

CHAPTER III

CLASSIFICATION OF ADMINISTRATIVE FUNCTIONS

SECTION 1. INTRODUCTORY

There is a great variety of administrative powers, such as to investigate, to prosecute, to make rules and regulations, to adopt schemes, to fix prices, to issue and cancel licences, to adjudicate on disputes etc. When an administrative action partakes of some judicial characteristics, it is characterised as 'quasi-judicial'. Decisions of a court of law are judicial in nature, though in certain matters the judges may act administratively. Administrative authorities act either in an administrative or a quasi-judicial manner but never in judicial manner for, by and large, they lack the impartiality and objectivity of a judge and it is therefore best, in order to avoid confusion, to apply the expression judicial to a court and not to an administrative authority.

A question which often arises in administrative law is whether the function performed by a body is administrative, quasi-judicial or legislative in character. The answer to this question bristles with difficulties as there is no precise test to distinguish the three functions. A further difficulty in such classification is created by the fact that a single proceeding may at times combine some aspects of all the three functions. "It is indeed difficult in theory and impossible in practice to draw a precise dividing line between the legislative on the one hand and the purely administrative on the other; administrative action so often partakes of both legislative and executive characteristics. The true nature of statutory provisions and of regulations made thereunder

is not infrequently still further complicated by the addition of a quasi-judicial aspect...."¹

Though there exists no clear formula for making the distinction between legislative, administrative and quasi-judicial functions, the distinction is, nevertheless, sought to be made as several legal consequences flow from it, *e.g.*, a body exercising quasi-judicial function is bound to follow principles of natural justice and is amenable to the writ of certiorari or prohibition and also to the special leave jurisdiction of the Supreme Court under article 136. On the other hand, it is not so in the case of a body exercising an administrative or legislative function involving quasi-judicial aspect at any stage; it is subject only to a relatively restricted judicial review. Problems of sub-delegation have a somewhat different connotation depending on the nature of the function. For instance, the legal rights of a person may depend upon the characterisation of rules or principles issued by the administration for the guidance of an authority as legislative or administrative; if regarded as merely administrative instructions, and not legislative in character or having a statutory force, they may not be enforceable by the aggrieved party.

There is no precise formula to describe the nature of the administrative action, and the case-law is neither consistent nor coherent. Legislation is also distinguished from administration on the ground that the former has an element of generality about it, as it applies to a group of persons, whereas the latter is particular in its application. But this does not provide an articulate test, for it is not always possible to separate particular from general.

✓ Much more difficult it is to distinguish administrative from quasi-judicial function. Whether an authority acts in a quasi-judicial or administrative capacity depends on the scope and effect of the power conferred by the statute and/or the rules. Ordinarily it is said that if the statute imposes either expressly or by necessary implication an obligation to act judicially, the authority acts in a quasi-judicial manner. But this proposition, it would seem, is hardly illuminating. It is, to some extent, tautologous to say that the function is quasi-judicial if it is to be done judicially. Furthermore, it is not common in the statute to find any specific or express statement that the body functioning under it should act in a quasi-judicial manner. In most cases, such a duty has to be inferred from the statute. If a body

1. *Report of the Committee on Minister's Powers* 19 (1932).

decides a dispute (*lis*) between two opposing parties, then *prima facie*, in the absence of anything to the contrary in the statute, the body may be treated as quasi-judicial. But the absence of two parties is not, however, decisive of the character of the body's function. If the act prejudicially affects a person, the body may still be regarded as acting in a quasi-judicial manner if the relevant statute implies so. Thus, when a body decides a controversy between itself and another person, it may be regarded as acting in a 'quasi-judicial' or 'administrative' manner.

Ultimately, whether a body acts in a quasi-judicial or administrative capacity is a question to be determined in each case, by an examination of relevant facts, circumstances, statute, and rules framed thereunder, if any. As Wanchoo, J. has observed in *Board of High School v. Ghanshyam*:²

"The inference whether the authority acting under a statute where it is silent has the duty to act judicially 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. A duty to act judicially may arise in widely different circumstances which it will be impossible and indeed inadvisable to attempt to define exhaustively."³

SECTION 2. LEGISLATIVE OR JUDICIAL FUNCTION

SCHWARTZ, AN INTRODUCTION TO AMERICAN ADMINISTRATIVE LAW

106-7 (1958)

Probably the most famous attempt to explain the difference between legislative and judicial functions is that made by Justice Holmes in *Prentis v. Atlantic Coast Line Company*. "A judicial inquiry," said he, "investigates, declares, and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation on the other hand looks to the

2. A.I.R. 1962 S.C. 1110.

3. *Id.* at 1113-1

future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power." The key factor in Justice Holmes's analysis is the element of time; a rule prescribes future patterns of conduct; a decision determines liabilities upon the basis of present and past facts.

The element of applicability has been emphasized by other commentators as the key in differentiating legislative from judicial functions. According to them, a rule is a determination of general applicability, "addressed to indicated but unnamed and unspecified persons or situations;" a decision on the other hand, applies to specific individuals or situations. As expressed by Professor Dickinson, "what distinguishes legislation from adjudication is that the former affects the rights of individuals in the abstract and must be applied in a further proceeding before the legal position of any particular individual will be definitely touched by it; while adjudication operates concretely upon individuals in their individual capacity."

Both the approach of Justice Holmes and that of Professor Dickinson will enable one to distinguish between rule making and adjudication in the great majority of cases. There are, however, certain situations which cause difficulty. Thus, under Justice Holmes's test, an administrative determination which is future in effect is a rule. This would lead to the conclusion that licensing or issuance of injunctive orders, such as a cease and desist order of the Federal Trade Commission, are instances of rule-making; which would be undesirable from the point of view of the procedural requirements which should be necessary in such cases. On the other hand, if the test of applicability be adopted, a function such as rate-making would be classified as judicial, although most of the authority on the point indicates that it is legislative in character.

EXPRESS NEWSPAPER LTD. v. UNION OF INDIA

A. I. R. 1958 S. C. 578, 610

Bhagwati, J.

The distinction between a legislative and a judicial function is brought out in *Cooley's Constitutional Limitations*, 8th Edn...Vol. I at p. 185 under the caption of "The powers which the legislative department may exercise":—

"On general principles, these inquiries, deliberations, orders, and decrees, which are peculiar to such a department, must in their nature be judicial acts. Nor can they be both judicial and legislative; because a marked difference exists between the employment of judicial and legislative tribunals. The former decide upon the legality of claims and conduct, and the latter make rules upon which, in connection with the constitution, those decisions should be founded. It is the province of judges to determine what is the law upon existing cases. In fine, the law is applied by one, and made by the other. To do the first, therefore,—to compare, the claims of parties with the law of the land before established—is in its nature judicial act. But to do the last—to pass new rules for the regulation of new controversies—is in its nature a legislative act; and if these rules interfere with the past, or the present and do not look wholly to the future, they violate the definition of a law as "a rule of civil conduct," because no rule of conduct can with consistency operate upon what occurred before the rule itself was promulgated.

"It is the province of judicial power, also to decide private disputes between or concerning persons: but of legislative power to regulate public concerns, and to make laws for the benefit and welfare of the State. Nor does the passage of private statutes, when lawful, are enacted on petition, or by the consent of all concerned; or else they forbear to interfere with past transactions and vested rights...."

A practical difficulty, however, arises in thus characterising the functions legislative or judicial because the functions performed by administrative agencies do not fall within water-tight compartments. Stason and Cooper in their treatise on "Cases and other materials on Administrative Tribunals" point out at page 150 :

"One of the great difficulties of properly classifying a particular function of an administrative agency is that frequently—and, indeed, typically—a single function has three aspects. It is partly legislative, partly judicial and partly administrative. Consider, for example, the function of rate-making. It has sometimes been characterised as legislative, sometimes as judicial. In some aspects, actually, it involves merely executive or administrative powers. For example, where the Interstate Commerce Commission fixes a tariff of charges for any railroad, its function is viewed as legislative. But where the question for decision is whether a

shipment of a mixture of coffee and chicory should be charged the lower rate established for chicory, the question is more nearly judicial. On the other hand, where the problem is merely the calculation of the total freight charges due for a particular shipment, the determination can fairly be described as an administrative act."

This difficulty is solved by the Court considering in a proper case whether the administrative agency performs a predominantly legislative or judicial or administrative function and determining its character accordingly.

SECTION 3. LEGISLATIVE OR EXECUTIVE FUNCTION

GRIFFITH AND STREET, PRINCIPLES OF ADMINISTRATIVE LAW

51 (3d ed. 1963)

The distinction between "legislative" and "executive" is very difficult to draw. There are two tests which have been suggested. The first is institutional: that which the Legislature enacts is legislation. Since no subordinate legislation is strictly enacted by Parliament, this is of no value. If the meaning of the word "enacts" is extended to include that which is done by Parliamentary authority, all kinds of actions are let in and solution is no nearer. Secondly, the meaning of "legislative" and "executive" may be determined by reference to the nature of the action. By this test, a power to make rules of general application is a legislative power and the rule is a legislative rule. A power to give orders in specific "cases" is, by the same test, an executive power and the order is an executive action. The difficulty here is that of distinguishing between what is "general" and what is "specific." These words, although they have some extreme and easily recognisable forms, do not help to solve the doubtful cases. The matter is finally one for arbitrary decision.

FRIEDMAN AND BENJAFIELD, PRINCIPLES OF AUSTRALIAN ADMINISTRATIVE LAW

41 (1962)

In 1932, the Committee on Minister's Powers attempted a distinction between the functions of legislation and administration on the following lines :

(a) Legislation is the process of formulating a general rule of conduct, without reference to particular cases, and usually operating in *futuro*.

(b) Execution is the process of performing particular acts, of issuing particular orders, or (as usually) of making decisions which apply general rules to *particular* cases.

The Committee was fully aware of the great difficulty in using such a definition. Thus a power vested in a Board of Education to make grants to secondary schools if they satisfied the Board that they were being efficiently maintained might appear, on the face of it, to be plainly executive or administrative but, if the Board were to elaborate in detail the conditions under which it would regard a school as qualifying for a grant, and issue circulars setting out such conditions for the information of schools, this would seem to be in substance the formulation of a general rule. Thus the function of the Board may be regarded as legislative from one point of view and as administrative from another. Indeed the distinction between that which is general and that which is particular in its application is itself only a matter of degree and it has been suggested that the classification of a discretion as legislative or administrative will often "depend rather upon the nature of the authority in whom the power is reposed and upon the measure and extent of the power, its subject matter and its limitations and the conditions in and upon which it is exercisable."

WADE, ADMINISTRATIVE LAW

249-50, 264 (1961)

Administrative Legislation

One of the principal administrative activities is legislation.... This administrative legislation is traditionally looked upon as a necessary evil, an unfortunate but inevitable infringement of the separation of powers. But this is an old-fashioned view.... There is only a hazy border-line between legislation and administration, and the assumption that they are two fundamentally different forms of power is misleading. There are some obvious general differences. But the idea that a clean division can be made (as it can, more probably, in the case of the judicial power) is a legacy from an older era of political theory. It is easy to see that legislative power is the power to lay down the law for people in general whereas administrative power is

the power to lay down the law for them individually, or in some particular case.... In fact it is largely a question of taste where the line is drawn. Nor does it much matter for our purposes. For legal purposes—judicial control, statutory interpretation, and the doctrine of *ultra vires*—there is common ground throughout both subjects. What does matter is that both involve the grant of wide discretionary powers to the government....

Although most people assume that they can tell 'legislation' when they see it, it easily merges into 'administration'.... Much of the work of the administration consists of legislation. Why, then should they be distinguished? Apart from theoretical analysis, are there any legal or political results of the distinction? In fact, there are. For one thing, it is a general principle that legislative acts should be public, so that all may know the law. For another, people's legal rights may depend on the distinction.

SECTION 4. ADMINISTRATIVE OR QUASI-JUDICIAL FUNCTION

COMMITTEE ON MINISTER'S POWERS

73-75, 81-82, 9 (1929)

Judicial or Quasi-Judicial Decision

A "quasi-judicial" decision is thus one which has some of the attributes of a judicial decision, but not all....

A true judicial decision presupposes an existing dispute between two more parties, and then involves requisites:—

(1) the presentation (not necessarily orally) of their case by the parties to the dispute: (2) if the dispute between them is a question of fact, the ascertainment of fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence; (3) if the dispute between them is a question of law, the submission of legal argument by the parties; and (4) a decision which disposes of the whole matter by finding upon the facts in dispute and an application of the law of the land to the facts so found, including, where required, a ruling upon any disputed question of law.

A quasi-judicial decision equally presupposes an existing dispute between two or more parties and involves (1) and (2) but does not

necessarily involve (3) and never involves (4). The place of (5) is in fact taken by administrative action, the character of which is determined by the Minister's free-choice.

For example, suppose a statute empowers a Minister to take action if certain facts are provided, and in that event gives him an absolute discretion whether or not to take action. In such a case he must consider the representations of the parties and ascertain the facts—to that extent the decision contains a judicial element. But, the facts once ascertained, his decision does not depend on any legal or statutory direction, for *ex hypothesi* he is left free within his statutory powers to take such administrative action as he may think fit: that is to say that the matter is not finally disposed of by the process of (4). Whereas it is of the essence of a judicial decision that the matter is finally disposed of by that process and nothing remains to be done except the execution of the judgment, a step which the law of the land compels automatically, in the case of the quasi-judicial decision the finality of (4) is absent; another and a different kind of step has to be taken; the Minister—who for this purpose personified the whole administrative Department of State—has to make up his mind whether he will or will not take administrative action and if so what action. His ultimate decision is “quasi-judicial”, and not judicial, because it is governed, not by a statutory direction to him to apply the law of the land to the facts and act accordingly, but by a statutory permission to use his discretion after he has ascertained the facts and to be guided by considerations of public policy. This option would not be open to him if he were exercising a purely judicial function.

It is obvious that if all four of the above named requisites to a decision are present, if, for instance, a Minister, having ascertained the facts, is obliged by the statute to decide solely in accordance with the law, the decision is judicial. The fact that it is not reached by a court so-called, but by a Minister acting under statutory powers and under specialised procedure, will not make the decision any the less judicial.¹

In the above analysis we have tried to explain the essential characteristics of a judicial decision in the full sense of the phrase; and we have expressed the view that quasi-judicial decision imports only some, and not all, of those characteristics; or, putting the same point in another form, that the Minister at some stage in his mental

1. The validity of distinction made by the Committee between law and discretion is considered in Chapter VI on *Administrative Discretion*.

operations before his action takes final shape passes from the judge into the administrator. But whether the function be judicial or quasi-judicial, its exercise presupposes the existence of a dispute and parties to the dispute, and it is this feature which separates the judicial and quasi-judicial function on the one hand from the administrative on the other....

Administrative decisions to be distinguished

Decisions which are purely administrative stand on a wholly different footing from quasi-judicial as well as from judicial decisions and must be distinguished accordingly.... In the case of the administrative decision, there is no legal obligation upon the person charged with the duty of reaching the decision to consider and weigh submissions and arguments, or to collate any evidence, or to solve any issue. The grounds upon which he acts, and the means which he takes to inform himself before acting, are left entirely to his discretion . .

But even a large number of administrative decisions may and do involve, in greater or less degree, at some stage in the procedure which eventuates in executive action, certain of the attributes of a judicial decision. Indeed, generally speaking a quasi-judicial decision is only an administrative decision, some stage or some element of which possesses judicial characteristics....

The intermingling of the two elements in one composite "decision" is well illustrated by the type of case where the judicial elements loom large in proportion to the administrative, although the final act is administrative. Instances we have in mind are the decisions of licensing authorities constituted under an Act of Parliament with an obligation to grant licences to fit and proper persons in accordance with the intentions and under the conditions of the Acts.... The ultimate decision is administrative and not judicial in each case—whether given by a justice, a commissioner, or the Minister. But evidence has to be considered and weighed; arguments on fact and possibly law have to be heard, and conclusions reached; irrelevant and improper considerations have to be excluded; and the body hearing the application must be disinterested and free from bias. And it is only after they have taken all the above preliminary steps judicially that they pass into pure administration and in the exercise of administrative discretion on grounds of public policy choose to grant or withhold a licence.

PROVINCE OF BOMBAY v. KHUSHALDAS ADVANI

A. I. R. 1950 S. C. 222

[The petitioner was a tenant of a flat. On February 26, 1948, the Bombay Government requisitioned the flat under section 3 of the Bombay Land Requisition Ordinance, 1947, and allotted it to another refugee from Sind. On March 4, 1946, the petitioner filed a petition for a writ of certiorari, which having been granted by the Bombay High Court, the Government came on appeal to the Supreme Court.

Section 3 of the Ordinance ran as follows :

Requisition of land—If in the opinion of the Provincial Government it is necessary or expedient to do so, the Provincial Government may by order in writing requisition any land for any public purpose :

Provided that no land used for the purpose of public religious worship or for any purpose which the Provincial Government may specify by notification in the Official Gazette shall be requisitioned under this section.]

Kania, C. J. (with whom Sastri, J. joined)

[I]t was pointed out that under S. 3 of the Ordinance the decision of the Provincial Government to requisition certain premises is clearly a matter of its opinion and therefore not liable to be tested by any objective standard. It was urged that the decision as to whether the premises were required for a public purpose was also a matter for the opinion of the Provincial Government, and not a matter for judicial investigation, and therefore the making of the order was in no sense a quasi-judicial decision, but an administrative or ministerial order. In this connection it was pointed out that unlike the Land Acquisition Act there was no provision in the Ordinance for issuing a notice, or for inquiries to be made, or for rival contentions to be examined and evidence to be weighed before a decision is arrived at. It was pointed out that if public purpose was outside the scope of the opinion of the Provincial Government, the section would have run : "If for any public purpose in the opinion of Government...."

In *Regina (John M'Evoy) v. Dublin Corporation* (1872) 2 L. R. Ir. 371 at p. 376, May C.J. in dealing with this point observed as follows :

"It is established that the writ of *certiorari* does not lie to remove an order merely ministerial, such as a warrant, but it lies to remove and adjudicate upon the validity of acts judicial. In this connection, the term 'judicial' does not necessarily mean acts of a judge or legal tribunal sitting for the determination of matters

of law, but for the purpose of this question a judicial act seems to be an act done by competent authority, upon consideration of facts and circumstances, and imposing liability or affecting the rights of others."

On behalf of the respondent it was contended that, as stated by May C. J., whenever there is the determination of a fact which affects the rights of parties, that determination is a quasi-judicial decision and, if so, a writ of *certiorari* will lie against the body entrusted with the work of making such decision. As against this, it was pointed out that in several English cases emphasis is laid on the fact that the decision should be a judicial decision and the obligation to act judicially is to be found in the Act establishing the body which makes the decision. This point appears to have been brought out clearly in *The King v. The Electricity Commissioners* (1924) K.B. 171: L. J. K. B. 390, where Atkin L. J. (as he then was) laid down the following test:

"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."

This passage has been cited with approval in numerous subsequent decisions and accepted as laying down the correct test. A slightly more detailed examination of the distinction is found in *The King v. London County Council* (1931) 2 K.B. 215 at p. 233: (100 L.J.K.B. 760), where Scrutton L. J. observed as follows:

"It is not necessary that it should be Court in the sense in which this Court is a Court; it is enough if it is exercising, after hearing evidence, judicial functions in the sense that it has to decide on evidence between a proposal and an opposition; and it is not necessary to be strictly a Court; if it is a tribunal which has to decide the rights after hearing evidence and opposition, it is amenable to the writ of *certiorari*."

Slesser L.J. in his judgment at p. 243 separated the four conditions laid down by Atkin L. J. under which a rule for *certiorari* may issue. They are: wherever any body of persons (1) having legal authority (2) to determine questions affecting rights of subjects and (3) having the duty to act judicially (4) act in excess of their legal authority—a writ of *certiorari* may issue. He examined each of these conditions

separately and came to the conclusion that the existence of each was necessary to determine the nature of the act in question....

In *Frenklin v. Minister of Town and Country Planning*, 1948 A.C. 87: (1947-2 All E. R. 289),....The question arose in respect of the town and country planning undertaken under the relevant Statute on the order of the Minister following a public local inquiry under the provisions of the Act. The question was whether the order of the Minister was a quasi-judicial act or a purely administrative one. Lord Thankerton pointed out that the duty was purely administrative but the Act prescribed certain methods or steps in the discharge of that duty. Before making the draft order, the Minister must have made elaborate inquiry into the matter and have consulted any local authorities who appear to him to be concerned and other Departments of the Government. The Minister was required to satisfy himself that it was a sound scheme before he took the serious step of issuing a draft order. For, the purpose of inviting objections and where they were not withdrawn, of having public inquiry to be held by someone other than the respondent to whom that person reports, was for the further information of the respondent for the final consideration of the soundness of the scheme...

Learned counsel for the respondent referred to several cases but in none of them the dicta of Atkin L.J. or the four conditions analysed by Slessor L.J. have been suggested, much less stated, to be not the correct tests. The respondent's argument that whenever there is a determination of a fact which affects the rights of parties, the decision is quasi-judicial, does not appear to be sound. The observations of May C.J., when properly read, included the judicial aspect of the determination in the words used by him. I am led to that conclusion because after the test of judicial duty of the body making the decision was expressly stated and emphasized by Atkin and Slessor L.JJ. in no subsequent decision it is even suggested that the dictum of May C.J. was different from the statement of law of the two Lord Justices or that the latter, in any way, required to be modified. The word "quasi-judicial" itself necessarily implies the existence of judicial element in the process leading to the decision.... Because an executive authority has to determine certain objective facts as a preliminary step to the discharge of an executive function, it does not follow that it must determine those facts judicially. When the executive authority has to form an opinion about an objective matter as a preliminary step to the exercise of a certain power conferred on it, the determination of the objective fact and the exercise of the

power based thereon are alike matters of an administrative character and are not amenable to the writ of *certiorari*.... It seems to me that the true position is that when the law under which the authority is making a decision, itself requires a judicial approach, the decision will be quasi-judicial. Prescribed forms of procedure are not necessary to make an enquiry judicial, provided in coming to the decision the well-recognised principles of approach are required to be followed....

On behalf of the respondent it was strongly urged that even applying these tests the decision of the Provincial Government under S.3 is quasi-judicial. The decision whether the premises were required for a public purpose was contended not to be a matter of opinion. The power to make inquiries under Ss. 10 & 12 were strongly relied upon in this connection....

Bearing in mind the important factor which distinguishes a quasi-judicial decision from an administrative act, it is next necessary to find out whether the action of the Provincial Government permitted under S. 2 of the Ordinance, read along with the scheme of the Ordinance is a quasi-judicial decision or an administrative act.... [I]t is not seriously disputed that the subjective opinion of the Provincial Government in respect of the order of requisition is not open to challenge by a writ of *certiorari*. The Ordinance has left that decision to the discretion of the Provincial Government and that opinion cannot be revised by another authority. It appears therefore that except when *mala fides* are clearly proved, that opinion cannot be questioned. The next question is whether requirement "for any public purpose" stands on the same footing. On behalf of the appellant, it was argued that opinion of the Government, that it is necessary or expedient to pass an order of requisition, stands on the same footing as its decision on the public purpose. In the alternative it was urged that the two factors, *viz.*, necessity to requisition and decision about public purpose, form one composite opinion and the composite decision is the subjective opinion of the Provincial Government. The third alternative contention was that the decision of the Government about a public purpose is a fact which it has to ascertain or decide, and thereafter the order of requisition has to follow. The decision of the Provincial Government as to the public purpose contains no judicial element in it. Just as the Government has to see that its order of requisition is not made in respect of land which is used for public religious worship or is not in respect of land used for a purpose specified by the Provincial Government in the Official Gazette, (as mentioned in the proviso to S. 3) or that the

premises are vacant on the date when the notification is issued (as mentioned in S. 4 of the Ordinance), the Government has to decide whether a particular object, for which it is suggested that land should be requisitioned, was a public purpose.

In my opinion, third alternative contention is clearly correct and it is unnecessary therefore to deal with the first two arguments. There appears nothing in the Ordinance to show that in arriving at its decision on this point the Provincial Government has to act judicially. Sections 10 and 12, which were relied upon to show that the decision was quasi-judicial, in my opinion, do not support the plea. The inquiries mentioned in those sections are only permissive and the Government is not obliged to make them. Moreover, they do not relate to the purpose for which the land may be required. They are in respect of the condition of the land and such other matters affecting land. Every decision of the Government, followed by the exercise of certain power given to it by any law is not necessarily judicial or quasi-judicial. The words of S. 3 read with the proviso, and the words of S. 4 taken along with the scheme of the whole Ordinance, in my opinion, do not import into the decision of the public purpose the judicial element required to make the decision judicial or quasi-judicial. The decision of the Provincial Government about public purpose is therefore an administrative act....

Mukherjea J. (dissenting)

....Every judicial act presupposes the application of judicial process. There is a well-marked distinction between forming a personal or private opinion about a matter, and determining it judicially. In the performance of an executive act, the authority has certainly to apply his mind to the materials before him; but the opinion he forms is a purely subjective matter which depends entirely upon his state of mind. It is of course necessary that he must act in good faith, and if it is established that he was not influenced by any extraneous consideration, there is nothing further to be said about it. In a judicial proceeding, on the other hand, the process or method of application is different. "The judicial process involves the application of a body of rules or principles by the technique of a particular psychological method, Robion's *Justice and Administrative Law* p. 33." It involves a proposal and an opposition, and arriving at a decision upon the same on consideration of facts and circumstances according to the rules of reason and justice.... It must be something which conforms to an objective standard or criterion laid down or recognised by law, and the soundness or otherwise of the

determination must be capable of being tested by the same external standard.

...[T]he general rule...is that if the foundation of the exercise of powers by an authority is his personal satisfaction or subjective opinion about certain facts, the function is to be regarded as executive and not judicial. The facts may undoubtedly be and often are objective facts about which the authority has got to form his opinion. When a statute says that a Minister can requisition property or order compulsory purchase if he deems it expedient to do so in the interest of public safety or the defence of the realm, the condition precedent to the exercise of the powers is not the *actual* existence of national interest, but his own opinion or belief that it exists.... On the other hand, if the statute imposes an objective condition precedent of fact to the exercise of powers by an authority, and not merely his subjective opinion about it, the function would be *prima facie* judicial....

The language of the Section [3 of the Bombay Land Requisitioning Ordinance, 1947]...indicates in my opinion, that whereas the act of requisitioning land is left to the executive discretion of the Provincial Government and the latter can requisition land whenever it considers necessary or expedient to do so, certain conditions have been laid down which are conditions precedent to the exercise of the powers. The first condition is specified in the section itself and it postulates the existence of a public purpose as an essential prerequisite to the taking of steps by the Provincial Government in the matter of requisitioning any property. Even where this condition is satisfied, there is another condition imposed by the proviso which is in the nature of an exception engrafted upon the entire section and which prevents the Provincial Government from exercising its powers at all if the land sought to be requisitioned is used for public religious worship or for any other purpose which the Provincial Government has specified in the official gazette.

In my opinion the existence of a public purpose as an objective fact, and not the subjective opinion of the Provincial Government that such fact exists, has been made the essential preliminary which founds the jurisdiction of the Provincial Government to proceed with any act of requisition.

Provincial Government has to satisfy itself that there is a public purpose before it proceeds to requisition any property. As this is an objective condition which has not been made dependent on the

personal opinion of the Executive it has got to be determined judicially and whether a public purpose exists or not is itself a mixed question of facts and law which could be determined by application of well established principles of law to the circumstances of a particular case. There is undoubtedly a *lis* or point in controversy—or what is called a proposal and an opposition. On the one hand there is the interest of the public and on the other, the interest of the individual whose property is being requisitioned. No formal array of parties is necessary. It is enough that there is a point in issue which has got to be decided between parties having conflicting interests in respect to the same. The fact that the Provincial Government represents the interests of the public also is to my mind immaterial. If there is a duty to decide judicially, it would be a judicial act and it is not necessary that there must be two opposing parties other than the deciding authority appearing in a regular or formal manner.

Das, J. (Concurring)

...Thus a person entrusted to do an administrative act has often to determine questions of fact to enable him to exercise his power. He has to consider facts and circumstances and to weigh *pros* and *cons* in his mind before he makes up his mind to exercise his power just as a person exercising a judicial or quasi-judicial function has to do. Both have to act in good faith. A good and valid administrative or executive act binds the subject and affects his rights or imposes liability on him just as effectively as a quasi-judicial act does. The exercise of an administrative or executive act may well be and is frequently made dependent by the Legislature upon a condition or contingency which may involve a question of fact, but the question of fulfilment of which may, nevertheless, be left to the subjective opinion or satisfaction of the executive authority.... The first two items of the definition given by Atkin L.J., may be equally applicable to an administrative act. The real test which distinguishes a quasi-judicial act from an administrative act is the third item in Atkin L.J.'s definition, namely, the duty to act, judicially.... Therefore, in considering whether a particular statutory authority is quasi-judicial body or a mere administrative body it has to be ascertained whether the statutory authority has the duty to act judicially.

An examination of the decided cases shows that in many of them where the statutory bodies were held to be quasi-judicial bodies and their decisions were regarded as quasi-judicial acts there were some parties opposing such claim and the statutory authority was

empowered to adjudicate upon the matters in issue between the parties and to grant or refuse the claim....

This definition of quasi-judicial decision clearly suggests that there must be two or more contesting parties and an outside authority to decide those disputes....

On the other hand there are many cases where the act of a statutory authority has been accepted as a quasi-judicial act, although there were not two opposing parties over whose disputes the authority was to sit in judgement. In those cases it was the authority who made a proposal and another person objected to it and the authority itself was entrusted to hear the objection and give a decision on it. In short the authority which was the proposer was the judge in its own cause. The only ground on which the decision of such an authority, placed in such situation as I have just mentioned, was regarded as quasi-judicial act was that the authority was empowered to affect the rights of or impose a liability on others and was required by the very law which constituted it to act judicially....

...The principles, as I apprehend them are: (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 *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.

In other words, while the presence of two parties besides the deciding authority will *prima facie* and in the absence of any other factor impose upon the authority the duty to act judicially, the absence of two such parties is not decisive in taking the act of the authority out of the category of quasi-judicial act if the authority is nevertheless required by the statute to act judicially....

[The concurring opinion of Fazal Ali, J. and dissenting opinion of Mahajan, J. have been omitted.]

NAGENDRA NATH BORA v. COMM.R., HILLS DIVISION

A.I.R., 1958 S. C. 398

[The Eastern Bengal and Assam Excise Act regulates the sale of country spirit in non-prohibited areas in the State of Assam by licences issued by authorities under the Act. Shops are settled for sale of liquor for one year.

In accordance with the rules framed under the Act, tenders were invited by the Deputy Commissioner of Sibsagar in 1956, for the settlement of Jorhat country spirit shop for the year 1957-58. The appellant Nagendranath and the respondent Dharmeshwar submitted tenders. The Deputy Commissioner, in consultation with the local Advisory Committee, settled the shop with Dharmeshwar. Nagendra's tender was not even considered by him. Thereupon, Nagendra preferred an appeal to the Excise Commissioner, who, setting aside the settlement in favour of Dharmeshwar, ordered settlement of the shop in favour of the Appellant.

The Commissioner of Hills Division and Appeals, Assam, acting as the Excise Appellate Authority, to whom Dharmeshwar had appealed against the order of the Excise Commissioner, dismissed the appeal and confirmed the order setting the shop with the Appellant.

Dharmeshwar then moved the Assam High Court under Articles 226 and 227 of the Constitution for an appropriate writ for quashing the order of the Commissioner of Hills Division and Appeals. The High Court quashed the order holding that the Commissioner had acted in excess of his jurisdiction, that his order was vitiated by errors apparent on the face of record, and directed that all the tenders be reconsidered in the light of the observations made by it. Against the order of the High Court the Appellant filed an appeal to the Supreme Court by special leave.

Section 9 of the Act^a runs as follows :

"9. (1) Orders passed under this Act or under any rule made hereunder shall be appealable as follows in the manner prescribed by such rules as the State Government may make in this behalf :

(a) to the Excise Commissioner, any order passed by the District Collector or a Collector other than the District Collector.

2. As amended in 1955.

- (b) to the Appellate Authority appointed by the State Government for the purpose, any order passed by the Excise Commissioner.
- (2) In cases not provided for by clauses (a) and (b) of subsection (1) orders passed under this Act or under any rules made thereunder shall be appealable to such authorities as the State Government may prescribe.
- (3) The Appellate Authority, the Excise Commissioner or the District Collector may call for the proceedings held by any officer or persons subordinate to it or him or subject to its or his control and pass such orders thereon as it or he may think fit.”]

Sinha J. (as he then was):

According to the present practice contained in Executive Instructions, intending candidates for licences, have to submit tenders to the Deputy Commissioner for the Sadar Division and to the Sub-Divisional Officers for Sub-Divisions in accordance with the terms of notices published for the purpose. Such tenders are treated as strictly confidential. Settlement is made by the Deputy Commissioner or the Sub-Divisional Officer concerned, as the case may be, in consultation with an Advisory Committee consisting of 5 local members or less. The selection of a particular tender is more or less a matter of administrative discretion with the officer making the settlement....

...At the forefront of the arguments advanced on behalf of the Appellate Authority, was the plea that the several authorities already indicated concerned with the settlement of excise shops like those in question in these appeals, are merely administrative bodies, and, therefore, their orders whether passed in the first instance or on appeal, should not be amenable to the writ jurisdiction or supervisory jurisdiction of the High Court under Arts. 226 and 227 of the Constitution....

It is true that no one has an inherent right to settlement of liquor shops,³ but when the State, by public notice, invites candidates for settlement to make their tenders, and in pursuance of which notice, a number of persons make such tenders each one makes a claim for himself in opposition to the claims of the others, and public authorities concerned with the settlement have to choose from amongst them.

3. *Cooverji B. Bharucha v. Excise Commissioner and the Chief Commissioner*, Ajmer, A.I.R. 1954 S. C. 220; *State of Assam v. A. N. Kidwai*, A.I.R. 1957 S. C. 414.

If the choice has rested in the hands of only one authority like the District Collector on his satisfaction as to the fitness of a particular candidate without his orders being amenable to an appeal or appeals or revision, the position may have been different. But S. 9 of the Act has laid down a regular hierarchy of authorities, one above the other, with the right of hearing appeals or revisions. Though the Act and the rules do not, in express terms, require reasoned orders to be recorded, yet, in the context of the subject matter of the rules, it becomes necessary for the several authorities to pass what are called 'speaking orders'. Where there is a right vested in an authority created by statute, be it administrative or quasi-judicial, to hear appeals and revisions, 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. In this connection the observations of Lord Haldane at p. 132, and of Lord Moulton at p. 150, in *Local Government Board v. Arlidge*, 1915 A.C. 120 to the following effect are very apposite :

LORD HALDANE : "My Lords, 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 each of the parties the opportunity of adequately presenting the case made. The decision must be come to in the spirit and with the sense of responsibility of a tribunal whose duty it is to mete out justice. But it does not follow that the procedure of every such tribunal must be same."

LORD MOULTON : "In the present case, however, the Legislature has provided an appeal, but it is an appeal to an administrative department of State and not to judicial body. It is said, truthfully, that on such an appeal the Local Government Board must act judicially, but this, in my opinion, only means that it must preserve a judicial temper and perform its duties conscientiously with a proper feeling of responsibility in view of the fact that its acts affect the property and right of individuals. Parliament has wisely laid down certain rules to be observed in the performance of its functions in these matters, and those rules must be observed because they are imposed by statute, and for no other reason, and whether they give much or little opportunity for what I may call quasi-litigious procedure depends solely on what Parliament has thought right. These rules are beyond the criticism of the Courts, and it is not their business to add or to take away from them, or even to discuss whether in the opinion of the individual members of the Court they are adequate or not."

The legal position has been very succinctly put in Halsbury's Laws of England Vol. II 3rd Edn. pp 56-57 as follows:

"Moreover, an administrative body whose decision is actuated in whole or in part by questions of policy, may be under a duty to act judicially in the course of arriving at that decision. Thus, if in order to arrive at the decision, the body concerned had to consider proposals and objections and consider evidence, if at some stage of the proceedings leading up to the decision there was something in the nature of lis before it, then in the course of such consideration and at that stage the body would be under a duty to act judicially. If, on the other hand, an administrative body in arriving at its decision has before it at no stage any form of lis and throughout has to consider the question from the point of view of policy and expediency it cannot be said that it is under a duty at any time to act judicially. Even where the body is at some stage of the proceedings leading up to the decision under a duty to act judicially, the supervisory jurisdiction of the Court does not extend to considering the sufficiency of the grounds for, or otherwise challenging, the decision itself."

The provisions of the Act are intended to safeguard the interest of the State on the one hand, by stopping, or at any rate, checking illicit distillation, and on the other hand, by raising the maximum revenue consistently with the observance of the rules of temperance. The authorities under the Act, with Sub-Divisional Officers at the bottom and the Appellate Authority at the apex of the hierarchy, are charged with those duties. The rules under the Act, and the executive instructions which have no statutory force but which are meant for the guidance of the officers concerned, enjoin upon those officers, the duty of seeing to it that shops are settled with persons of character and experience in the line, subject to certain reservations in favour of tribal population. Except those general considerations, there are no specific rules governing the grant of leases or licences in respect of liquor shops, and in a certain contingency, even drawing of lots is provided for⁴.... The words of sub-s. (3) of S. 9, set out above, vest complete discretion in the Appellate Authority, the Excise Commissioner or the District Collector to 'pass such orders thereon as it or he may think fit'. The sections of the Act do not make any reference to the recording of evidence or of hearing of parties or even recording reasons for orders passed by the authorities aforesaid. But we have been informed at the bar that as a matter of practice, the

4. *Vide* Executive Instruction 110 at p. 174 of the Manual,

authorities under the Act, hear counsel for the parties, and give reasoned judgements, so as to enable the higher authorities to know why a particular choice has been made. That is also apparent from the several orders passed by them in course of these few cases that are before us.

But when we come to the rules relating to appeals and revisions, we find that the widest scope for going up in appeal or revision, has been given to persons interested, because R. 344 only lays down that no appeal shall lie against the orders of composition, thus, leaving all other kinds of orders open to appeal or revision. Rule 343 provides that every memorandum of appeal shall be presented within one month from the date of the order appealed against, subject to the requisite time for obtaining a certified copy of the order being excluded.⁵ Rule 344 requires the memorandum of appeal to be accompanied by a certified copy of the order appealed against. The memorandum of appeal has to be stamped with a requisite court fee stamp....

These rules...set out above, approximate the procedure to be followed by the Appellate Authorities, to the regular procedure observed by courts of justice in entertaining appeals... the ultimate jurisdiction to hear appeals and revisions was divided between the Assam High Court and the Authority.... Appeals and revisions arising out of cases covered by provisions of the enactments⁶ specified in Schedule 'A' to that Act, were to lie in and to be heard by the Assam High Court, and the jurisdiction to entertain appeals and revisions in matters arising under the provisions of the enactments specified in Schedule 'B' to that Act, was vested in the Authority to be set up under S. 3(3), that is to say, for the purposes of the present appeals before us, the Excise Appellate Authority. Thus, the Excise Appellate Authority, for the purposes of the cases arising under the Act, was vested with the power of the highest appellate Tribunal, even as the High Court was, in respect of the other group of cases. That does not necessarily mean that the Excise Appellate Authority was a Tribunal of co-ordinate jurisdiction with the High Court, or that authority was not amenable to the supervisory jurisdiction of High Court under Arts. 226 and 227 of the Constitution. But the

5. The Appellate Authority was, however, empowered to admit the appeal after the prescribed period of limitation when appellant satisfied it that he had sufficient cause for not preferring the appeal within such period. (Ed.).

6. Assam Revenue Tribunal (Transfer of Powers) Act, 1948; *State of Assam v. A. N. Kidwai*, 1957 S. C. R. 295, 304.

juxtaposition of the two parallel highest Tribunals, one in respect of predominantly civil cases, and the other, in respect of predominantly revenue cases, (without attempting any clear outline of demarcation), would show that the Excise Appellate Authority was not altogether an administrative body which had no judicial or quasi-judicial functions.

Neither the Act nor the rule made thereunder, indicates the grounds on which the first Appellate Authority, namely, the Excise Commissioner, or the Second Appellate Authority (The Excise Appellate Authority), has to exercise his or its appellate or revisional powers. There is no indication that they make any distinction between the grounds of interference on appeal and in revision. That being so, the powers of the Appellate Authorities, in the matter of settlement, would be co-extensive with the powers of the primary authority, namely, the District Collector or the Sub-Divisional Officer. See in this connection the observations of the Federal Court in *Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhari*, 1940 F.C.R. 84 at p. 102 : (A.I.R. 1941 F.C. 5 at p. 13) and of this Court in *Ebrahim Aboobakar v. Custodian-General of Evacuee Property*, 1952 S.C.R. 626 at p. 704 : (A.I.R. 1952 S.C. 319 at p. 322). In the latter case, this court, dealing with the powers of the Tribunal (Custodian-General of the Evacuee Property) under S. 24 of Ordinance No. 27 of 1946, observed :

"Like all courts of appeal exercising general jurisdiction in civil cases, the respondent has been constituted an appellate court in words of the widest amplitude and the legislature has not limited his jurisdiction by providing that such exercise will depend on the existence of any particular state of facts."

Thus, on a review of the provisions of the Act and the rules framed thereunder, it cannot be said that the authorities mentioned in S. 9 of the Act pass purely administrative order which are beyond the ambit of the High Court's power of supervision and control....

SHIVAJI NATHUBHAI v. UNION OF INDIA

A.I.R. 1960 S.C. 605.

[The State of Orissa granted the mining leases of five areas to the appellant. The third respondent, who had also applied for mining leases of some of those areas and was not given any, applied for review to the Central Government under Rule 52 of the Mineral

Concession Rules, 1949, framed under section 6 of the Mines and Minerals (Regulation and Development) Act, 1948. The Central Government allowed the review application and directed Orissa Government to grant a mining lease to the third respondent with respect to two out of the five areas given to the appellant. The appellant complained that the Central Government decided the matter without giving him a hearing.

The rules relevant for the purpose are Rules 52 to 55. Rule 52, *inter alia*, provided that any person aggrieved by an order of the State Government refusing to grant a mining lease may within two months of the date of such order apply to the Central Government for reviewing the same. Rule 53 prescribed a fee. Rule 54 ran :

"Upon receipt of such application, the Central Government may, if it thinks fit, call for the relevant records and other information from the State Government and after considering any explanation that may be offered by the State Government, cancel the order of the State Government or revise it in such manner as the Central Government may deem just and proper."

Rule 55 made the order of the Central Government under Rule 54, and subject only to such order, any order of the State Government under these rules, final. The basic question which arose for consideration was whether an order of the Central Government under Rule 54 was quasi-judicial or administrative.]

Wanchoo, J. :

This Court had occasion to consider the nature of the two kinds of acts, namely judicial which includes quasi-judicial and administrative, a number of times. In *Province of Bombay v. Khusaldas S. Advani*, 1950 S.C.R. 621 (A.I.R. 1950 S.C. 222) it adopted the celebrated definition of a quasi-judicial body given by *Atkin L. J.* in *R. v. Electricity Commissioners*, 1942-1 K. B. 171.... After analysing the various cases, *Das, J.* (as he then was) laid down the following principles as deducible therefrom in *Khusaldas S. Advani's Case (supra)* at p. 725 of S.C.R. : (at p. 260 of A.I.R....)

It is on these principles that we have to see whether the Central Government when acting under Rule 54 is acting in a quasi-judicial capacity or otherwise....

Mr. Pathak contends that there is no right in favour of the person to whom the lease has been granted by the State Government till the Central Government has passed an order on a review application, if

any. Rule 55, however, makes it clear that the order of State Government is final subject to any order on review by the Central Government under Rule 54. Now when a lease is granted by the State Government, it is quite possible that there may be no application for review by those whose applications have been refused. In such a case the order of the State Government would be final. It would not therefore be in our opinion right to say that no right of any kind is created in favour of a person to whom the lease is granted by the State Government. The matter would be different if the orders of the State Government were not to be effective until confirmation by the Central Government. But Rule 54 does not provide for confirmation by the Central Government. It gives power to the Central Government to act only when there is an application for review before it under Rule 54. That is why we have not accepted Mr. Pathak's argument that in substance the State Government's order becomes effective only after it is confirmed; Rule 54 does not support this. We have not found any provision in the Rules or in the Act which gives any power to the Central Government to review *suo motu* the order of the State Government granting a lease. That some kind of right is created on the passing of an order granting a lease is clear from the facts of this case also.... At any rate, when the statutory rule grants a right to any party aggrieved to make a review application to the Central Government it certainly follows that the person in whose favour the order is made has also a right to represent his case before the authority to whom the review application is made. It is in the circumstances apparent that as soon as Rule 52 gives a right to an aggrieved party to apply for review *a lis* is created between him and the party in whose favour the grant has been made. Unless therefore there is anything in the statute to the contrary it will be the duty of the authority to act judicially and its decision would be a quasi-judicial act.

The next question is whether there is anything in the Rules which negatives the duty to act judicially by the reviewing authority. Mr. Pathak urges that Rule 54 gives full power to the Central Government to act as it may deem "just and proper" and that it is not bound even to call for the relevant records and other information from the State Government before deciding an application for review. That is undoubtedly so. But that in our opinion does not show that the statutory rules negative the duty to act judicially. What the Rules require is that the Central Government should act justly and properly: and that is what an authority which is required

to act judicially must do. The fact that the Central Government is not bound even to call for records again does not negative the duty cast upon it to act judicially, for even courts have the power to dismiss appeals without calling for records. Thus Rule 54 lays down nothing to the contrary. We are therefore of opinion that there is *prima facie a lis* in this case as between the person to whom the lease has been granted and the person who is aggrieved by the refusal and therefore *prima facie* it is the duty of the authority which has to review the matter to act judicially and there is nothing in Rule 54 to the contrary. It must therefore be held that on the Rules and the Act, as they stood at the relevant time, the Central Government was acting in a quasi-judicial capacity while deciding an application under Rule 54. As such it was incumbent upon it before coming to a decision to give a reasonable opportunity to the appellant, who was the other party in the review application whose rights were being affected, to represent his case. Inasmuch as this was not done, the appellant is entitled to ask us to issue a writ in the nature of certiorari quashing the order... passed by the Central Government... ..It will, however, be open to the Central Government to proceed to decide the review application afresh after giving a reasonable opportunity to the appellant to represent his case....

SHANKERLAL v. SHANKERLAL

A.I.R. 1965 S.C. 507.

[A company incorporated under the Indian Companies Act, 1913, was carrying on business at Calcutta. On a petition of the first Respondent, the High Court of Calcutta ordered the company to be wound up compulsorily. In the course of winding up, the official liquidators sought the confirmation by the company Judge of the High Court, of the auction sale of certain assets of the company to the appellant. The sale was confirmed. On appeal, the Division Bench of the High Court set aside the order confirming the sale. It was from that order that the appeal was preferred by special leave. The principal question that was raised in the appeal was whether the order of the company Judge confirming the sale under Section 179 of the Indian Companies Act, 1913 was administrative or quasi-judicial.

Section 179 of the Indian Companies Act, 1913 provides:

"Powers of official liquidator—The official liquidator shall have power, with the sanction of the Court, to do the following thing :

(c) to sell the immoveable and moveable property of the company by public auction or private contract, with power to transfer the whole thereof to any person or company or to sell the same in parcels." Section 183 of the Act makes provision for the exercise of control by the court over the liquidator and sub-section (3) enables the liquidator to apply to the court for directions in relation to any particular matter arising in winding up. Section 184 requires the court to cause the assets of the company to be collected and applied in the discharge of its liabilities.]

Ayyangar, J.

On the basis of these provisions, we shall proceed to consider whether the confirmation of the sale was merely an order in the course of administration and not a judicial order. The sale by the liquidator was, of course, effected in the course of the realisation of the assets of the company and for the purpose of the amount realised being applied towards the discharge of the liabilities and the surplus to be distributed in the manner provided by the Act. It would also be correct to say that when a liquidator effects a sale he is not discharging any judicial function. Still it does not follow that every order of the Court merely for the reason that it is passed in the course of the realisation of the assets of the company must always be treated as merely an administrative one. The question ultimately depends upon the nature of the order that is passed. An order according sanction to a sale undoubtedly involves a discretion and cannot be termed merely a ministerial order, for before confirming the sale the Court has to be satisfied, particularly where the confirmation is opposed, that the sale has been held in accordance with the conditions subject to which alone the liquidator has been permitted to effect it, and that even otherwise the sale has been fair and has not resulted in any loss to the parties who would ultimately have to share the realisation.

The next question is whether such an order could be classified as an administrative order. One thing is clear, that the mere fact that the order is passed in the course of the administration of the assets of the company and for realising those assets is not by itself sufficient to make it an administrative, as distinguished from a judicial order. For instance, the determination of amounts due to the company from its debtors which is also part of the process of the realisation of the assets of the company is a matter which arises in the course of the administration. It does not on that account follow that the

determination of the particular amount due from a debtor who is brought before the Court is an administrative order.

It is perhaps not possible to formulate a definition which would satisfactorily distinguish, in this context, between an administrative and a judicial order. That the power is entrusted to or wielded by a person who functions as a Court is not decisive of the question whether the act or decision is administrative or judicial. But we conceive that an administrative order would be one which is directed to the regulation or supervision of matters as distinguished from an order which decides the rights of parties or confers or refuses to confer rights to property which are the subject of adjudication before the Court. One of the tests would be whether a matter which involves the exercise of discretion is left for the decision of the authority, particularly if that authority were a Court, and if the discretion has to be exercised on objective, as distinguished from a purely subjective, consideration, it would be a judicial decision. It has sometimes been said that the essence of a judicial proceeding or of a judicial order is that there should be two parties and a *lis* between them which is the subject of adjudication, as a result of that order or a decision on an issue between a proposal and an opposition... No doubt, it would not be possible to describe an order passed deciding a *lis* before the authority, that it is not a judicial order but it does not follow that the absence of a *lis* necessarily negatives the order being judicial. Even viewed from this narrow stand point it is possible to hold there was a *lis* before the Company Judge which he decided by passing the order. On the one hand were the claims of the highest bidder who put forward the contention that he had satisfied the requirements laid down for the acceptance of his bid and was consequently entitled to have the sale in his favour confirmed, particularly so as he was supported in this behalf by the official liquidators. On the other hand there was the 1st respondent and not to speak of him the large body of unsecured creditors whose interests, even if they were not represented by the 1st respondent, the Court was bound to protect. If the sale of which confirmation was sought was characterised by any deviation from the conditions subject to which the sale was directed to be held or even otherwise was for a gross undervalue in the sense that very much more could reasonably be expected to be obtained if the sale were properly held... it would be the duty of the Court to refuse the confirmation in the interests of the general body of creditors and this was the submission made by the 1st respondent. There were thus

two points of view presented to the Court by two contending parties or interests and the Court was called upon to decide between them. And the decision vitally affected the rights of the parties to property. In this view we are clearly of the opinion that the order of the Court was, in the circumstances, a judicial order and not an administrative one and was therefore not inherently incapable of being brought up in appeal.

GULLAPALLI NAGESHWARA RAO v. A.P.S.R.T. CORPN.

A.I.R. 1959 S.C. 308.

[In exercise of the powers conferred by Section 68 (c) of the Motor Vehicles Act, 1939 (as amended by Act 100 of 1956) General Manager of the State Transport Undertaking of the Andhra Pradesh Road Transport, published a scheme for the purpose of providing an efficient, adequate, economical and properly coordinated transport service mentioned therein with effect from the date notified by the State Government. Thereafter, the petitioners filed objections before Secretary to Government, Transport Department. Individual notices were issued by the Government fixing the date of the hearing. The Secretary to the Government, Home Department, incharge of Transport, heard the representations made by the objectors, and also the representation made by the General Manager of the Road Transport Undertaking. The Secretary, after hearing the objections, prepared notes and placed the entire matter with his notes before the Chief Minister, who considered the matter and passed orders rejecting the objections and approving the Scheme. The approved scheme was issued in the name of the Governor.

The petitioners, who had been carrying on motor transport business in Krishna District for several years, approached the Supreme Court under article 32 of the Constitution for the enforcement of their fundamental right to carry on the business of Motor transport. The decision of the Government was challenged on several grounds. The basic question involved was whether the State Government in approving the scheme was discharging a quasi-judicial or an administrative act.

The relevant sections of the Motor Vehicles Act, and rules thereunder are as follows:

Section 68-A:—Definitions: In this Chapter, unless the context otherwise requires,—

(a) "road transport service" means a service of motor vehicles carrying passengers or goods or both by road for hire or reward;

(b) "State transport undertaking" means any undertaking providing road transport service, where such undertaking is carried on by,—

- (i) the Central Government or a State Government;
- (ii) any Road Transport Corporation established under section 3 of the Road Transport Corporations Act, 1950;
- (iii) the Delhi Road Transport Authority established under section 3 of the Delhi Road Transport Authority Act, 1950;
- (iv) any municipality or any corporation or company owned or controlled by the State Government.

*Section 68-C:—*Preparation and publication of scheme of road transport service of a State transport undertaking. Where any State transport undertaking is of opinion that for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service, it is necessary in the public interest that road transport services in general or any particular class of such service in relation to any area or route or portion thereof should be run and operated by the State transport undertaking whether to the exclusion, complete or partial, of other persons or otherwise, the State transport undertaking may prepare a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and such other particulars respecting thereto as may be prescribed; and shall cause every such scheme to be published in the Official Gazettee and also in such other manner as the State Government may direct.

*Section 68-D:—*Objection to the scheme. (1) Any person affected by the scheme published under section 68-C may, within thirty days from the date of the publication of the scheme in the Official Gazette, file objections thereto before the State Government.

(2) The State Government may, after considering the objections and after giving an opportunity to the objector or his representatives and the representatives of the State transport undertaking to be heard in the matter, if they so desire, approve or modify the scheme.

(3) The scheme as approved or modified under sub-section (2) shall then be published in the Official Gazette by the State Government and same shall thereupon become final and shall be

called the approved scheme and the area of route to which it relates shall be called the notified area or notified route :

Provided that no such scheme which relates to any inter-State route shall be deemed to be an approved scheme unless it has been published in the Official Gazette with the previous approval of the Central Government.

Rule 8 : Filing of objections (procedure):—

Any person concerned or authority aggrieved by the scheme published under S. 68-C may, within the specified period, file before the Secretary to Government in charge of Transport Department, objections and representations in writing setting forth concisely the reasons in support thereof.

Rule 9 : Conditions for submission of objections:—

No representation or objection in respect of any scheme published in the Official Gazette shall be considered by the Government unless it is made in accordance with rule 8.

Rule 10 : Consideration of scheme (Procedure regarding) :

After the receipt of the objections referred to above, the Government may, after fixing the date, time and place for holding an enquiry and after giving, if they so desire, at least seven clear days' notice of such time and place to the persons who filed objections under rule 8, proceed to consider the objections and pass such orders as they may deem fit after giving an opportunity to the person of being heard in person or through authorised representatives.]

Subba Rao, J.

The aforesaid three decisions⁷ lay down that whether an administrative tribunal has a duty to act judicially should be gathered from the provisions of the particular statute and the rules made thereunder, and they clearly express the view that if an authority is called upon to decide respective rights of contesting parties or, to put it in other words, if there is a lis, ordinarily there will be a duty on the part of the said authority to act judicially. Applying the aforesaid test, let us scrutinize the provisions of Ss. 68-C and 68-D and the relevant rules made under the Act to ascertain whether under the said provisions the State Government performs a judicial act or an administrative one. Section 68-C may be divided into three parts: (i) The State

7. *Province of Bombay v. Khushaldas Advani*, A.I.R. 1950 S. C. 222; *Nagendra Nath Bora v. Commr. of Hills Division*, A.I.R. 1958 S.C. 398; *Express Newspapers Ltd. v. Union of India*, A.I.R. 1958 S.C. 875. (Ed.).

Transport Undertaking should come to an opinion that it is necessary in public interest that the road transport service in general or any particular class of such service in relation to any area or route or portion thereof should be run or operated by the State Transport Undertaking, whether to the exclusion, complete or partial, of other persons or otherwise; (ii) it forms that opinion for the purpose of providing an efficient, adequate, economical and properly co-ordinated road transport service; and (iii) after it comes to that opinion, it prepares a scheme giving particulars of the nature of the services proposed to be rendered, area or route proposed to be covered and such other particulars respecting thereto as may be prescribed and cause it to be published in the Official Gazette. The section, therefore, makes a clear distinction between the purposes for which a scheme is framed and the particulars of the schemes. To state it differently, though the purpose is to provide an efficient, adequate, economical and co-ordinated road transport service in public interest, the scheme proposed may affect individual rights such as the exclusion, complete or partial, of other persons or otherwise, from the business in any particular route or routes. Under S.68-C, therefore, the State Transport Undertaking may propose a scheme affecting the proprietary rights of individual permit-holders doing transport business in a particular route or routes. The said proposal threatens the proprietary rights of that individual or individuals. Under S. 68-D read with Rules 8 and 10 made under the Act, any person affected by the aforesaid proposed scheme may file objections within the prescribed time before the Secretary of the Transport Department. Under the said provisions, State Government is enjoined to approve or modify the scheme after holding an enquiry and after giving an opportunity to the objectors or their representatives and the representatives of the State Transport Undertaking, to be heard in the matter in person or through authorised representatives. Therefore, the proceeding prescribed is closely approximated to that obtaining in courts of justice. There are two parties to the dispute. The State Transport Undertaking, which is a statutory authority under the Act, threatens to infringe the rights of a citizen. The citizen may object to the scheme on public grounds or on personal grounds. He may oppose the scheme on the ground that it is not in the interest of the public or on the ground that the route which he is exploiting should be excluded from the scheme for various reasons. There is, therefore, a proposal and an opposition and the third party, the State Government is to decide that *lis* and *prima facie* it must do so judicially. The position is put beyond any doubt by

the provision in the Act and the Rules which expressly require that the State Government must decide the dispute according to the procedure prescribed by the Act and the Rules framed thereunder, *viz.*, after considering the objections and after hearing both the parties. It therefore appears to us that this is an obvious case where the Act imposes a duty on the State Government to decide the act judicially in approving or modifying the scheme proposed by the Transport Undertaking.

The learned Attorney-General argues that Ss. 68-C and 68-D do not contemplate the enquiry in regard to the rights of any parties, that the scheme proposed is only for the propose of an efficient, adequate, economical and properly co-ordinated bus transport service and should relate only to that purpose and that therefore, the enquiry contemplated under S.68-D, though assimilated to a judicial procedure, does not make the approval of the scheme any the less an administrative act. To put it shortly, his contention is that the Government is discharging only an administrative duty in approving the scheme in public interest and no rights of the parties are involved in the process. There is some plausibility and attraction in the argument, but we cannot accept either the premises or the conclusions. The scheme proposed may exclude persons, who have proprietary rights in a route or routes. As we have pointed out, the purpose must be distinguished from the particulars in the scheme. The scheme propounded may exclude persons from a route or routes and the affected party is given a remedy to apply to the Government and the Government is enjoined to decide the dispute between the contesting parties. The statute clearly, therefore, imposes a duty upon the Government to act judicially. Even if the grounds of attack against the scheme are confined only to the purpose mentioned in S. 68-C we cannot agree with this contention—the position will not be different for even in that case there is a dispute between the State Transport undertaking and persons excluded in respect of the scheme, though the objections are limited to the purpose of the scheme....

Support is sought to be drawn for this contention from the decision of the House of the Lords in *Franklin v. Minister of Town and Country Planning*, 1948 A.C. 87.

A comparison of the procedural steps under both the Acts⁸ brings out in bold relief the nature of the enquiries contemplated under the

8. The Motor Vehicles Act, 1939 (as amended by Act 100 of 1956), and the New Towns Act, 1946 (England). (Ed.).

two statutes. There, there is no *lis*, no personal hearing and even the public enquiry contemplated by a third party is presumably confined to the question of statutory requirements or at any rate was for eliciting further information for the Minister. Here, there is a clear dispute between the two parties. The dispute comprehends not only objections raised on public grounds but also in vindication of private rights and it is required to be decided by the State Government after giving a personal hearing and following the rules of judicial procedure. Though there may be some justification for holding, on the facts of the case before the House of Lords that that Act did not contemplate a judicial act—on that question we do not propose to express our opinion—there is absolutely none for holding in the present case that Government is not performing a judicial act. Robson in '*Justice and Administrative Law*', commenting upon the aforesaid decision, makes the following observation at page 533:

"It should have been obvious from a cursory glance at the New Towns Act that the rules of natural justice could not apply to the Minister's action in making an order, for the simple reason that the initiative lies wholly with him. His role is not to consider whether an order made by a local authority should be confirmed, nor does he have to determine a controversy between a public authority and private intrerests. The responsibility of seeing that the intention of Parliament is carried out is placed on him."

The aforesaid observations explain the principle underlying that decision and that principle cannot have any application to the facts of this case. In '*Principles of Administrative Law*', by Griffith and Street, the following comment is found on the aforesaid decision: After considering the provisions of S. 1 of the New Towns Act, 1946, the Authors say—

"Like the town-planning legislation, this differs from the Housing Acts in that Minister is a party throughout. Further, the Minister is not statutorily required to consider the objections. It is obvious, as the statute itself states, that the creation of new towns is of national interest."

At page 176, the authors proceed to state:

"Lord Thankerton did not analyse the meanings of 'judicial' and 'administrative' nor did he specify the particular factors which motivated his classification. It is permissible to conclude that he looked at the Act as a whole, applying a theory of interpretation similar to the rule in *Heydon's case*, 1584-3 Co. Rep. 7a, 7b."

It is therefore clear that Franklin's case.. is based upon the interpretation of the provisions of that Act and particularly on the ground that object of the enquiry is to further inform the mind of the Minister and not to consider any issue between the Minister and the objectors. The decision in that case is not of any help to decide the present case, which turns upon the construction of the provisions of the Act. For the aforesaid reasons, we hold that the State Government's order under S. 68-D is a judicial act.

Wanchoo, J. (Dissenting).

In the present case, it is urged by...the petitioners that there were two parties before the State Government, which was the deciding authority under S. 68 D (12), namely, the objectors and the representative of the State Transport Undertaking. Therefore, according to him, *prima facie*, there would be a duty to act judicially and there is no other factor which would take away the inference to be deduced from the presence of two parties before the State Government, which has to decide the matter. Whether there is any other factor will, however, depend upon the circumstances of each case, and the nature of the matter under hearing and the scope of the hearing. The learned Attorney-General contends that if one looks at the nature of the matter to be heard and considers the scope of the hearing before the State Government in this case only conclusion possible is that the State Government acts administratively when it gives a hearing under section 68(2).

What then is the nature of the hearing before the State Government? ...The scheme which has been published provides that there will be a complete exclusion of citizens when the scheme is enforced in the area to which it relates. Now, the question is whether the exclusion of citizens as a whole is also an issue to be decided by the State government when it hears objections. Mr. Nambiar submits that the most important thing for the State Government to decide is whether there should be a complete exclusion of citizens on the enforcement of the scheme. The learned Attorney-General on the other hand contends that all that the State Government has to do is to see whether the scheme published is in the interest of the public and also whether it will provide an efficient, adequate, economical and properly co-ordinated road transport service. The argument continues that if the State Government comes to that conclusion, the complete exclusion which the scheme provides *ipso facto* follows, and the State Government has not to decide the matter of exclusion as a separate issue. In other words, the argument is that the State

Government is not to decide between the competing claims of citizens providing transport privately and the State Transport Undertaking providing transport to the exclusion of citizens, and there is, therefore, no real *lis* in this case. It is also pointed out that objection cannot only be filed by the bus operators of that area who are to be excluded but also by anybody who is affected by the scheme, including the members of the travelling public. Giving my best consideration to the arguments on either side on this aspect of the matter, I have come to the conclusion that the scope of the hearing before the State Government is of a limited character, though the decision may affect citizens providing transport, the question whether private citizens should or should not be allowed to provide transport is really not a matter in issue before the State Government. What is in dispute before the State Government, is only whether the scheme that is proposed by the State Transport Undertaking is an efficient, adequate, economical and properly co-ordinated scheme for road transport service and whether it is in the interest of the public. If the State Government comes to the conclusion that it is so, the complete exclusion proposed automatically follows and the question of exclusion is not to be determined as a separate issue as between the objectors and the State Transport Undertaking. It is true that the State Government has the right to modify the scheme and in so doing it may drop a part of the scheme; but here again it is not modifying the scheme because of any right of a private citizen to carry on road transport service in a particular area but because it considers that the scheme so far as that particular area is concerned is not efficient, adequate, economical or properly co-ordinated or in the public interest. Unless it comes to that conclusion with respect to any part of the area comprised in the scheme and modifies it, the consequence of complete exclusion *ipso facto* follows. What I wish to emphasize is that the State Government is not determining whether there should be State monopoly or private enterprise when it is considering objections under S. 69 D (2); it is only deciding whether the scheme put forward before it is such as can be approved with or without modifications within four corners of the law laid down under S. 68 C. If it comes to that conclusion, the complete or partial exclusion follows. If on the other hand it modifies any part of the scheme, exclusion fails to that extent. Considering, therefore, the nature and the scope of the hearing under S. 68 D(2) it seems to me that there is really no *lis*. Even though there may be two parties before the State Government at the hearing, there is no determination of the rights

before it. The determination is only of the efficiency etc., of the scheme proposed and whether it is in the public interest. Therefore, it cannot be said that the nature of the hearing in this case makes the State Government a quasi-judicial tribunal and the decision a quasi-judicial act within the meaning of the principles laid down in Advani's case....

Sinha, J. (Dissenting).

The question now arises whether, in view of the provisions of Chapter IVA... the determination by the State Government is judicial or quasi-judicial in character, as contended for the petitioners, or only of an administrative character, as contended on behalf of the respondents. In order that a determination may be characterized as judicial or quasi-judicial, it is essential that it should be objective, based on evidence pro and con (not necessarily given in accordance with the strict rules of evidence) by a determinate authority who should not have the right to delegate such a function of a judicial character. Section 68D (2) authorizes the State Government to decide whether or not the proposed scheme should be approved or modified. The "State Government" may mean the Governor himself or any of his Ministers or Deputy-Ministers or any officers in the Secretariat, according to the rules of business promulgated under Art. 166 of the Constitution. Section 68D (2) could not have meant that the Governor himself or any of his Minister should personally hear the objections—that would be throwing too great a burden on them. The objections may be heard by any one who has been delegated that power. If that is correct, the function to be performed under S. 68D (2), does not satisfy the test of a Judicial hearing. Under that section, the objections may be heard by 'A' and the decision arrived at by 'B'. If that is a regular procedure under that section, that is not an index of a judicial process.

Another very important consideration pointing to the conclusion that the determination under S. 68D (2) is not of a judicial character (using it in the comprehensive sense, including 'quasi-judicial', which expression has not been approved by high judicial authorities), is that no objective tests have been laid down in Chapter IV-A with reference to which, the determination has to be arrived at. The expressions "efficient", "adequate", "economical", properly co-ordinated" and "public interest" are matters of opinion and policy, as S. 68 C itself indicates, and do not lay down any objective tests. If I am right in that conclusion, there cannot be any question of evidence

forthcoming in proof of something which is subjective to the authority determining that matter.

A very fundamental consideration in this connection is whether Ss. 68C and 68D contemplate any *lis*. In other words, what is the proper scope and ambit of the inquiry envisaged by those sections? The scheme prepared and published in accordance with S. 68C by a State Transport Undertaking, is placed before the public only after the Undertaking has reached the conclusion that it is necessary in the public interest. After the scheme has been prepared and published as aforesaid, the objections to be filed under S. 68D have reference to the basic question whether or not the scheme as published, was in public interest. Such objections are open to any person or organization, e.g. an Automobile Association, and are not limited only to persons who are providing road transport services. In my opinion, it is a mistake to suppose that the objections contemplated by S. 68D (1), could be on grounds personal to the objectors who are engaged in the business of providing road transport services. It is not open to any particular individual carrying on the business of providing road transport services, to claim that his route should be excluded from the operation of the effective words of S. 68D (1), namely, "file objections thereto", that is, to the scheme published under S. 68 C. The objections have to be limited to the merits of the scheme as propounded by the State Transport Undertaking. It will, therefore, be opening the gates too wide to hold that the objections have reference to particular routes or portions of routes covered by private transport services. The underlying purpose of inviting objections, is not to invite "claims" by individual businessmen engaged in providing road transport services, but to bring out useful information bearing on the feasibility and soundness of the scheme, as propounded by the Undertaking. Once, the Government has decided upon a policy of nationalization of road transport facilities, the question of safeguarding the interest of individual businessmen in that line, is no more relevant. What is relevant for the purpose of the inquiry by the Government, on receipt of objections, is whether the published scheme is in the interest of the public. In my opinion, therefore, it is erroneous to suppose that the object of S. 68D (1) is to afford any remedy to a private individual in his personal interest. Particulars of the scheme required to be published under S. 68 C, are meant for the information of the public, so that persons feeling interested in a public venture like that, may offer intelligent and constructive criticism with reference to the merits of the scheme. It is equally erroneous to suppose that

there are two parties, one, represented by the Undertaking, and the other, represented by persons who are engaged in the business of providing road transport services—and that the Government is the third party, which is the arbitrator between the two contesting parties. That, in my opinion, is not a correct reading of the provisions of Chapter IVA of the Act. The whole aim and object of that Chapter is to replace individual businessmen engaged in that trade, by nationalised road transport services which are meant to be run in the interest of the community as a whole, and thus to serve the best public interest. The Government is as much interested in the scheme as the Road Transport Undertaking which is a creature and a limb of the Government, brought into existence with a view to implementing the policy of the Government to provide nationalised road transport services. That being the whole scheme of the policy of nationalisation, it is not correct to represent the State Transport Undertaking as entering into competition with other individual or incorporated bodies whose business it is to provide the same kind of transport facilities. That is made clear by the provisions of S. 68F, which, as indicated above, make it obligatory on the Regional Transport Authority to issue permits as applied for by the State Transport Undertaking. It follows from the foregoing observations that there is no question of the Government functioning as an adjudicating authority as between the rival claims of the Undertaking and private persons engaged in the same kind of activity, or that the Secretary to Government in the Department of Road Transport, when he personally heard the objections, was functioning as a judge....

The scheme as prepared and published, may have proposed, as it did in instant case, completely to exclude other persons from providing road transport service in the notified area by the notified routes. But the State Government is not concerned with determining whether any or some or all of the objectors could be permitted to provide or continue to provide their own road transport service. The State Government under S. 68D (2) has only to decide whether or not the proposed scheme should be approved or modified in any way. The decision to be arrived at by State Government, is confined to the scheme, and is not concerned with rival claims by persons providing road transport service in the same area or by the same routes.... It has been held and it may be taken as well settled that when there is a competition between a number of applicants for a particular route for supplying road transport service, the Regional Transport Authority or any other Authority deciding between those conflicting claims, has

to determine the matter in a quasi-judicial way, because they are determining questions affecting the rights of individuals. But in the proceeding before the State Government, no such rival claims have to be decided upon. What has to be determined is whether the proposed scheme will serve public interest. Thus, in proceedings under Chapter IV of the Act,⁹ individual claims have to be decided upon, whereas under Chapter IVA, it is the collective interest of the community as a whole, which is the subject-matter of determination by the State Government. In other words, the proposed scheme is the outcome of the decision by a limb of the State Government (State Transport Undertaking), which has come to the conclusion that it is in the public interest that road transport service should be run and operated by the State. The calling of objections by persons affected by the scheme, is not with a view to deciding between the rival claims of the State Undertaking and individuals providing road transport services in the area or routes proposed to be covered. The State Transport Undertaking has not made any claim at this stage. Such a claim arises after the determination by the State Government under S. 68D (2). That stage is reached when the State Transport Undertaking applies for permits under S.68F. Such a claim for a permit, once made by the Undertaking, is no more a rival claim to be treated along with claims of other individuals providing such road transport services, but an absolute claim which under that section shall be granted by the Regional Transport Authority which is authorised even to cancel an existing permit or modify the terms of an existing permit, or to refuse renewal of permits, with a view to implementing the approved scheme. In my opinion, therefore, it is not correct to view the proceedings under Chapter IVA before the State Government as a *lis* between any rival claims, unlike proceedings under Chapter IV of the Act. In view of these considerations, I would hold that there is no *lis* between rival claims, no determinate tribunal to determine any *lis*, and no procedure prescribed in Chapter IVA approximating or even simulating judicial procedure....

Note :

[The majority in the case held that there was a '*lis*' between the Department, on the one hand and the objectors, on the other and the Chief Minister was to decide the matter. Will it not be correct to say that Transport Department, and the Chief Minister being limbs of the Government, the case was more in the nature of the Government

9. Chapter IV deals with the control of motor vehicles by the state governments, viz., grant of stage carriages permits, etc., (Ed.).

deciding a matter between itself and objectors and, therefore, the presumption in favour of the action being quasi-judicial should not have been drawn as the majority did.

Is not the preparation of a general transport scheme more akin to what a legislature does than what a court does? Was not the function of the Chief Minister, in approving the scheme, legislative in nature? Did not the Court's opinion reveal the same confusion as was shown by the United States Supreme Court in the famous Morgan cases¹⁰? Is the procedure prescribed determinative?]

**NATHANSON, THE RIGHT TO FAIR HEARING IN INDIAN,
ENGLISH AND AMERICAN ADMINISTRATIVE LAW**

Journal of the Indian Law Institute, Vol. 1, 500-501, and 515 (1958-59)

It is more difficult to compare the *Advani*¹¹ case and the *Road Transport Case*¹² because the former involved only the question of reviewability on *certiorari* and not the fairness of the proceedings. However, it is apparent that the court regarded the key question as the same—namely, whether the proceedings were properly to be characterized as quasi-judicial or not. Here again the case may be distinguished on the particular facts because the statute in *Advani* unlike that in *Road Transport* did not specifically provide for any hearing at all. However, the essential nature of the determination, whether it was necessary or expedient to requisition land for a public purpose, is closely comparable to the policy determination in the *Road Transport* case. Therefore, insofar as the character of the determination is regarded as decisive, the two decisions may be regarded as conflicting. But the question still to be answered is whether the character of determination, apart from the provisions for hearing, can be regarded as decisive.

In *Nagendra Nath*, the character of the issue to be determined, namely the relative qualifications of applicants for licences, doubtless involved questions of policy as well as fact. It is, however, the kind of question with respect to which the relevant facts and considerations might more readily be encompassed within the four corners of a formal record than the consideration of general public policy involved in the

10. 298 U.S. 468; 304 U.S. 1; 307 U.S. 183; 313 U.S. 409.

11. *Province of Bombay v. Khushaldas Advani*, A.I.R. 1950 S. C. 222.

12. *Gullapalli Nageshwararao Rao v. A.P.S.R.T. Corp.*, A.I.R. 1959 S.C. 308.

Road Transport case. This may possibly help to explain Justice Sinha's position in the two cases, in addition to his own emphasis on the hierarchy of administrative appeals provided for in the liquor licensing case. Finally, the actual decision in the *Express*¹³ case, sheds no light on the attitude of the Court towards this problem since it was placed entirely on other grounds. However, it is interesting that Justice Bhagwati suggested some doubt as to whether the distinction between quasi-judicial, administrative or legislative need really be regarded as determinative and whether some requirements of fairness or natural justice might not be implied from the statutory authority, even if the proceedings were not characterized as quasi-judicial.

[In the *Andhra Transport Case*]...[C]ertain procedural safeguards expressly included in the statute necessarily implied others which were not so included. Particularly speaking, the provisions explicitly included were those requiring that the State Transport Undertaking was to propose a plan, that persons affected might object, and that the government was to hold a hearing at which both the Transport Undertaking and the objectors were to be heard. The implied safeguards were that the hearing must be conducted in an essentially judicial manner, that the hearing officer must be truly impartial and that the person who hears must also be the one who decides. The danger of this approach is that if such implications are drawn too freely and tend to impose substantial burdens on efficient administration, the Legislature will be tempted to dispense entirely with the explicit safeguards which provided the basis for the implication.

It will be recalled that the majority opinion distinguishes the statutory provisions involved in the *Andhra* case from those involved in *Franklin* on the ground that latter did not include provisions for presentation of a plan by a subordinate authority which would then defend that plan against objectors at the hearing. The distinction is factually correct, but it merely establishes that the Indian statute did contain some safeguards not included in the English statute. It does not establish the wisdom of implying still further safeguards which bring the entire proceeding closer to the judicial pattern. The analogy of the Transport Undertaking and the objectors to contending parties to a law suit, may be sufficiently close to suggest the desirability of a hearing at which both the Transport Undertaking and the objectors appear, without implying that the government is judging between two contending litigants. The issues between the so-called contending

13. *Express Newspapers v. Union of India*, *supra* note 7.

parties are no different than those that would be presented between the government and objectors if the statute had simply required the government to present a tentative proposal, without specifying any particular agency of the government as proponent of the plan. Those issues, as the dissenters forcefully argue, concern primarily broad considerations of public policy, rather than the specific rights of individuals.

BOARD OF REVENUE v. VIDYAVATI

A.I.R. 1962 S.C. 1217.

[Under section 56(2) of the Stamp Act, 1889, if a Collector feels any doubt as to the amount of duty which is chargeable on any instrument, he may draw up a statement of the case, and refer it, with his own opinion thereon, to the Chief Controlling Revenue Authority for decision. Acting under this section, the Collector referred a case to the Board of Revenue for its decision. The question that arose in the appeal was whether the Board of Revenue when dealing with a proceeding under section 56(2) acts administratively or quasi-judicially.]

Wanchoo, J.

...It is clear, therefore, that S. 56 (2) deals with cases where there is a doubt in the mind of the Collector in regard to an instrument which comes up before him under the above provisions of the Act as to the construction of the instrument and the provisions of the Act applicable to it. Such doubt itself shows that the point raised for the Collector's decision is a difficult point of law and from the very nature of the duty to be performed in such circumstances it appears clear that the Chief Controlling Revenue Authority has to decide the matter judicially and would thus be a quasi-judicial tribunal.

...[T]he question whether an authority, like the Board of Revenue, acts judicially is to be gathered from the express provisions of the Act in the first instance. Where, however, the provisions of the Act are silent, the duty to act judicially may be inferred from the provisions of the statute or 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 and other indicia afforded by the statute. It is true that in the present case the Act and the Rules framed thereunder do not provide for a hearing by

the Board of Revenue, when it is dealing with a matter under S. 56(2) of the Act. But the question that is before the Board of Revenue under S. 56(2) is of the construction of an instrument and the application of the Act to it. In many cases decision of the Board, if it goes against the person executing the instrument, may result in payment of large amount as deficit stamp duty and even larger amounts as penalty. The question is purely a question of law in the circumstances. It seems to us considering the nature of the duty cast on the Board of Revenue under S. 56(2) requiring it to construe instruments submitted to it thereunder and the application of the Act to them which may result in payment of heavy amounts of deficit duty and even heavier amounts as penalty, that the legislature intended that party affected by the decision of the Board of Revenue should be given a hearing, and that the Board should act judicially in deciding a pure question of law. The fact that the decision will depend upon the opinion of the Board cannot in any way make any difference for the determination of questions of law must always depend upon the opinion arrived at judicially of the person or authority who has to determine it, and that will not necessarily mean that the person determining it cannot possibly be required to act judicially because he has to act upon his opinion. Further, S. 57 enforces the above conclusion.... This provision shows that questions referred to the Board under S. 56(2) may be such complicated questions of law that the Board may not be able to make up its mind and may be in doubt and in such a case the Board has the power to refer the matter to the High Court along with its opinion, and the question has to be decided by a Bench of three judges where, undoubtedly the hearing could not but be judicial. If therefore the hearing under S. 57 is judicial it would in our opinion be proper to infer that the hearing under S. 56(2) which deals with similar questions must also be judicial.

We are therefore of opinion that, considering the totality of circumstances and the nature of the matter to be determined by the Board of Revenue under S. 56(2), the Board has to act judicially when proceeding under S. 56(2) and must therefore on principles of natural justice give a hearing to the other party namely, the executant of the instrument....

BOARD OF HIGH SCHOOL v. GHANSHYAM

A.I.R. 1962 S.C. 1111

[Respondents, students of G. S. Hindu Intermediate College, at Sikandrarao, appeared at the Intermediate (Commerce) Examination conducted by the appellant in the year 1954. On 12th June 1954, the result of the examination was published in newspapers and the three respondents passed in the second division. Thereafter, they prosecuted further studies. In December, 1954, their fathers and guardians were informed by the Principal of the G. S. Hindu Intermediate College that the Examinations' Committee of the appellant (hereinafter referred to as the Committee) had cancelled the results of the respondents for the examination of 1954 and that they had also been debarred from appearing at the examination of 1955. Thereupon, the respondents filed a writ petition in the High Court contending that the Committee had never afforded any opportunity to them to rebut the allegations made against them and that they were never informed about the nature of the unfair means used by them in the said examination and the first thing they came to know was the resolution of the Committee cancelling their results and debarring them from appearing in 1955. The procedure thus adopted by the appellant violated the principles of natural justice in as much as they were given no opportunity whatsoever to defend themselves and to show cause against the action contemplated against them, and, therefore, the resolution cancelling their results and debarring them from appearing in the later examination was without jurisdiction and illegal.

The appellant opposed the application and contended that the respondents had used unfair means at the examination and their cases were reported to the Committee under the Regulations and the Committee had acted under the powers conferred on it under the Act and the Regulations framed thereunder after a thorough inquiry. It was not disputed, however, that no opportunity had been afforded to the respondents to rebut the allegations against them in the inquiry made by the Committee which resulted in the resolution cancelling the results of the examination.

The High Court held that the Committee was acting merely administratively; nevertheless, they came before the Supreme Court in appeal.]

Wanchoo, J.

The main contention on behalf of the appellant is that the High Court was wrong in the view it took that any opportunity for hearing

was necessary in this case even though the Committee acted merely administratively. It is contended that where a body is acting merely administratively, it is not necessary that it should give a hearing to a party who might be affected by its decision and that the principles of natural justice, including the maxim, *audi alteram partem*, apply only to judicial or quasi-judicial bodies, i.e., bodies on whom a duty is cast to act judicially.... The respondents on the other hand contend that though the final decision of the High Court is correct, the High Court was not right in holding that the Committee was acting merely administratively in a matter of this kind; they contend that considering the entire circumstances which operate in cases of this kind, the High Court should have held that there was a duty to act judicially and therefore it was necessary to give an opportunity to the respondents to be heard before action was taken against them....

The first question therefore which falls for consideration is whether any duty is cast on the Committee under the Act and Regulations to act judicially and therefore it is a quasi-judicial body....

We must therefore proceed to examine the provisions of the Act and the Regulations framed thereunder in connection with matter of this kind to determine whether the Committee can be said to have the duty to act judicially when it deals with cases of examinees using unfair means in examination halls. Under S. 7 of the Act, the Board constituted thereunder has *inter alia* powers to prescribe courses of instruction, to grant diplomas and certificates, to conduct examinations, to admit candidates to its examinations, to publish the results of its examinations, and to do all such things as may be requisite in order to further the objects of the Board as a body constituted for regulating and supervising High School and Intermediate education. Under Section 13, the Board has power to appoint and constitute various committees including the examinations, and under S. 14, the Board can delegate its powers by Regulations to such committees. Section 15 gives power to the Board to make Regulations with respect to the constitution, powers and duties of committees, the conduct of examination, and all matters which by the Act may be provided for by Regulations. Section 20 gives power to the Board and its committees to make bye-laws consistent with the Act and the Regulations.

It will be clear from the above that the Act makes no express provisions as to the powers of the Committees and the procedure to

be adopted by them in carrying out their duties, which are left to be provided by Regulations, and we have therefore to look to the Regulations framed under S. 15 to see what powers and duties have been conferred on various committees constituted under the Regulations. Section 13 (1) makes it incumbent on the the Board to appoint the Committee and Chapter VI of the Regulations deals with the powers and duties of the Committee. Rule 1 (1) of Chapter VI with which we are particularly concerned reads as follows:—

“It shall be the duty of the Examinations’ Committee, subject to sanction and control of the Board.

(1) to consider cases where examinees have concealed any fact or made a false statement in their application forms or a breach of rules and regulations to secure undue admission to an examination or used unfair means or are guilty of a moral offence or indiscipline and to award penalty which may be one or more of the following :—

- (1) withdrawal of certificate of having passed the examination ;
- (2) cancellation of the examination;
- (3) exclusion from the examination.”

There is, however, no provision in Chapter VI as to how the Committee will carry out the duty imposed on it by R.1 (1). Further, there is no express provision in the Act or the Regulations casting a duty on the Committee to act judicially when exercising its powers under R.1 (1) and the question whether the Committee has to act judicially when exercising these powers will have to be decided on an examination of all the circumstances relevant in the matter. At the same time, there is nothing express in the Act from which it can be said that the Committee is not under a duty to act judicially. It is true that there is no procedure provided as to how the Committee will act in exercising its powers under R.1 (1) and it is further true that there is no express provision in that rule requiring the Committee to call for an explanation from the examinees concerned and to hear the examinees whose cases it is required to consider. But we are of opinion that the mere fact that the Act or the Regulations do not make it obligatory on the Committee to call for an explanation and hear the examinee is not conclusive on the question whether the Committee acts as a quasi-judicial body in exercising its powers under R.1 (1). Even though calling for an explanation and hearing the examinee may not have been made expressly obligatory by the Act or the Regulations, it is obvious that the Committee when it proceeds to decide matters covered by R.1 (1) will have to depend upon materials

placed before it, in coming to its decision. Before the Committee decides to award any penalty it has to come to an objective determination on certain facts and only when it comes to the conclusion that these facts are established that it can proceed to punish the examinee concerned. The facts which the Committee has to find before it takes action are :—

- (i) Whether the examinee has concealed any fact or made a false statement in his application form; or
- (ii) Whether the examinee has made a breach of the Rules and Regulations to secure undue admission to an examination; or
- (iii) Whether the examinee has used unfair means at the examination; or
- (iv) Whether the examinee has committed fraud (including impersonation) at the examination; or
- (v) Whether the examinee is guilty of moral offence or indiscipline.

Until one or other of these five facts is established before the Committee, it cannot proceed to take action under R.1 (1). In order to come to the conclusion that one or other of these facts is established, the Committee will have to depend upon materials placed before it, for in the very nature of things it has no personal knowledge in the matter. Therefore, though the Act or the Regulations do not make it obligatory on the Committee to call for an explanation and hear the examinee, it is implicit in the provisions of R.1 (1) that the Committee must satisfy itself on materials placed before it that one or other of the facts is established to enable it to take action in the matter. It will not be possible for the Committee to proceed at all unless materials are placed before it to determine whether the examinee concerned has committed some misconduct or the other which is the basis of the action to be taken under R.1 (1). It is clear therefore that consideration of materials placed before it is necessary before the Committee can come to any decision in the exercise of its powers under R.1 (1) and this can be the only manner in which the Committee can carry out the duties imposed on it.

We thus see that the Committee can only carry out its duties under R.1 (1) by judging the materials placed before it. It is true that there is no lis in the present case, in the sense that there are not two contesting parties before the Committee and the matter rests between the Committee and the examinee, at the same time

considering that materials will have to be placed before the Committee to enable it to decide whether action should be taken under R.1 (1), it seems to us only fair that the examinee against whom the Committee is proceeding should also be heard. The effect of the decision of the Committee may in an extreme case blast the career of a young student for life and in any case will put a serious stigma on the examinee concerned which may damage him in later life. The nature of misconduct which the Committee has to find under R. 1 (1) in some cases is of a serious nature, for example, impersonation, commission of fraud, and perjury; and the Committee's decision in matters of such seriousness may even lead in some cases to the prosecution of the examinee in courts. Considering therefore the serious effects following the decision of the Committee and the serious nature of the misconduct which may be found in some cases under R.1 (1), it seems to us that the Committee must be held to act judicially in circumstances as those. Though therefore there is nothing express one way or the other in the Act or the Regulations casting a duty on the Committee to act judicially, the manner of the disposal, based as it must be on materials placed before it, and the serious effects of the decision of the Committee on the examinee concerned, must lead to the conclusion that a duty is cast on the Committee to act judicially in this matter particularly as it has to decide objectively certain facts which may seriously affect the rights and careers of examinees, before it can take any action in the exercise of its power under R.1 (1). We are therefore of opinion that the Committee when it exercises its powers under R.1 (1) is acting quasi-judicially and the principles of natural justice which require that the other party, (namely, the examinee in this case) must be heard, will apply to the proceedings before the Committee....¹⁴

It is urged on behalf of the appellant that there are a large number of cases which come up before the Committee under R. 1 (1), and if the Committee is held to act judicially as a quasi-judicial tribunal in the matter it will find it impossible to carry on its task. This in our opinion is no criterion for deciding whether a duty is cast to act judicially in view of all the circumstances of the case. There is no doubt in our mind that considering the totality of circumstances the Committee has to act judicially when taking action under R. 1 (1). As to the manner in which it should give an opportunity to the examinee concerned to be heard, that is a matter which can be

14. *Dipa Pal v. University of Calcutta*, A.I.R. 1952 Cal. 594; *B. C. Das Gupta v. Bijoyranjan Rakshit*, A.I.R. 1953 Cal. 212.

provided by Regulations or Bye-laws if necessary. As was pointed out in *Local Government Board v. Arlidge*, 1915 A.C. 120 all that is required is that the other party should have an opportunity of adequately presenting his case. But what the procedure should be in detail will depend on the nature of the tribunal. There is no doubt that many of the powers of the Committee under Chapter VI are of administrative nature; but where quasi-judicial duties are entrusted to an administrative body like this it becomes a quasi-judicial body for performing these duties and it can prescribe its own procedure so long as the principles of natural justice are followed and adequate opportunity of presenting his case is given to the examinee....

RADESHYAM v. STATE OF MADHYA PRADESH

A. I. R. 1959 S. C. 107.

[Two factions existed in the Municipal Committee of Dhamtari which made charges against each other.

Finally, the State Government, under section 53A of the C.P. and Berar Municipalities Act, 1922 notified that the Municipal Committee was incompetent to do its work and, therefore, appointed an Executive Secretary for a period of eighteen months to perform the various duties to the exclusion of the committee, President, Vice-President, or Secretary. The case was brought to the Supreme Court by special leave to appeal.

The main contention of the appellants (the President and the Committee) was that the notification was ultra vires the State Government as it was made in breach of the rules of natural justice in so far as no opportunity was given to the appellants to defend themselves.

Sections 53 A and 57 of the Act ran as follows :—

"53 A (1) If a committee is not competent to perform the duties imposed on it or undertaken by it by or under this Act or any other enactment for the time being in force and the State Government considers that a general improvement in the administration of the municipality is likely to be secured by the appointment of a servant of the Government as the executive officer of the committee, the State Government may, by an order stating the reasons therefor published in the Gazette, appoint

such servant as the executive officer of the committee for such period not exceeding eighteen months as may be specified in such order."

"57 (1) If a committee is not competent to perform, or persistently makes default in the performance of the duties imposed on it or undertaken by it under this Act or any other enactment for the time being in force, or exceeds or abuses its powers to a grave extent, the State Government may, by an order stating the reasons therefor published in the Official Gazette, dissolve such committee and may order a fresh election to take place.

"(5) No order under sub-s. (1)... shall be passed until reasonable opportunity has been given to the committee to furnish an explanation."

According to S. 57 (5), no order under S. 57 (1) could be passed until reasonable opportunity had been given to the committee to furnish an explanation.]

S. R. Das, C. J.

It is pointed out that in case of incompetency, action can be taken either under S. 53-A or S. 57 but in case of abuse of power action can be taken only under S. 57. Reference is then made to the grounds enumerated in the notification itself and it is argued that except perhaps grounds a, b, c, and g which may be indicative of incompetency, the other grounds, which are, by far, greater in number, obviously constitute abuse of powers and from this circumstance the conclusion is sought to be drawn that in substance and in reality the impugned notification must have been made under S. 57 and that being so the notification cannot be sustained because of the non-compliance with the provisions of sub-sec. (5) of S. 57 which expressly lay down that no order under sub-sec. (1) or (2) shall be passed until reasonable opportunity has been given to the committee to furnish an explanation. I am not persuaded to uphold this argument.

...The effect of an order made under S. 57 is, therefore, extremely drastic and puts an end to the very existence of the committee itself and, in view of the grave nature of the consequence that will ensue, the legislature presumably thought that some protection should be given to the committee before such a drastic action was taken and accordingly it provided, by sub-sec. (5) of that section, that no order should be passed until reasonable opportunity had been given to the committee to furnish an explanation—a provision which clearly

indicates that action under S. 57 can only be taken after hearing and considering all the explanations furnished by or on behalf of the committee. The legislature did not think fit to provide a similar safeguard in S. 53-A presumably because the order under the last mentioned section was of a temporary duration, was not very drastic and did not threaten the very existence of the committee....

What, then, is the position here? Certain charges had been made in writing against the Committee and its president which were forwarded to the president with a request to submit explanations in detail. The President, acting in his official capacity, gave detailed explanations in writing and sent the same officially from the office of the municipal committee to the Additional Deputy Collector who was deputed by the Collector to hold the enquiry. The Additional Deputy Collector held the enquiry during which the president appeared in person on several days and came to certain findings and presumably made his report which in due course must have reached the State Government. The State Government apparently accepted such of those findings as have been set out in the notification itself. Even according to learned counsel for the appellants some of those findings amount only to incompetency and the rest, he contends, amount to abuse of power.... Taking the position to be as contended by learned counsel for the appellants the position was that, as a result of the enquiry, the State Government found two things against the appellant committee, namely (i) that it was guilty of incompetency and (ii) that it was also guilty of certain abuses of power. I have already stated that the State Government was not obliged to take any action at all either under S. 53-A or under S. 57. If the State Government considered that it was necessary to take action, it was entirely for the State Government to consider whether it would take action for incompetency or for abuse of power....

...[L]earned counsel for the appellants contends that where a statute requires a decision to be arrived at purely from the point of view of policy or expediency the authority is under no duty to act judicially. He urges that where, on the other hand, the order has to be passed on evidence either under an express provision of the statute or by implication and determination of particular facts on which its jurisdiction to exercise its power depends or if there is a proposal and an opposition the authority is under a duty to act judicially....

...He concedes that the ultimate order under that section (S. 53-A) is purely discretionary, that is to say, the State Government is not

obliged to take any action under the section. It may make an order under the section or it may not according as it thinks fit. But in case the State Government chooses to act under the section, it can only do so if the conditions therein laid down are fulfilled.... [T]here are two prerequisites to be satisfied before the State Government can take action under S. 53-A, namely, (1) that the municipal committee is not competent to perform the duties imposed on it and (2) that the State Government considers that a general improvement in the administration of the municipality is likely to be secured by the appointment of a servant of the Government as the Executive Officer of the Committee.... Of the two conditions the second one, by the very language in which it is expressed, is left entirely a matter for the State Government to consider, for it depends entirely on the view of its own duty and responsibility that the State Government may take on a consideration of the situation arising before it. In other words, the statute has left that matter to the subjective determination of the State Government. The first requisite, however, is an objective fact, namely, whether the committee is or is not competent to perform the duties imposed on it. The determination of that fact, it is pointed out, has not been left to the subjective determination by the State Government. Learned counsel for the appellants urges that if it were intended to leave the determination of this fact of incompetency also to the subjective opinion of the State Government, the section would have been framed otherwise. It would have said something like this: 'If the State Government consider that a committee is not competent to perform the duties... and that the general improvement in the administration of the municipalities is likely to be secured by....' This the Legislature has not done and has, thus, clearly evinced an intention not to leave it to the ipse dixit of State Government. Section 53-A, it is pointed out, differs materially in this respect from S.3 of the Bombay Land Requisition Ordinance (V of 1947) which was considered by this Court in *Khushaldas Advani's* case. (A. I. R. 1950 S. C. 222). That section of the Bombay Ordinance opened with the words: 'If in the opinion of the Provincial Government....' which were taken as indicative of the Legislature's intention to leave the determination of the existence of all the conditions precedent entirely to the subjective opinion of the Provincial Government so as to make the action a purely administrative one. The argument is that the first requirement is the finding of a fact which may be called a jurisdictional fact, so that the power under S. 53-A can only be

exercised when that jurisdictional fact is established to exist. The determination of the existence of that jurisdictional fact, it is contended, is not left to the subjective opinion of the State Government and that although the ultimate act is an administrative one the State Government must at the preliminary stage of determining the jurisdictional fact act judicially and determine it objectively, that is to say, in a quasi-judicial way. It is assumed that whenever there has to be a determination of a fact which affects the rights of the parties, the decision must be a quasi-judicial decision....

The simple fact that the incompetency of the committee goes to the root of the jurisdiction of the State Government to exercise its power under S.53-A does not require that that fact must be determined judicially. The sole question is, does the statute require the State Government to act judicially. There need not be any express provision that the State Government must act judicially. It will be sufficient if this duty may be implied from the provisions of the statute. The mere fact that a question of fact has to be determined as a preliminary condition before action can be taken under the statute by itself does not carry that implication. There must be some indication in the statute as to the manner or mode in which the preliminary fact is to be determined. I find nothing in S. 53-A which in terms imposes any duty on the State Government to act judicially. No form of procedure is laid down or even referred to from which such a duty could be inferred. On the contrary one finds a significant omission of any provision like that embodied in sub-sec. (5) of S. 57 which requires that no order under that section shall be passed until reasonable opportunity has been given to the committee to furnish an explanation.... Further, S. 53-A contemplates swift action and a judicial hearing may easily frustrate the very purpose contemplated by S. 53-A, for a judicial act will be subject to the powers of superintendence of the superior Courts and the operation of the order under S. 53-A may be postponed.... The requirement that the State Government must give reasons for the order it makes, does not necessarily require it to record a judgment judicially arrived at....

To say that action to be taken under S. 53-A is an administrative action is not to say that the State Government has not to observe the ordinary rules of fair play.... But that is quite different from the well ordered procedure involving notice and opportunity of hearing, necessary to be followed before a quasi-judicial action, open to correction by a superior court by means of a writ of certiorari, can be taken. The difference lies in the manner and mode of the two

procedures. For the breach of the rules of fair play in taking administrative action a writ of certiorari will not lie.

S. K. Das, J.

To get to the bottom of the distinction, we must go a little deeper into the content of the expression 'duty to act judicially'. As has been repeated so often, the question may arise in widely differing circumstances and a precise, clear-cut or exhaustive definition of the expression is not possible. But in decisions dealing with the question several tests have been laid down for example—

- (i) Whether there is a *lis inter parties*;
- (ii) Whether there is a claim (or proposition) and an opposition;
- (iii) Whether the decision to be founded on the taking of evidence or on affidavits;
- (iv) Whether the decision is actuated in whole or in part by questions of policy or expediency, and if so, whether in arriving at the decision, the statutory body has to consider proposals and objections and evidence; and
- (v) Whether in arriving at its decision, the statutory body has only to consider policy and expediency and at no stage has before it any form of *lis*.

The last two tests were discussed and considered in (1952)2 Q.B. 413¹⁵. It is fairly clear to me that tests (i) to (iv) are inappropriate in the present case by reason of the provisions in S. 53-A as contrasted with S. 57 and other sections of the Act. The test which is fulfilled in the present case is test (v) and that makes the function under S. 53-A a purely administrative function in spite of the requirement of an initial determination of a jurisdictional fact and the recording of reasons for the decision.

I am content to rest my decision on the aforesaid ground, as I am not satisfied that the enquiry held by the Deputy Collector was a proper enquiry if it be held that S 53-A entrusts a quasi-judicial function to the State Government and therefore requires compliance with the principles of natural justice. That enquiry was for a different purpose altogether, the charges were not the same, and in my view the Municipal Committee had no real opportunity of meeting the charges on which the State Government ultimately took action. I prefer, therefore, to base my decision on the third question on the

15. *R. v. Manchester Legal Aid Committee*, (Ed.).

short ground that the function which the State Government exercised under S. 53-A was administrative in nature....

Subba Rao, J.

Before considering the validity of the arguments based upon the provisions of the section, it would be convenient at this stage to notice briefly the distinction between a judicial and an administrative act and the criteria laid down by decisions for ascertaining whether a particular act is a judicial act or an administrative one. The said criteria have been laid down with clarity by Lord Justice Atkin in (1924) 1 K.B. 171,¹⁶ elaborated by Lord Justice Scrutton in (1931) 2 K.B. 215¹⁷ and authoritatively restated in 1950 S. C. R. 621 (A. I. R. 1950 S.C. 222).¹⁸ The aforesaid decisions lay down the following conditions to be complied with: (1) the body of persons must have legal authority; (2) the authority should be given to determine questions affecting the rights of subjects; and (3) they should have a duty to act judicially. So far there is no dispute. The question raised in this case is what do the words "a duty to act judicially" mean. If the statute in express terms says that the decision should be arrived at judicially, then it is an obvious case. If it does not expressly say so, can the intention of the Legislature be gathered or implied from the terms of the statute? If it can be so gathered, what are the guiding factors for implying such a duty on the part of a tribunal or authority?...

In the present case, S. 53-A of the Act itself provides the necessary criteria to answer the question. Before the Government can take action under the section, three preliminary conditions for the exercise of the power are laid down: (1) the Committee is not competent to perform the duties imposed on it; (2) the State Government considers that a general improvement in the administration of the municipality is likely to be secured by the appointment of a servant of the Government; (3) an order stating the reasons therefor. The first condition depends upon the determination of an objective fact, namely, whether the committee is competent to perform the duties imposed upon it. It is a jurisdictional fact that confers jurisdiction on the Government to take further action. The determination of this fact is not left to the subjective satisfaction of the Government. Indeed, the different phraseology used in regard to

16. *R. v. Electricity Commissioners*. (Ed.).

17. *R. v. The London Council ex parte The Entertainment Protection Association Ltd.*, (Ed.).

18. *Province of Bombay v. Khushaldas Advani*, (Ed.).

the second condition, namely, "the State Government considers", brings out in bold relief the distinction between the two; while in the former an objective fact has to be determined, in the latter the fact is left to the subjective satisfaction of the Government....

The Government has to arrive at the finding of their incompetency on the basis of objective facts to be ascertained and to give reasons for its finding. It is against all canons of natural justice that a tribunal should arrive at a finding of far-reaching consequence without giving an opportunity to explain to the persons who would be affected by such a finding. For the aforesaid reasons, I have no doubt that the section imposes a duty on the Government to act judicially in ascertaining the objective and jurisdictional fact, namely, whether the committee is incompetent. It is a necessary condition of such a duty to give an opportunity to the committee to explain the grave charges levelled against it. Admittedly, no such opportunity was given to the committee and I cannot agree with the learned Advocate-General that the inquiry by the Deputy Collector at an earlier stage for a different purpose had in effect given an opportunity to the committee. It is not known what were the charges for which that inquiry was held. The record discloses that the inquiry was held by a subordinate officer—there is nothing on record to show that the Government authorised either the Collector or the Deputy Collector to make the inquiry.... In my view, the inquiry cannot presumably take the place of reasonable opportunity to be given by the Government for the proposed action under S. 53-A of the Act....

BHARAT BANK v. EMPLOYEES OF BHARAT BANK

A. I. R. 1950 S. C. 188

[One of the questions that was considered in the case was whether the industrial tribunal was quasi-judicial or administrative in nature.]

Fazl Ali, J. :

[T]here can be no doubt that the industrial tribunal has to use a well-known expression, "all the trappings of a court" and performs functions which cannot but be regarded as judicial. This is evident from the rules by which the proceedings before the tribunal are

regulated. It appears that the proceeding before it commences on an application which in many respects is in the nature of a plaint. It has the same powers as are vested in a civil court under the Code of Civil Procedure when trying a suit, in respect of discovery, inspection, granting adjournment, reception of evidence taken on affidavit, enforcing the attendance of witnesses; compelling the production of documents, issuing commissions, etc. It is to be deemed to be a civil court within the meaning of Ss. 480 and 412, Criminal P. C., 1898. It may admit and call for evidence at any stage of the proceeding and has the power to administer oaths. The parties appearing before it have the right of examination, cross-examination and re-examination and of addressing it after all evidence has been called. A party may also be represented by a legal practitioner with its permission.

The matter does not rest there. The main function of this tribunal is to adjudicate on industrial disputes which implies that there must be two or more parties before it with conflicting cases, and that it has also to arrive at a conclusion as to how the dispute is to be ended. *Prima facie*, therefore, a tribunal like this cannot be excluded from the scope of Art. 136, but before any final conclusion can be expressed on the subject certain contentions which have been put forward on behalf of the respondents have to be disposed of.

The first contention is that the industrial tribunal cannot be said to perform a judicial or quasi-judicial function, since it is not required to be guided by any recognized substantive law in deciding disputes which come before it. On the other hand, in deciding industrial disputes, it has to override contracts and create rights which are opposed to contractual rights....

...The tribunal has to adjudicate in accordance with the provisions of the Industrial Disputes Act. It may sometimes override contracts, but so can a court which has to administer law according to the Bengal or Bihar Money lenders Act, Encumbered Estates Act and other similar Acts. The tribunal has to observe the provisions of the special law which it has to administer though that law may be different from the law which an ordinary Court of Justice administers. The appellate Court, therefore, can at least see that the rules according to which it has to act and the provisions which are binding upon it are observed, and its powers are not exercised in an arbitrary or capricious manner.

The second contention which is a more serious one, is that the adjudication of the tribunal has not all the attributes of a judicial decision, because the adjudication cannot bind the parties until it is declared to be binding by the Government under S. 15, Industrial Disputes Act. It is said that the adjudication is really in the nature of an advice or report which is not effective until made so by the Government....

It is to be noted that under S. 15, Industrial Disputes Act, 1947, in cases where the appropriate Government is not a party to the dispute all that the Government has to do on receiving the award of the tribunal is to declare it to be binding and to state from what date and for what period it will be binding....

...[T]he Government cannot alter, or cancel, or add to the award, but the award must be declared to be binding as it is. In substance, therefore, the adjudication of the tribunal amounts to a final determination of the dispute which binds the parties as well as the Government.

Mahajan, J. :

It is now convenient to consider whether a tribunal constituted under the Industrial Disputes Act, 1947, exercises all or any of the functions of a Court of Justice and whether it discharges them according to law or whether it can act as it likes in its deliberations and is guided by its own notions of right and wrong. The phrase "industrial dispute" has been defined in S. 2. cl. (k) of the Act as follows :

"any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment on the terms of employment or with the condition of labour, of any person."

Such a dispute concerns the rights of employers and employees. Its decision affects the terms of contract of service or the conditions of employment. Not only may the pecuniary liability of an employer be considerably affected by the adjudication of such dispute but it may even result in the imposition of punishments on him. It may adversely affect the employees as well. Adjudication of such a dispute affects valuable rights. The dispute and its result can always be translated in terms of money. The point for decision in the dispute usually is how much money has to pass out of the pocket of

the employer to the pocket of the employee in one form or another and as to what extent the right of freedom of contract stands modified to bring about industrial peace. Power to adjudicate on such a dispute is given by S. 7 of the statute to an Industrial Tribunal and a duty is cast on it to adjudicate *it in accordance with the provisions of the Act*. The words underlined (italicised) clearly imply that the dispute has to be adjudicated according to law and not in any other manner. When the dispute has to be adjudicated in accordance with the provisions of the Act, it follows that the tribunal has to adhere to law, though that law may be different from the law that an ordinary Court of justice administers. It is noteworthy that the tribunal is to consist of experienced judicial officers and its award is defined as a determination of the dispute. The expression "adjudication" implies that the tribunal is to act as a Judge of the dispute; in other words, it sits as a Court of justice and does not occupy the chair of an administrator. It is pertinent to point out that the tribunal is not given any executive or administrative powers. In S. 38 of the Act power is given to make rules for the purpose of giving effect to the provisions of the Act. Such rules can provide in respect of matters which concern the *powers* and *procedure* of tribunals including rules as to the summoning of witnesses, the production of documents relevant to the subject-matter and as to appearance of legal practitioners in proceedings under this Act. Rule 3 of these rules provides that any application for the reference of an industrial dispute to a tribunal shall be made in Form (A) and shall be accompanied by a statement setting forth, *inter alia*, the names of the parties to the dispute and the specific matters of dispute. It is in a sense in the nature of a plaint in a suit. In Rule 13 power is given to administer oaths. Rule 14 provides as follows:—

"A tribunal may accept, admit or call for evidence at any stage of the proceeding before it and in such manner as it may think fit."

Rule 17 provides that at its first sitting the tribunal is to call upon the parties to *state their case*. In Rule 19 provision has been made for proceeding *ex parte*. Rule 21 provides that in addition to the powers conferred by Sub-s. 3 of S. 11 of the Act, a tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure when trying a suit, in respect of the following matters, namely, (a) discovery and inspection; (b) granting of adjournment; (c) reception of evidence taken on affidavit; and that the tribunal may summon and examine *suo motu* any person whose

evidence appears to it to be material. It further says that the tribunal shall be deemed to be a civil court within the meaning of Ss. 480 and 482, Criminal Procedure Code, 1898. Rule 21 says that the representatives of the parties, appearing before a tribunal, shall have the right of examination, cross-examination and re-examination and of addressing the court or *tribunal when all evidence has been called*. In Rule 30 it is provided that a party to a reference may be represented by a legal practitioner with the permission of the tribunal and subject to such conditions as the tribunal may impose. In S. 11 (3) it is laid down that a tribunal shall have the same powers as are vested in a civil Court under the Code of Civil Procedure when trying a suit, in respect of the following matters, namely, (a) enforcing the attendance of any person and examining him on oath; (b) compelling the production of documents and material objects; (c) issuing commissions for the examination of witnesses; (d) in respect of such other matters as may be prescribed, and every inquiry or investigation by a tribunal shall be deemed to be a judicial proceeding within the meaning of Ss. 193 and 228, Penal Code.

It was...strenuously urged that the award of the tribunal had no binding force by itself and unless the appropriate Government made a declaration in writing under cl. (2) of S. 15 this award was a lifeless document and had no sanction behind it and therefore it could not have been contemplated that it would be appealable even by special leave. In my opinion, this contention is unsound. The provisions of Cl. (2) of S. 15 leave no discretion in the Government either to affirm, modify or reject the award. It is bound to declare it binding. It has no option in the matter. In such a situation it is the determination by the tribunal that matters, without that determination Government cannot function. It does not possess the power either to adjudicate the dispute or alter it in any manner whatsoever. That power vests in tribunal alone...

RIDGE v. BALDWIN

(1963)2 W.L.R. 935

[Under Section 191 (4) of the Municipal Corporation Act, 1882, a watch committee has power to dismiss any constable whom it thinks "negligent in the discharge of his duty, or otherwise unfit for the same."

The respondent watch committee, the police authority of the county borough of Brighton summarily dismissed the appellant, who was Chief Constable, in consequence of the evidence given during a trial at which he had been acquitted and of observations made by the trial judge on appellant's fitness for his duties.

The appellant was given no notice of the charges against him nor any opportunities to be heard before the Committee. His appeal to the Home Secretary also failed in that the Home Secretary decided not to set aside the watch committee's decision. Therefore, the appellant instituted proceedings against the members of the Committee, claiming a declaration that its decision was void. The Court of Appeal, in refusing to set aside the Committee's decision held, *inter alia* that the watch committee, exercising their power under Section 191 (4) of the Act of 1882 were acting in an administrative or executive capacity, not in a judicial or quasi-judicial nature with the result that the rules of natural justice did not apply to their proceedings for dismissal. The case came in appeal before the House of Lords which allowed the appeal by a majority of four to one (Lords Reid; Morris of Borth-y-Gest, Hodson and Devlin : Lord Evershed dissenting.)]

Lord Reid

The power of dismissal is contained in section 191 (4) of the Municipal Corporations Act, 1882. So far as I am aware, that subsection is the only statutory provision regarding dismissal, and the respondents purported to act under it. It is in these terms: "The "watch committee, or any two justices having jurisdiction in the "borough, may at any time suspend, and the watch committee may "at any time dismiss, any borough constable whom they think negligent "in the discharge of his duty, or otherwise unfit for the same"...

The appellant's case is that in proceeding under the Act of 1882 the watch committee were bound to observe what are commonly called the principles of natural justice. Before attempting to reach any decision they were bound to inform him of the grounds on which they proposed to act and give him a fair opportunity of being heard in his own defence.... It appears to me that one reason why the authorities on natural justice have been found difficult to reconcile is that insufficient attention has been paid to the great difference between various kinds of cases in which it has been sought to apply the principle. What a minister ought to do in considering objections to a scheme may be very different from what a watch committee

ought to do in considering whether to dismiss a chief constable. So I shall deal first with cases of dismissal. These appear to fall into three clauses: dismissal of a servant by his master, dismissal from an office held during pleasure, and dismissal from an office where there must be something against a man to warrant his dismissal.

[After holding that in the first two classes the principle of natural justice is not applicable, His Lordship continued.]

So I come to the third class which includes the present case. There I find an unbroken line of authority to the effect that an officer cannot lawfully be dismissed without first telling him what is alleged against him and hearing his defence or explanation ...

[Then follows a discussion of the case-law]

Stopping there, I would think that authority was wholly in favour of the appellant but the respondent's argument was mainly based on what has been said in a number of fairly recent cases dealing with different subject-matter. Those cases deal with decisions by ministers, officials and bodies of various kinds which adversely affected property or no proper opportunity of presenting their cases before the decisions were given. And it is necessary to examine those cases for another reason. The question which was or ought to have been considered by the watch committee on March 7, 1958, was not a simple question whether or not the appellant should be dismissed. There were three possible courses open to watch committee—reinstating the appellant as chief constable, dismissing him, or requiring him to resign. The difference between the latter two is that dismissal involved forfeiture of pension rights whereas requiring him to resign did not ..

I would start an examination of the authorities dealing with property rights and privileges with *Copper v. Wandsworth Board of Works*.¹⁹ Where an owner had failed to give proper notice to the Board they had under an Act of 1855 authority to demolish any building he had erected and recover the cost from him. This action was brought against the board because they had used that power without giving the owner an opportunity of being heard. The board maintained that their discretion to order demolition was not a judicial discretion and that any appeal should have been to the Metropolitan Board of works. But the court decided unanimously in favour of the owner. Erle C. J. held that the power was subject to a qualification repeatedly recognised that no man is to be deprived of his property without his having an opportunity of being heard and

19. (1863) 14 C.B.N.S. 180.

that this had been applied to "many exercises of power which in common understanding would not be at all a more judicial proceeding than would be the act of the district board in ordering a house to be pulled down. Willes J. said that the rule was of universal application, and founded upon the plainest principles of justice, and Byles J. said that although there are no positive words in a statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature."

This was followed in *Hopkins v. Smethwic Local Board of Health*.²⁰ Wills J. said: "In condemning a man to have his house pulled down, a judicial act is as much implied as in fining him £5; and as the local board is the only tribunal that can make such an order its act must be a judicial act, and the party to be affected should have a notice given him;... the judgement of Willes J. [in *Cooper's* case] does for more upon the nature of the thing done by the board than on the phraseology of the Act itself. It deals with the case on principles; from the nature of the thing done it must be a judicial act, and justice requires that the man should be heard." In the Court of Appeal, Lord Esher M.R., in dismissing an appeal expressly approved the principles laid down in *Cooper's* case.

The principle was applied in different circumstances in *Smith v. The Queen*.²¹ That was an action of ejectment on the alleged forfeiture of a Crown lease in Queensland. The Governor was entitled to forfeit the lease if it has been proved to the satisfaction of a commissioner that the lessee had abandoned or ceased to reside on the land. The commissioner did not disclose to the lessee the case against him so that he had no opportunity to meet it, and therefore his decision could not stand. The Commissioner was not bound by any rules as to procedure or evidence but he had to conduct his inquiry "according to the requirements of substantial justice." In *De Verteuil v. Knaggs*²² the Governor of Trinidad was entitled to remove immigrants from an estate "on sufficient ground shown to his satisfaction." Lord Parmoor said that: "The acting Governor was not called upon to give a decision on an appeal between parties, and it is not suggested that he holds the position of a judge or that the appellant is entitled to insist on the forms used in ordinary judicial procedure, but he had a duty of giving to any person against whom the complaint is made a fair opportunity to make any relevant statement which he may desire to bring forward and a fair

20. (1890) 24 Q.B.D. 712, 714-15.

21. (1878) L.R. 3 App. Cas. 614, P.C.

22. (1918) A.C. 557, 34 T.L.R. 323, P.C.

"opportunity to correct or controvert any relevant statement brought forward to "his prejudice." The duty of an official architect in fixing a building line was stated in somewhat similar terms in *Spackman v. Plumstead District Board of Works*.²³

I shall now turn to a different class of case—deprivation of a professional or social body. In *Wood v. Wood*²⁴ the committee purported to expel a member of a mutual insurance society without hearing him, and it was held that their action was void, and so he was still a member. Kellay C.B. said of *audi alteram partem*: "This rule "is not confined to the conduct of strictly legal tribunals, but is "applicable to every tribunal or body of persons invested with "authority to adjudicate upon matters involving civil consequences "to individuals." This was expressly approved by Lord Macnaghten giving the judgment of the Board in *Lapointe v. L' Association de Bienfaisance et de Retraite de la Police de Montréal*.²⁵ In that case the board of directors of the association had to decide whether to give a pension to a dismissed constable—the very point the watch committee had to decide in this case—and it was held that they had to observe "the elementary principles of justice."

Then there are the club cases *Fisher v. Keane*²⁶ and *Dawkins v. Antrobus*.²⁷ In the former, Jessel M. R. said of the committee, "They "ought not, as I understand it, according to the ordinary rules by "which justice should be administered by committees of clubs or by "any other body of persons who decide upon the conduct of others, to "blast a man's reputation for ever—perhaps to ruin his prospects for "life, without giving him an opportunity of either defending or "palliating his conduct." In the latter case it was held that nothing had been done contrary to natural justice. In *Weinberger v. Inglis*²⁸ a member of enemy birth was excluded from the Stock Exchange and it was held that the committee had heard him before acting, Lord Birkenhead L.C. said: "...if I took the view that the appellant was "condemned upon grounds never brought to his notice, I should not "assent to the legality of that course, unless compelled by authority." He said this although the rule under which the committee acted was in the widest possible terms—that the committee should each year

23. (1885) 10 A.C. 229; I.T.L.R. 313, H.L.

24. (1874) L.R. 9 Ex. 190.

25. (1906) A.C. 535; 22 T.L.R. 768, P.C.

26. (1878) 11 Ch.D. 353.

27. (1879) 17 Ch.D. 615, C.A.

28. (1919) A.C. 606; 35 T.L.R. 399, H.L.

re-elect such members as they should deem eligible as members of the Stock Exchange.

I shall not at present advert to the various trade union cases because I am deliberately considering the state of the law before difficulties were introduced by statements in various fairly recent cases. It appears to me that if the present case had arisen thirty or forty years ago the courts would have had no difficulty in deciding this issue in favour of the appellant on the authorities which I have cited. So far as I am aware none of these authorities has ever been disapproved or even doubted. Yet the Court of Appeal has decided this issue against the appellant on more recent authorities which apparently justify that result. How has this come about?

At least three things appear to me to have contributed. In the first place, there have been many cases where it has been sought to apply the principles of natural justice to the wider duties imposed on ministers and other organs of government by modern legislation. For reasons which I shall attempt to state in a moment, it has been held that those principles have a limited application in such cases and those limitations have tended to be reflected in other decisions on matters to which in principle they do not appear to me to apply. Secondly, again for reasons which I shall attempt to state, those principles have been held to have a limited application in cases arising out of wartime legislation; and against such limitations have tended to be reflected in other cases. And, thirdly, there has, I think, been a misunderstanding of the judgement of Atkin L. J. in *Rex v. Electricity Commissioners, Ex parte London Electricity Joint Committee Co.*²⁹

In cases of the kind I have been dealing with, the Board of Works or the Governor or the club committee was dealing with a single isolated case. It was not deciding, like a judge in a law-suit, what were the rights of the person before it. But it was deciding how he should be treated—something analogous to a judge's duty in imposing a penalty. No doubt policy would play some part in the decision—but so it might when a judge is imposing a sentence. So it was easy to say that such a body is performing a quasi-judicial task in considering and deciding such a matter, and to require it to observe the essentials of all proceedings of a judicial character—the principles of natural justice.

Sometimes the functions of a minister or department may also be of that character and then the rules of natural justice can apply

29. (1924) K.B. 171. This case has also been used in India as a starting-point of the discussion on quasi-judicial.

in much the same way. But more often their functions are of a very different character. If a minister is considering whether to make a scheme for, say, an important new road, his primary concern will not be with the damage which its construction will do to the rights of individual owners of land. He will have to consider all manner of questions of public interest and, it may be, a number of alternative schemes. He cannot be prevented from attaching more importance to the fulfilment of his policy than to the fate of individual objectors and it would be quite wrong for the courts to say that the minister should or could act in the same kind of way as a board of works deciding whether a house should be pulled down. And there is another important difference. As explained in *Local Government Board v. Arlidge*,³⁰ a minister cannot do everything himself. His officers will have to gather and sift all the facts including objections by individuals and no individual can complain if the ordinary accepted methods of carrying on public business do not give him as good protection as would be given by the principles of natural justice in a different kind of case.

And now I must say something regarding war-time legislation. The older authorities clearly show how the courts engrafted the principles of natural justice on to a host of provisions authorising administrative interference with private rights. Parliament knew quite well that the courts had an inveterate habit of doing that and must therefore be held to have authorised them to do it unless a particular Act showed a contrary intention. And such an intention could appear as a reasonable inference as well as from express words. It seems to me to be a reasonable and almost an inevitable inference from the circumstances in which Defence Regulations were made and from their subject-matter that, at least in many cases, the intention must have been to exclude the principles of natural justice. War-time secrecy alone would often require that, and the need for speed and general pressure of work were other factors. But it was not to be expected that anyone would state in so many words that a temporary abandonment of the rules of natural justice was one of the sacrifices which war conditions required—that would have been almost calculated to create the alarm and despondency against which one of the regulations was specifically directed. And I would draw the same conclusion from another fact. In many regulations there was set out an alternative safeguard more practicable in war time—the objective test that the officer must have reasonable cause to believe

30. (1915) A.C. 120; 30 T.L.R. 672. H.L.

whatever was the crucial matter. (I leave out of account the very peculiar decision of this House in *Liversidge v. Anderson*.³¹) So I would not think that any decision that the rules of natural justice were excluded from war-time legislation should be regarded as of any great weight in dealing with a case such as this case, which is of the older type and which involves the interpretation of an Act passed long before modern modification of the principles of natural justice became necessary, and at a time when, as Parliament was well aware, the courts habitually applied the principles of natural justice to provisions like section 191 (4) of the Act of 1882.

The matter has been further complicated by what I believe to be a misunderstanding of a much-quoted passage in the judgment of Atkin L. J. in *Rex. v. Electricity Commissioners Ex parte London Electricity Joint Committee Co.* He said "...the operation of the "writs [of prohibition and certiorari] has extended to control the "proceedings of bodies which do not claim to be, and would not be "recognised as, Courts of Justice. 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."

A gloss was put on this by Lord Hewart C.J. in *Rex v. Legislative Committee of the Church Assembly, Ex parte Haynes-Smith*.... Lord Hewart said, having quoted the passage from Lord Atkin's judgment: "The question therefore which we have to ask ourselves in this case "is whether it is true to say in this matter either of the Church "Assembly as a whole, or of the Legislative Committee of the Church "Assembly, that it is a body of persons having legal authority to determine questions affecting the rights of subjects and having the duty "to act judicially. It is to be observed that in the last sentence which "I have quoted from the judgment of Atkin L. J. the word is not 'or', "but 'and'. In order that a body may satisfy the required test it is not "enough that it should have legal authority to determine questions "affecting the rights of subjects; there must be super-added to that "characteristic the further characteristic that the body has the duty "to act judicially. The duty to act judicially is an ingredient which, "if the test is to be satisfied, must be present. As these writs in the "earlier days were issued only to bodies which without any harshness "of construction could be called, and naturally would be called, courts

31. (1942) A.C. 206; 58 T.L.R. 35.

32. (1928) 1 K.B. 411; 44 T.L.R. 68.

"so also today these writs do not issue except to bodies which act or "are under the duty to act in a judicial capacity."

...If Lord Hewart meant that it is never enough that a body simply has a duty to determine what the rights of an individual should be, but that there must always be something more to impose on it a duty to act judicially before it can be found to observe the principles of natural justice, then that appears to me impossible to reconcile with the earlier authorities...

There is not a word in Lord Atkin's judgement to suggest disapproval of the earlier line of authority which I have cited... I have already stated my view that it is more difficult for the courts to control an exercise of power on a large scale where the treatment to be meted out to a particular individual is only one of many matters to be considered. This was a case of that kind, and, if Lord Atkin was prepared to infer a judicial element from the nature of the power in this case, he could hardly disapprove such an inference when the power relates solely to the treatment of a particular individual.

The authority chiefly relied on by the Court of Appeal in holding that the watch committee were not bound to observe the principles of natural justice was *Nakkuda Ali v. M.F. de S. Jayratne*.³³ In that case the Controller of Textiles in Ceylon made an order cancelling the appellant's licence to act as a dealer, and the appellant sought to have that order quashed. The controller acted under a Defence Regulation which empowered him to cancel a licence, "where the "controller has reasonable grounds to believe that any dealer is unfit "to be allowed to continue as a dealer."

The Privy Council regarded that as "imposing a condition that 'there must in fact exist such reasonable grounds, known to the "controller, before he can validly exercise the power of cancellation.'" But according to their judgement certiorari did not lie and no other means were suggested whereby the appellant or anyone else in his position could obtain redress even if the controller acted without a shred of evidence. It is quite true that the judgement went on, admittedly unnecessarily, to find that the controller has reasonable grounds and did observe the principles of natural justice, but the result would have been just the same if he had not. This House is not bound by decisions of the Privy Council and for my own part nothing short of a decision of this House directly in point would induce me to accept the position that, although an enactment

33. (1951) A.C. 66; T.L.R. (Pt. 2) 214, P.C.

expressly requires an official to have reasonable grounds for his decision, our law is so defective that a subject cannot bring up such a decision for review however seriously he may be affected and however obvious it may be that the official acted in breach of his statutory obligation.

I would sum up my opinion in this way. Between 1882 and the making of police regulations in 1920, section 191 (4) has to be applied to every kind of case. The respondents' contention is that, even where there was a doubtful question whether a constable was guilty of a particular act of misconduct, the watch committee were under no obligation to hear his defence before dismissing. In my judgement it is abundantly clear from the authorities I have quoted that at that time the courts would have rejected any such contention. In later cases dealing with different subject-matter, opinions have been expressed in wide terms so as to appear to conflict with those earlier authorities. But learned judges who expressed those opinions generally had no power to overrule those authorities, and in any event it is a salutary rule that a judge is not to be assumed to have intended to overrule or disapprove of an authority which has not been cited to him and which he does not even mention. So, I would hold that the power of dismissal in the Act of 1882 could not then have been exercised and cannot now be exercised until the watch committee have informed the constable of the grounds on which they propose to proceed and have given him a proper opportunity to present his case in defence....

Lord Morris of Borth-y-Gest

In view of the opinions which I have expressed as to the applicability of the regulations and as to the consequences of disregarding them, I propose only to deal briefly with the question whether, had there been no regulations, the police authority would have been bound to have regard to the principles of natural justice. In my view the regulations incorporate those principles but have not been any and had the police authority in the exercise of power given them by section 191 (4) contemplated dismissing the appellant on the ground of neglect of duty they would in my view be under obligation to give him an opportunity to be heard and to have had to consider anything that he might say. I cannot think that the dismissal of the appellant should be regarded as an executive or administrative act if based upon a suggestion of neglect of duty before it could be decided that there had been neglect of duty, it would

be pre-requisite that the question should be considered in a judicial spirit. In order to give the appellant an opportunity to defend himself against a charge of neglect of duty, he would have to be told what the alleged neglect of duty was.

The relationship between the watch committee and the appellant was not that of master and servant. Nor was the appellant one who held an office at pleasure with the consequence that he could be required at pleasure to relinquish it. He was in a different position from someone possessing a licence to do various acts. The appellant held an office from which the watch committee should at any time dismiss him if they thought he had been negligent in the discharge of his duty. The watch committee did not however have an unfettered or unrestricted discretion. If it be assumed that no regulations had been made then the fact that section 191 (4) is silent as to any procedure for a hearing does not involve that there could be a dismissal without a hearing....

Lord Hodson

My Lords, I have reached the conclusion apart from the application of the Police Act of 1919 and the regulations which followed, that this appeal should succeed upon the ground that the appellant was entitled to and did not receive natural justice at the hands of the watch committee of Brighton when he was dismissed on March 7, 1958.

(His Lordship enumerated the reasons underlying the principle of natural justice, thus:)

One is that the absence of a lis or dispute between opposing parties is not a decisive feature although, no doubt, the presence of a lis would involve the necessity for the applications of the principles of natural justice. Secondly, the answer in a given case is not affected by the statement that the giver of the decision is acting in a private or administrative capacity as if that was the antithesis of judicial capacity. The cases seem to me to show that persons acting in a judicial capacity which is not on the face of it judicial but rather administrative have been held by the courts to be subject to the principles of natural justice....

The matter which, to my mind, is relevant in this case is that where the power to be exercised involves a charge made against the person who is dismissed, by that I mean a charge of misconduct, the

principles of natural justice have to be observed before the power is exercised.³⁴

BENJAFIELD AND WHITMORE, THE HOUSE OF LORDS
AND "NATURAL JUSTICE"

37 Aust. L.J. 140(1963)

The decision in *Ridge v. Baldwin* at least involves the proposition that, in case similar to those considered and approved by the House, an obligation to give a fair hearing will be implied notwithstanding statutory silence as to the matter. It may be doubtful whether one can go beyond this and say, to paraphrase Atkin L.J., that such an obligation will be implied wherever there is a power to affect rights or impose obligations. The limits to the implication of the duty to give a fair hearing will probably have to be worked out from case to case but it is at least worth pointing out that in the very great majority, if not all, of the cases considered by the House, the administrative authority or body in question was obliged by its statutory authority to ascertain whether or not a particular state of facts existed before it took action, and were not given a bare power to do an act no matter what the circumstances might be.

Whatever may be the ultimate solution of this problem, the decision of the House of Lords leaves two areas still clouded with doubt.

First, there are several cases in which it has been held that the *audi alteram partem* rule does not apply because no "right" of a citizen has been affected but merely a "licence" or "privilege" withdrawn or refused. Typical cases are *R. v. Metropolitan Police Commissioner; Ex parte Parker*³⁵ (withdrawal of a cab driver's licence), *Nakkuda Ali v. Jayratne*³⁶ (cancellation of a textile dealer's licence) and, in Australia, *Ex parte McCarthy; Re Milk Board*³⁷ (refusal of a milk dealer's licence). Despite continued criticism of the application of such a Hohfeldian distinction in an area of the law where it is singularly inappropriate, Lord Hodson [in *Ridge v. Baldwin*] appears to concede its validity and

34. For comments on this case see *Public Law* 269 (1963); *Modern L. Rev.* 543-547 (1963).

35. (1953) 1 W.L.R. 1150.

36. (1951) A.C. 66.

37. (1934) 35 S. R. (N.S.W.) 47.

comments that he must in a given case "retreat to the last refuge of one confronted with as difficult a problem as this, namely that each case depends on its own facts." Lord Evershed (dissenting) also concedes that the distinction has force, while Lord Reid adverts to it without comment. While, perhaps it is not enough to embed the distinction in the law, it is strong support for the continued existence of a serious gap in the remedial law. As Lord Evershed points out, the withdrawal of a licence may involve the destruction of a person's livelihood.

Secondly, Lord Reid takes up the point that the status of an authority and the degree to which it is free to apply the dictates of a policy which may be determined independently of the facts of the particular case presented are relevant in determining what is required to constitute a fair hearing. It is vital to realise that these same considerations must be relevant in determining whether there is any obligation to give a hearing at all. What is involved in "a fair hearing" is considered later but at the present juncture it is necessary to point out that the higher the status of the officer concerned in the governmental structure, and the more closely allied with the policy of government are the considerations which he must take into account, the concept of "a fair hearing" approaches to vanishing point. If vanishing point is substantially reached, then one must say that there is in truth no obligation to give a fair hearing at all. This may well be the explanation of numbers of the decisions suggesting, for example, that the prerogative writs will not run against Ministers of the Crown in certain circumstances and, in Australia, against the Governor-General and State Governors. Such cases are often put on the ground that the ultimate sanction of imprisonment cannot be put into force against the Crown itself yet even in regard to the "*persona designata*" the remedies are available, though none of the decisions is clear as to what is meant by "*persona designata*". Clearly a more satisfactory approach would be to judge the availability of remedies by reference to status of the officer and the nature of the policy considerations which he must bear in mind and support for such an approach can be found in Lord Reid's judgment; perhaps it is this sort of clarification which he had in mind when he rather ambiguously said that it is incorrect to say "that it is never enough (to attract certiorari) that a body simply has right to determine what the rights of individuals should be."

It would be but a short step for the courts to base their approach on some more predictable basis such as that suggested by Professor

K.C. Davis.³⁸ In his opinion, the governing distinction in situations of this nature should be one between "adjudicative" and "legislative" facts. The essence of this distinction is that a hearing should always be given as to matters pertaining directly to the parties but that, in relation to policy matters, the most that could be required would be the opportunity to submit argument. The adoption of some such distinction might well be critical for administrative law in Australia, because of the practice here of conferring so many powers, of widely differing content, directly on the Governor-General, Governor or senior Minister of the Crown.

PROBLEMS

1. The Working Journalists, scattered all over the country, agitated for a considerable period that their wages and salaries, dearness and other allowances, retirement benefits, rules of leave and conditions of service, be enquired into by some impartial authority, who would be empowered to fix just and reasonable terms and conditions of service for them. As a result, Parliament enacted the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955. Sections 8 to 11 of the Act provided for fixation of the rates of wages for working journalists. The Central Government was authorised to constitute a Wage Board for the purpose. The circumstances which the Wage Board were to have regard to in fixing rates of wages were laid down. The decision of the Wage Board was to be published by the Central Government and it was to come into operation from a specified date. The powers and procedure of the Board were laid down in the Act. The decision of the Board was to be binding on all employers in relation to newspaper establishments and every working journalist was entitled to be paid wages at a rate in no case less than the rate of wages fixed by the Board. The Board drew up a questionnaire and sent it to Universities, Governments, several other organisations and individuals interested in the inquiry, and to all newspapers individually. The Board also took evidence. Witnesses were asked to produce books of accounts, incom-tax assessment orders or any other documents, which in the Board's opinion were essential.

38. 1 Davis, *Administrative Law Treatise*, (1958) 506.

Is the character of the Wage Board administrative, legislative or quasi-judicial?³⁹

2. Section 14 of the Punjab Municipal Act, 1911, runs as follows :

"Notwithstanding anything in the foregoing sections of this Chapter, the State Government may, at any time, for any reason which it may deem to affect the public interests or at the request of a majority of the electors, by notification, direct—

(e)...[T]hat the seat of any specified member [of a Municipal Committee] whether elected or appointed, shall be vacated on a given date, and in such case, such seat shall be vacated accordingly, notwithstanding anything in this Act or in the rules made thereunder."

Sec. 16 (3) lays down that a person whose seat has been vacated under Sec. 14 (e) may be disqualified for election for a period not exceeding five years. J's seat was declared vacant and he was also disqualified for three years, without giving him any notice or hearing. Can the Government's decision be challenged in a Court?⁴⁰

3. Section 36 of the U.P. Town Area Act runs as follows:

"If, in the opinion of the State Government, a committee persistently makes default in the performance of the duties imposed on it by or under this or any other Act for the time being in force, or exceeds or abuses its powers, the State Government may, by any order published, with the reasons for making it, in the official Gazettee, declare that Committee to be in default or to have exceeded or abused its powers; and supersede it for a period not exceeding two years as specified in the order."

The Government superseded the Town Area Committee, Sikandarpur. A member filed a petition for *certiorari* in the High Court challenging the order of supersession. How would you decide?⁴¹

4. Section 7 of the Punjab Small Towns Act runs as follows :

"The State Government may remove any member of a Committee who is in its opinion unfit to act or persistently remiss in the discharge of his duties as a member and any person so removed shall not be eligible for election or appointment as a member of a Committee for a period of 5 years from the date of his removal."

39. See *Express Newspapers Ltd. v. Union of India*, *supra* note 7.

40. See *Jogindar Singh v. State of Punjab*, A.I.R. 1963 Punj. 280.

41. See *Iqbal Ahmed v. State of U. P.*, A.I.R. 1962 All. 264.

Is the function of the Government administrative?⁴²

5. Under section 8 (3)(d) of the Rice Milling Industry (Regulation) Act, 1958, no owner of a rice mill would effect any expansion of the rice mill except with the previous permission of the Central Government. The statute did not lay down any factors for the guidance of the government in according sanction and there was also no provision for appeal. What is the nature of the government's function when it sanctions the conversion of huller rice-mill into a combined shelter-huller mill under the Act?⁴³

6. What is the function of granting of sanction under section 197 (1) Criminal Procedure Code which provides that when any person who is a Judge within the meaning of section 19 of the Indian Penal Code, or when any Magistrate or public servant who is not removable from his office save by or with the sanction of a State Government or the Central Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of the government concerned?⁴⁴

7. Section 92 of the Civil Procedure Code runs as:

(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate General, or two or more persons having an interest in the trust and having obtained the consent in writing of the Advocate General, may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction...within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate, to obtain a decree—

- (a) removing any trustee;
- (b) appointing a new trustee;
- (c) vesting any property in a trustee;
- (d) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;

42. See *Negi Bal Bahadur Singh v. Lt. Governor, Him. Pr.*, A.I.R. 1962 H.P. 68. See *Prihi Chand v. Lieutenant Governor, Him. Pr.*, A.I.R. 1962 H.P. 59.

43. See *I. Venugopala v. Venkata Narasimhulu*, A.I.R. 1962 A.P. 363.

44. (1904) See *In re. Kalagava Bapiiah*, I.L.R. 27 Mad. (1903) 54.

- (d) directing accounts and inquiries;
- (e) directing what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;
- (f) authorising the whole or any part of the trust-property to be let, sold, mortgaged or exchanged;
- (g) settling a scheme; or
- (h) granting such further or other relief as the nature of the case may require.

Does the Advocate General in according the sanction under the above provision act in an administrative or quasi-judicial capacity?⁴⁵

8. Under Section 10 of the Industrial Disputes Act, 1947, the government can, where it is of opinion that any industrial dispute exists or is apprehended, refer an industrial dispute to:

- (a) a Board for promoting settlement;
- (b) to a court for inquiry;
- (c) to a labour court or tribunal for adjudication.

Is the function of reference quasi-judicial?⁴⁶

9. Section 47 of the Motor Vehicles Act, 1939 provides that a Regional Transport Authority in considering an application for a stage carriage permit shall have regard to the following matters:

- (a) the interests of the public generally;
- (b) the advantages to the public of the service to be provided;
- (c) the adequacy of other passenger transport services;
- (d) the benefit likely to be afforded by the service;
- (e) the operation by the applicant of other transport services;
- (f) the condition of the roads.

It shall also take into consideration any representations made by persons already providing passenger transport facilities, any local or police authority. There exist provisions for appeal to a prescribed authority and for revision by the State Transport Authority under Sections 64 and 64-A of the Act which expressly provide for hearing to be given to the affected persons. Is the Regional Transport Authority discharging quasi-judicial functions under Section 47 of the Act?⁴⁷

45. See *Desraj v. Dy. Commissioner*, A.I.R. 1962 J. & K. 86.

46. See *State of Madras v. C. P. Sarthy*, A.I.R. 1953 S.C. 53.

47. See *B. Rajagopala Naidu v. S.T.A.*, A.I.R. 1964 S. C. 1573; *New Prakash Transport Co. v. New Suvarana Transport Co.*, A.I.R. 1957 S.C. 232.

10. Under Section 4 of the Indian Electricity Act, 1910, the State Government is empowered, after consulting the State Electricity Board, to revoke a licence, if in its opinion public interest so requires, in any of the following cases: (a) where the licensee, in the opinion of the State Government, makes wilful and unreasonably prolonged default in doing anything required of him by or under the Act; (b) where the licensee breaks any of the terms or conditions of his licence the breach of which is expressly declared by such licence to render it liable to revocation; (c) where in the opinion of the State Government the financial position of licensee is such that he is unable fully and efficiently to discharge the duties and obligations imposed on him by his licence. No licence is to be revoked unless the State Government has given to the licensee three months notice in writing stating the grounds on which it is proposed to revoke the licence and has considered any cause shown by the licensee against the proposed revocation. Is the function of the State Government in revoking the licence administrative?⁴⁸

11. Consider the judgment of the Supreme Court in *Pradyat K. Bose v. C. J. Of Calcutta*.⁴⁹ The Registrar of the High Court was dismissed by the order of the Chief Justice for misconduct. The Registrar was given a hearing by another judge of the High Court, who was authorised by the Chief Justice to make an enquiry and submit a report. He then made a report finding the Registrar guilty on some of the charges. The Chief Justice then himself held a hearing in which the Registrar was given an opportunity to show cause why he should not be dismissed. The Court said:

"But the exercise of the power to appoint or dismiss an officer is the exercise not of a judicial power but of an administrative power. It is nonetheless so, by reason of the fact that an opportunity to show cause and an enquiry simulating judicial standards have to precede the exercise thereof."

Do you agree?

12. According to Section 167 (8) of the Sea Customs Act, 1878, if any goods, the importation or exportation of which is prohibited or restricted, be imported into or exported from India contrary to such prohibition or restriction, or if any attempt be made to import or

48. See *Baranagar E. S. & I. Co. v. State of Madhya Pradesh*, A.I.R. 1963 M.P. 41.

49. A.I.R. 1956 S.C. 285.

export any such goods, such goods are liable to confiscation and the person concerned in any such offence is liable to a penalty.

Discuss the nature of the order of a Customs authority imposing confiscation and other penalties under the above provision.⁵⁰

13. Do you agree with the Bombay High Court's view in *Glaxo Laboratories v. Venkateswaran*⁵¹ that the function of the authorities in assessing customs duties on goods under section 87 of the Sea Customs Act, 1878, is administrative?⁵² Compare this decision with the statement of the Supreme Court in *K. T. Moopil Nair v. State of Kerala*⁵³ that "the assessment of a tax on person or property is at least of a quasi-judicial character."

14. Under rule 41 of the Indian Arms Rules, 1951, made under the Indian Arms Act, 1878, the competent authority has discretion to renew a licence. Under the rule, however, an appeal against the refusal of the authority lies to a higher administrative authority, and under rule 41-B the authority refusing to renew a licence is required to record in writing its reasons for such refusal. What is the nature of function exercised by the authority in refusing to renew a licence?⁵⁴

15. Under section 3 of the Commissions of Inquiry Act, 1952, the appropriate Government may appoint a Commission of Inquiry for the purpose of making an inquiry into any matter of public importance and perform such functions as may be specified. Under section 4 of the Act the Commission shall have the powers of a civil court, while trying a suit under the Code of Civil Procedure, 1908, in respect of certain matters, e.g., summoning of witnesses, production of documents, etc. By a notification the Central Government appointed a Commission to inquire into the affairs of certain persons and companies. What is the nature of the function discharged by the Commission?⁵⁵

50. *East India Commrl. Co. v. Collector of Customs*, A.I.R. 1962 S. C. 1893, *F. N. Roy v. Collector of Customs*, A.I.R. 1957 S.C. 648; *Leo Roy v. Supdt. Dist. Jail, Amritsar*, A.I.R. 1958 S. C. 119; *Pioneer Traders v. Chief Controller, Imp. & Exp.*, A.I.R. 1963 S. C. 734. The Sea Customs Act of 1878 has now been re-enacted as the Customs Act, 1962. In the new Act sections 111, 112, 113 and 114 stand for the section 167(8) of the old Act.

51. A.I.R. 1959 Bom. 372.

52. See also *Gopikishen v. Collector of Customs*, A.I.R. 1961 A.P. 170.

53. A.I.R. 1961 S.C. 552, 559.

54. See *Moti Miyan v. Commissioner, Indore Division*, A.I.R. 1960 M.P. 157.

55. See *Allen Berry & Co. v. Vivian Bose*, A.I.R. 1960 Punj. 86.

16. Section 51 of the Madras Shops and Establishments Act provides, inter alia, that if any question arises whether any provision of the Act applies to an establishment or to a person employed therein, it shall be decided by the Commissioner of Labour and his decision thereon shall be final and shall not be liable to be questioned in any court of law.

Since the decision of the Commissioner has been made final, can it be argued that he acts in an administrative capacity?⁵⁶

17. Is the obligation to hear inconsistent with a purely discretionary function of the Administration?

18. What other tests have the courts used to characterise administrative action as "quasi-judicial?" Can you develop some better approach to differentiate between the three types of administrative action—legislative, administrative and quasi-judicial?

19. In most of the cases noted in this chapter it is suggested that the words like "necessary and expedient", "public purpose", "opinion", "grounds to believe", "considers" show that the function is non-adjudicative. (e.g., *Advani*⁵⁷ and *Radeshyam*⁵⁸). But compare the *Gullapalli*⁵⁹ and the *Nagendra Nath*⁶⁰ cases.

20. Is it possible to separate into parts a single process of administration and say one part is adjudicative and the other not? In the *Radeshyam*⁶¹ case, the court said: "Both the decisions as to the fact and as to the action to be taken are really one and not two decisions, the determination being for the purpose of taking an appropriate administrative decision two decisions...cannot be separated into parts with different legal qualities." However, in *Inayat Ullah v Custodian, Evacuee Property*⁶² the Supreme Court held that, when the Custodian of Evacuee property issued a notice and then conducted an enquiry as to whether the property was evacuee, the two parts were separate. Only the Custodian could pass judgement on the sufficiency of information to issue a notice; the court could not. But the enquiry could be examined by the court with a view to see whether there was sufficient material for the authority's decision.

56. See *Prem Sagar v. S. V. Oil Company*, A.I.R. 1965 S. C. 111.

57. A.I.R. 1950 S. C. 222.

58. A.I.R. 1959 S. C. 107.

59. A.I.R. 1959 S. C. 308.

60. A.I.R. 1958 S. C. 398.

61. A.I.R. 1959 S. C. 107, 128.

62. A.I.R. 1958 S. C. 160.