

25. Dwivedi, J.--The question referred to us for opinion is :

"When the State Government deals with a proceeding u/s 3 of the U.P. (Temporary) Control of Rent and Eviction Act u/s 7F of the same Act, does the State Government act administratively or in a judicial or quasi-judicial capacity ?"

26. It has not been argued before us that the State Government acts in a judicial capacity. It does not require much logic to show that the State Government does not act in a judicial capacity. We have only to consider whether the State Government acts in an administrative or a quasi-judicial capacity.

27. This question arose directly in three cases. In Narottam Saran Vs. Govt. of the State of Uttar Pradesh and Another, , Dayal and Bhargava, JJ. held that the District Magistrate and the State Government do not act in a quasi-judicial capacity. Then in 1962 Cri L J 672, Srivastava and Bishambhar Dayal, JJ. took the same view. In Murlidhar Vs. State of U.P. and Others, , Desai G. J. and R.N. Sharma, J. also took the same view. In 1956 Cri L J 329, V.D. Bhargava, J.

followed *Narottam Saran Vs. Govt. of the State of Uttar Pradesh and Another*, . The three Division Bench decisions are the leading cases, and it is not necessary to refer to those cases which decide that the District Magistrate acts u/s 3 in an administrative capacity. We also leave aside the cases which were decided on the Act as it stood before its amendment in 1952 or in which the question did not arise directly.

28. In 1963 Cri L J 752, *Dhavan, J.*, however, held that the State Government acts in a quasi-judicial capacity.

29. All quasi-Judicial authorities are, truly, administrative authorities, and all quasi-judicial orders are in the generic sense administrative orders.

An administrative authority may sometimes be under a duty to act judicially throughout a proceeding or at some particular stage of the proceeding. In the former event it is a quasi-judicial authority from the first to the last; in the latter event it is so at the particular stage of the proceeding.

30. When is an administrative authority under a duty to act judicially ? It is not easy to answer the question when there is no express provision in a statute imposing a duty to act judicially. There is no universal test for deciding the question :

"A duty to act judicially may arise in widely different circumstances which it will be impossible and indeed inadvisable to attempt to define exhaustively." AIR 1902 S C 1110 at p. 1114.

It is necessary to look to the provisions of the Act, the nature of the rights affected, the manner of deciding the proceeding provided for in the Act, the impact of the decision upon the person affected by it, the objective criterion, if any, to be adopted in decision and other indicia afforded by the Act Board of High School and Intermediate Education, U.P., *Allahabad Vs. Ghanshyam Das Gupta and Others*, . A decision would be quasi-judicial if it is in substance an objective determination on facts and law governing a case, and declares rights or imposes upon parties obligations affecting their civil rights and is arrived at after a statutory hearing of the parties. *Jaswant Sugar Mills Ltd., Meerut Vs. Lakshmichand and Others*, . If the decision is made wholly or partly on personal or subjective opinion or on grounds of policy, it is not quasi-judicial. But even in such a case if the authority, in order to arrive at the decision, has to consider a proposal and an objection and consider evidence at some stage of the proceeding, then in the course of that consideration at that stage it acts as a quasi-judicial authority. (Halsbury's Laws of England, 3 Ed. Vol II, p. 56-57).

31. It is now necessary to examine the material provisions of the Act. The Act is avowedly enacted for controlling the letting and rent of accommodations and for preventing the eviction of tenants therefrom. The material provisions of Section 3 are :

"(1) Subject to any order passed under Sub-section (3) 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.....

(2) 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.

(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 proceedings held before him alter or revise his order, or make such other order as may be just and proper.

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

Section 7-F materially provides :

"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 appears to it necessary for the ends of justice."

Section 7-G pertinently reads:

"(1) For the purposes of any enquiry under this Act, the District Magistrate may:
--

(a) enter, inspect.... any accommodation

(b) by written order require any person to produce for his inspection such rent receipts, books or other documents relevant to the enquiry

(2) The District Magistrate shall.:. have power to summon and enforce the attendance of witnesses and to compel the production of documents in so far as may be in the same manner as is provided in the case of a court under the Code of Civil Procedure,"

32. The Act does not expressly require the District Magistrate and the State Government to hear the landlord and the tenant in a proceeding for permission to sue for the latter's ejectment. It is to be seen whether such hearing at any stage of the proceeding is necessarily implied in the provisions of the Act.

33. It appears from Sub-section (2) of Section 3 that the proceeding starts with an application by the landlord to the District Magistrate. He would state some reasons in the application for which he wants permission to sue for the tenants eviction. Those reasons would be connected either with the landlord or with the tenant or with the accommodation. The landlord may need the accommodation for his own use; his relations with the tenant may be intolerably strained; the

tenant may be habitually irregular in paying rents; or the accommodation may need urgent and extensive repairs or reconstruction. This list of reasons is far from exhaustive, but it serves to illustrate the objective nature of his reasons. All his reasons would be matters of fact capable of proof and disproof. The District Magistrate would have no personal knowledge about their correctness. It would be necessary for him to enquire into the truth or otherwise of the reasons. When he holds an enquiry, he can summon and enforce the attendance of witnesses and compel any person to produce relevant documents. By virtue of Section 7-G he has got the powers of a civil court in respect of those matters.

34. Enquiry into the correctness of the alleged reasons is the first stage in the proceeding. If the enquiry does not bear out the reasons, there is an end of the matter; but if the reasons are found to be true, the District Magistrate may pass on to the second stage of exercising his discretion to grant or to refuse to grant permission to sue. For the present I shall concentrate on the first stage in the proceeding and shall examine whether the District Magistrate is under a duty to act judicially at that stage.

35. I have already indicated that some enquiry will have to be made at the first stage into the correctness of the alleged reasons. The condition of the District Magistrate's permission is a clog on the landlord's right to eject a tenant. This right is a part of his fundamental right to hold property, and it cannot be restricted unreasonably. Accordingly I find it difficult to believe that the Legislature would have intended to withhold from him the right to eject a tenant on the result of an enquiry held behind his back. I think that the duty to hear him about the truth of the reasons alleged by him in his application is implicit in Section 3.

36. The Act has granted to the tenant the qualified privilege of protection from ejectment. The District Magistrate's permission withdraws this privilege from him. Having regard to the importance of the privilege (for after food shelter is the next prime need of man) I am led to think that the District Magistrate is under a duty to hear him also in the first stage of the proceeding. He must give him an opportunity of showing that the reasons stated by the landlord in his application are not correct. It is all the more necessary if the reasons are concerned with some alleged vice in him, for an affirmative finding of the District Magistrate thereon would cast a stigma on his conduct.

37. I shall now refer to certain other indicia in support of my view. The District Magistrate is to pass an order granting or refusing to grant permission. Sub-section (2) of Section 3 calls the landlord and the tenant, as the case may be, "the party aggrieved by the order," and requires the District Magistrate to communicate the order to them. Either party is given a right to apply to the Commissioner to revise the order.

For that purpose a limitation of 30 days is provided for. The Commissioner may interfere with the order if he is not satisfied as to the "correctness, legality or

propriety of the order" or as to the "regularity of proceedings held" before the District Magistrate. The language of Sub-sections (2) and (3) is suggestive of judicial process. The word "correctness" and "regularity of proceedings held" in Sub-section (3) are not without some significance. It is, I think, hardly apt to describe the- exercise of discretion as correct. We generally speak of discretion being exercised properly. It seems to me that the word "correctness", in the context of "legality or propriety", refers to the correctness of the findings of facts recorded by the District Magistrate in respect of the factual reasons mentioned in the landlord's application. As the Legislature has given to the aggrieved party a right to challenge the correctness of the findings of facts, it is reasonable to suppose that the Legislature has also intended to give him the right of being heard in proof or disproof of the reasons alleged in the application. The former right, without the latter right, would be illusory. The expression, "the regularity of proceedings held before him," is also suggestive of some sort of hearing procedure before the District Magistrate. For the same reasons it is, I think, necessarily implied in the language of Sub-sections (2) and (3) that the order of the District Magistrate should be a reasoned order.

38. To sum up, I am of opinion that at the first stage of the proceeding the District Magistrate acts in a quasi-judicial capacity. I get support for this view from a decision of a Full Bench of our Court in Abdul Hamid Vs. Smt. Fatima Begum, . In that case permission was granted without giving notice and hearing to the tenant. When later he complained of want of notice and hearing, the permission was cancelled. The validity of the order of cancellation was questioned by the landlord. While upholding the validity of the order of cancellation the Full Bench said :

"Though the District Magistrate has a complete discretion in the matter, yet this discretion must be exercised in accordance with rules of natural justice and it is, therefore, who are likely to be affected) a chance of placing their view points before him. The question of granting permission to the plaintiff had, therefore, to be reconsidered after notice to the defendant Abdul Hamid Vs. Smt. Fatima Begum, ."

It may be observed that Bhargava, J., who was a member of the Bench in Narottam Saran Vs. Govt. of the State of Uttar Pradesh and Another, is also a member of the Full Bench. This decision was not brought to the notice of the learned Judges in the cases of Virendraswarup 1962 Cri L J 672 and Murlidhar Vs. State of U.P. and Others, . It is also significant to notice that the Full Bench arrived at that conclusion on the basis of the Act as it stood in 1949, that is, when it did not comprise of Section 3 (2) and (3), Section 7F and Section 7G. The language of Section 3(3) is different from what it was in Narottam Saran Vs. Govt. of the State of Uttar Pradesh and Another, in one important respect: the Commissioner can now examine the "correctness" of the order of the District Magistrate. We appear to be on a stronger footing, now.

39. I now pass on to the second stage of the proceeding. When the District

Magistrate is satisfied as to the truth of the reasons stated by the landlord in his application, he has to make up his mind whether he should grant or refuse permission to sue. He has got undefined and unlimited discretion in the matter. Courts cannot interfere with his discretion except on the grounds of mala fide, arbitrariness and of being extraneous to the purposes of the statute. At this stage he does not, in my judgment, act in a quasi-judicial capacity.

40. Sub-section (2) or Section 3 gives a right to the aggrieved party to apply to the Commissioner to revise "the order of the District" Magistrate. Sub-section 3 of Section (3) expressly requires him to hear the application. He may interfere with the order on certain specified grounds.

41. He can make any order which may be just and proper. Wide though this power may be, yet his discretion is confined by the material on the record of the case prepared by the District Magistrate. He cannot receive additional evidence without the consent of the parties and the witness and the custodian of papers, etc. There is no provision like Section 7G empowering him to call for additional evidence. Being a statutory authority he can invoke no inherent power for the purpose. Perforce he must mould his discretion out of the facts on record, so that his discretion would be neither subjective nor imponderable.

42. On a consideration of all these aspects I am of opinion that the Commissioner acts in a quasi-judicial capacity from the beginning to the end In *Murlidhar Gupta v. Addl. Commr. Allahabad* 1955 Cri L J 498, *Brij Mohan Lal, J.* has taken the same view. In *Majeeduddin v. G.H. Nagvi* 1961 All W R H C 102, *Mootham, C. J. and Srivastava, J.* said :

"The order of the Commissioner stands on a different footing. This order is of a quasi judicial nature and therefore liable to be quashed if it suffers from an apparent error of law."

43. I shall now take up the question referred to us. The State Government is placed at the apex of the hierarchy of authorities dealing with disputes under the Act. It is vested with the supervisory power of review of the orders of the *Kailash Chandra Jain and Others Vs. State of U.P. and Others*, The phrase ""may call for the record of any case" in Section 7F appears to have been borrowed from Section 115 of the Code of Civil Procedure. Although Section 7F confers power on the State Government, yet in the context of Section 3 it is a power coupled with a duty as it is granted for the benefit of the party aggrieved by the order of the Chief Controlling Revenue Authority and Superintendent of Stamps Vs. *Maharashtra Sugar Mills Ltd.*, The Government cannot decline to exercise the power arbitrarily or maliciously or for irrelevant reasons.

44. The discussion concerning the District Magistrate and the Commissioner leads me to the conclusion that the State Government acts in a quasi-judicial capacity u/s 7F. The duty to act judicially is implicit in the provisions of Section 7F read in the context of Section 3.

45. The State Government may make "such order as appears to it necessary for the ends of justice." The discretion of the State Government does not appear to be wider than that of the Commissioner. The phrase "may call for the record of any case" shows that it is to be exercised on the facts on record. The State Government cannot travel outside the record. It has no power to receive additional evidence without the consent of the parties and the witness. Its discretion is accordingly not subjective nor imponderable.

46. There seems to be no special magic in the expression "for the ends of justice." It is a familiar phrase to lawyers. It is also found in Section 151 of the Code of Civil Procedure. The mere width of the discretion should not overpersuade us, for often courts also exercise a wide discretion. Notwithstanding the absolute discretion of the Excise authorities to grant licence for liquor shops the Supreme Court has held that they do not act as purely administrative bodies. Sinha, C. J., observed:--

"Where there is a right vested in an authority created by statute,.... to hear appeals and revision, it becomes its duty to hear judicially, that is to say, in an objective manner, impartially and after giving reasonable opportunity to the parties concerned in the dispute to place their respective cases before it." Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, .

The rules in that case did not prescribe a period of limitation for filing a revision nor did they create a right in anybody's favour to apply for revision. Again, neither the Act nor the rules specified the grounds on which the revising authority could interfere with the order of the inferior authority. Its power was unlimited and unchanneled.

47. It has been stressed during arguments that while the Commissioner's aid may be invoked on certain specified grounds and within a certain period of time, the State Government may act at any time and for the ends of justice. I do not consider that these differences have a bearing on the question before us. These differences are explained by the nature and scope of the supervisory power. It is a common experience that legislation does not generally impose any temporal limitation on supervisory jurisdiction. The object of supervisory jurisdiction is to advance justice. It is ordinarily not concerned with mere errors of fact and law. This Court does not act under Arts. 226 and 227 of the Constitution or under Sections 115 and 151 of the CPC for curing mere errors of law and fact if no manifest injustice has been caused thereby to any party. It seems to me that the language of Section 7F is designed to confer a similar power on the State Government. So looked at, the phrase "for the ends of justice" is in a sense limitative rather than expansive of the power. It shows that the Government should not act to correct mere mistakes but to advance justice.

48. I shall now refer to some of the cases referred to during arguments. In Radeshyam Khare and Another Vs. The State of Madhya Pradesh and Others, , it

has held that the Government, when appointing a person as Executive Officer of a Municipality u/s 53A of the C. P. & Bearar Municipalities Act does not act as a quasi-judicial authority. In that case there were not two parties, and the statutory background was different. In *Kishan Chand Arora Vs. Commissioner of Police, Calcutta*, the order of the Commissioner of Police was held to be an administrative order. The order refused to grant a licence for an eating-house u/s 39 of the Calcutta Police Act. In that case also there were not two parties, nor a lis nor a provision for appeal and revision and the context was radically different. In *Jaswant Sugar Mills Ltd., Meerut Vs. Lakshmichand and Others*, , it was held that while granting permission to the employer to discharge an employee from service the Regional Conciliation Officer acts in a quasi-judicial capacity. That case is important for our purposes in so far as it decides that one of the indicia of a quasi-judicial, decision is that it is the decision of an "authority invested by law with authority to "determine questions or disputes affecting the rights" of citizens..... " (emphasis (here in" ") mine). It is not essential that the quasi-judicial authority should always determine rights of citizens.

49. The question we are considering here did not arise in *Kailash Chandra Jain and Others Vs. State of U.P. and Others*, . There it was held that the decision of the State Government is not invalid even, though it had not sent for the record of the case before the Commissioner. The substantial part of the record was there before it at the time of the making of the order. The papers which were not sent for were not shown to be material, and it was held that the omission to consider them had not caused any prejudice to the appellant. A case is authority for what it decides.

50. I have carefully read my judgment in that case, and I find no inconsistency between what I said then and what I say now.

51. In the light of the foregoing discussion I am of opinion that a writ in the nature of certiorari can issue to the District Magistrate, the Commissioner and the State Government. They are bound to hear the landlord and the tenant. No rigid rule can be prescribed as regards the kind and quantum of hearing. Each case will depend on its own facts. I should only say that there should be fair play.

52. I would respectfully agree with the actual decision in *Murlidhar Vs. State of U.P. and Others*, . In that case the State Government sent a copy of the landlord's application to the tenant and asked him to file his written reply to the application. He did file a written reply. After considering the application and the reply the State Government granted permission to the landlord to sue for his ejectment. He contended in this Court that he was not heard, This contention was not accepted. Obviously he was heard, though he did not receive an oral hearing. The Government is not bound to give an oral bearing in the absence of a statutory sanction therefore.

53. My answer to, the question is that the State Government acts in a quasi-judicial capacity.

54. BY THE COURT :-In view of the majority opinion of this Bench we answer the question referred as follows :--

When the State Government deals with a proceeding u/s 3 of the U.P. (Temporary) Control of Rent and Eviction Act u/s 7-F of that Act, the State Government acts administratively and not in a judicial or quasi-judicial capacity.