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PURTABPORE CO. LTD.

v.

CANE COMMISSIONER OF BIHAR & ORS.

November 21, 1968

B [S. M. SIKRI AND K. S. HEGDE, JJ.]

Sugar Cane (Control) Order, 1955—Central Government's power under cl. 6 of Order to regulate supply of sugarcane to factories—Power under cl. 6 delegated under cl. 11 to State Governments and Cane Commissioners—Cane Commissioner passing Order under cl. 6(1) on direction given by Chief Minister such order is invalid—An order under s. 6(1) modifying a reservation in favour of a factory is quasi judicial—Requirement of natural justice must be satisfied.

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The Sugar Cane (Control) Order, 1955 was promulgated by the Central Government in the exercise of its powers under the Essential Supplies Act. Under cl. 6 of the Order the Central Government could reserve any area where sugarcane was grown for a factory taking into account various relevant factors. Clause 11 allowed the Central Government to delegate its power under cl. 6, and the Central Government by a notification dated July 16, 1966 delegated the said power to the several State Governments and the Cane Commissioners of those States. The appellant was a sugar mill situated in U.P. near the border of Bihar State. For a long time its source of supply of sugarcane had been the neighbouring area of Bihar State consisting of 208 villages. For the seasons 1966-67 and 1967-68 the 5th respondent—a sugar mill situate on the Bihar side of the border—sought to have the area reserved for itself but by order dated November 30, 1966 the request was rejected by the State Government. In December 1966 the Cane Commissioner, Bihar passed an order under cl. 6(1) of the Sugar Cane (Control) Order reserving the said area of 208 villages for the appellant for the seasons 1966-67 and 1967-68. The 5th respondent made representations to the Chief Minister. Acting on directions given by the Chief Minister the Cane Commissioner, Bihar passed orders on November 14, 1967, whereby by a notification in the Bihar Government Gazette 121 of the aforesaid villages were reserved for the appellant and 99 villages for the 5th respondent. The appellant filed a writ petition in the High Court challenging this order of the Cane Commissioner but the petition was rejected. With certificate appeal was filed in this Court. The contentions urged on behalf of the appellant were : (i) The orders in question though purported to have been made by the Cane Commissioner were in fact not so, and were therefore invalid; (ii) Every proceeding to modify any reservation under cl. 6 is a quasi-judicial proceeding. As the impugned notifications were made without affording the appellant reasonable opportunity for representing its case they were bad in law; (iii) Even if the said proceeding was considered an administrative proceeding the impugned orders were liable to be set aside on the basis of the rule laid down by this Court in *State of Orissa* v. *Dr. (Miss) Binapani Dei,* [1967] 2 S.C.R. 625.

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HELD : (i) From the material on record the only conclusion possible was that the Chief Minister imposed his opinion on the Cane Commissioner. The power exercisable by the Cane Commissioner under cl. 6(1) is a statutory power. He alone could have exercised that power. While exercising that power he cannot abdicate his responsibility in favour of anyone—not even in favour of the State Government or the Chief Minister. It was not proper for the Chief Minister to have interfered with the

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functions of the Cane Commissioner. In this case what had happened was that the power of the Cane Commissioner had been exercised by the Chief Minister, an authority not recognised by cl. (6) read with cl. (11) but the responsibility for making those orders was asked to be taken by the Cane Commissioner. A

The executive officers entrusted with statutory discretions may in some cases be obliged to take into account considerations of public policy and to some context the policy of a Minister or the Government as a whole when it is a relevant factor in weighing the policy but this will not absolve them from their duty to exercise their personal judgment in individual cases unless explicit statutory provision has been made for them to be given binding instructions by a superior. [816 D—H] B

Commissioner of Police, Bombay v. *Gordhandas Bhanji,* [1952] S.C.R. 135 and *State of Punjab* v. *Hari Kishan Sharma,* A.I.R. 1966 S.C. 1081, applied. C

(ii) As soon as the 5th respondent moved the Government for altering or modifying the reservation made in favour of the appellant, a *lis* commenced. The dispute that arose between the appellant and the 5th respondent had to be decided on the basis of the objective criteria, prescribed by cl. 6 of the order *i.e.* (1) the crushing capacity of the appellant mill; (2) the availability of the sugarcane in the reserved area and (3) the need for the production of sugar. There could hardly be any doubt that the modification of the reservation made in favour of the appellant would have had serious repercussions on the working of the appellant's mill. It was bound to affect its interests adversely. Hence it was not possible to accept the conclusion of the High Court that the proceeding before the Cane Commissioner was not a *quasi-judicial* proceeding. [817 E—H] D

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Province of Bombay v. *Kusaldas S. Advani & Ors.,* [1950] S.C.R. 621 at p. 725, *Shivji Nathubhai* v. *The Union of India,* [1960] 2 S.C.R. 775, *Board of High School and Intermediate Education U.P. Allahabad* v. *Ghanshyam Das Gupta & Ors.,* [1962] 3 Supp. S.C.R. 36, *New Zealand Dairy Board* v. *Okitu Co-operative Dairy Co. Ltd.,* (1953) *New Zealand* Law Reports p. 366, and *James Edward Jeffs & Ors.* v. *New Zealand Dairy Production & Marketing Board & Ors.*, [1967] A.C. p. 551, referred to. F

(iii) In the present case both the appellant and the 5th respondent were making repeated representations to the Chief Minister as well as to the Cane Commissioner. The representations made by the 5th respondent or even the substance thereof were not made available to the appellant. The proposal to split the reserved area into two or the manner in which it was proposed to be split was not made known to the appellant and his objection invited in that regard. It had no opportunity to represent against the same. Hence the appellant was justified in complaining that the principles of natural justice had been contravened. [822 D—F] G

Suresh Koshy George v. *The University of Kerala & Ors.,* [1969] 1 S.C.R. 317, referred to.

(iv) The appellant's interest was adversely affected by the impugned order and the contention of the respondent that as no orders had been passed under cls. 6(c) and (d) of the 'order' the appellant could not be considered as an aggrieved party, was not correct. [823 A] H

A [The Court did not consider it necessary to decide the questions (a) whether the impugned orders could have been validly made in an administrative proceeding, (b) whether the Cane Commissioner who had the power to make the reservation in question also had the power to alter or modify that reservation]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1464 of
B 1968.

Appeal from the judgment and order dated March 18, 1968 of the Patna High Court in C.W.J.C. No. 816 of 1967.

A. K. Sen, Bhola Sen, D. Parkar Gupta, Om Khetan, B. P. Maheshwari and *R. K. Maheshwari,* for the appellant.

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M. C. Chagla and *R. C. Prasad,* for respondents Nos. 1 and 2.

M. C. Chagla, D. P. Singh, S. C. Agarwal, Uma Dutta and *S. Chakravarti,* for respondent No. 5.

Sobhagmal Jain and *Krishna Sen,* for respondent Nos. 6 to 8.

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The Judgment of the Court was delivered by

Hegde, J. This appeal by certificate arises from the decision rendered on 18th March 1968 by the Patna High Court in C.W.J.C. No. 816 of 1967. That was a petition filed by the appellant under Art. 226 of the Constitution praying, *inter alia,*
E that the High Court may be pleased to quash the two orders made by the Cane Commissioner, Bihar on November 14, 1967 under which he excluded 99 villages from the area reserved by him in favour of the appellant under cl. 6 of the Sugar Cane (Control) Order 1966 (to be hereinafter referred to as the 'order') and included those villages in the area reserved in favour of New Siwan
F Mill (5th respondent in this appeal). The High Court dismissed that writ petition.

The appellant Co. was established in 1903. Though its sugar mill is in U.P., it used to draw its sugarcane requirement mainly from the neighbouring areas in Bihar State. The mill in question
G is within about 100 yards of the Bihar border. The appellant's case is that for the last over 30 years the 208 villages of Bihar, with which we are concerned in this appeal had been the principal source of its supply of sugarcane and that the Bihar authorities used to reserve those villages for it. The appellant claims to have spent huge amount in the development of sugarcane grow-
H ing areas in the said 208 villages in the course of years. It also claims to have advanced large sums to the sugarcane growers in the said villages, such sums to be adjusted later on against the price of the sugarcane purchased. In 1955 the Central Govern-

ment promulgated the 'order' in exercise of its powers under the Essential Commodities Act. One of the main purpose of that order was to regulate the supply and distribution of sugarcane. Reservation of the said 208 villages in favour of the appellant continued under that order. But in view of the agitation carried on by the 5th respondent and others, during the two seasons 1962-63 and 1963-64 those villages were kept unreserved. Hence any factory was free to make purchases in that area. Even during that period the appellant continued to get its supplies from that area. On February 3, 1964, there was a meeting of the Cane Commissioners of Bihar and U.P. with the object of deciding on a long term basis the question of allotting sugarcane grown in the border area among the sugar factories situated near the Bihar U.P. border. In that meeting it was decided *inter alia* that the afore-mentioned 208 villages should be reserved in favour of the appellant; at the same time some of sugarcane growing areas in U.P. were reserved for some of the Bihar sugar mills. Accordingly the Cane Commissioner of Bihar passed oders reserving the aforementioned 208 villages for the appellant for two seasons *i.e.* 1964-65 and 1965-66. For the New Siwan mill (5th respondent) 100 more villages were reserved in Guthani area. The representation of the New Siwan mill for reserving the 208 villages mentioned earlier was rejected by the Cane Commissioner.

The powers of the Central Government under cls. 6, 7, 8 and 9 of the 'order' were delegated to the several States and the Cane Commissioners mentioned in the notification issued by the Central Government on July 16, 1966. The State Government of Bihar and the Cane Commissioner of Bihar are amongst the authorities to whom the powers under those clauses were delegated. By its order of November 4, 1966, the State Government of Bihar rejected the representation made by New Siwan mill by its application of February 17, 1966 asking for reservation of the 208 villages mentioned earlier. Thereafter by his order of December 30, 1966, the Cane Commissioner Bihar reserved those villages for the appellant under cl. 6(1)(a) of the 'order' for two seasons (1966-67 and 1967-68). The New Siwan mill challenged the validity of that order in C.W.J.C. No. 63 of 1967 in the Patna High Court. The appellant filed its counter affidavit in that proceeding on March 21, 1967. The application was heard in part on April 13, 1967 and April 14, 1967 but thereafter the case was adjourned. Later the appellant learnt that the 5th respondent had moved the Chief Minister of Bihar to revoke the reservation made in favour of the appellant. Apprehending that the appellant's interest may be jeopardised, one of the Directors of the appellant company wrote to the Chief Minister on June 15, 1967 praying that the reservation made in favour of the appellant should

not be disturbed. Subsequent to that, the appellant made numerous other representations both to the Chief Minister as well as to the Cane Commissioner. One of the Director of the appellant company met the Chief Minister as well as his Private Secretary. Meanwhile the 5th respondent was also making representations to the Chief Minister as well as to the Cane Commissioner. From the records produced before us, it is clear that the Cane Commissioner was firmly of the opinion that there was no justification for disturbing the reservation made in favour of the appellant. He strongly recommended to the Chief Minister against interfering with the said reservation. According to him it was in the interest of the Sugar industry as well as that of the Sugar mills in Bihar not to disturb the agreement arrived at the meeting of the Sugar Cane Commissioners of U.P. and Bihar. From the records produced before us it is seen that one of the grounds urged by the 5th respondent in support of his plea was that while it was a Bihar mill, the appellant was a U.P. mill and as such the Bihar villages should be reserved for its use. From the note submitted by Shri Tarini Sahai, an officer in the Cane Commissioner's department, to the Assistant Cane Commissioner on July 5, 1967, it is seen that the Chief Minister was interesting himself in the controversy between the appellant and the 5th respondent. That is also clear from the note submitted by S. Asanullah another officer in the same department to the Cane Commissioner on 7-7-1967. It is unnecessary to refer to the correspondence that passed between the Cane Commissioner and the Chief Minister but one thing is clear from that correspondence that while the Cane Commissioner was firm in his opinion that the agreement entered into between him and his counter-part in U.P. should be respected, the Chief Minister was inclined to alter the reservation made in favour of the appellant. In the notes submitted by the Assistant Cane Commissioner to the Cane Commissioner we find the following statement :

> "As verbally ordered by the Cane Commissioner in the background of the above notes of the Assistant Cane Commissioner in connection with the discussions held with the Chief Minister the undersigned examined the geographical positions given in the map.

208 villages of Bihar are reserved for Pratabpur mill. They are divided as follows :

(a) Mirganj police station	..	87
(b) Siwan police station	..	106
(c) Darauli police station	..	15
Total .		208"

In the note submitted by the Cane Commissioner to the Chief Minister on October 27, 1967, it is stated:

> "As per order, the above two suggestions (Ka and Kha) have been given for division of 208 villages between the New Siwan Mill and the Pratabpur Mill. According to one (Ka) the New Siwan Mill gets 121 villages and according to the second proposal (Kha) it gets 99 villages. As it is clear from the notes of the Assistant Cane Commissioner, the Chief Minister has ordered that most of these 208 villages may be given to the New Siwan Mill. This order is carried out under proposal 'Kha', but under it, about 20-22 such villages come as are at a distance of only 2-3 miles from the Pratabpur Mill and the farmers of those villages can also have some objection on account of it.
>
> Hence only after obtaining a clear order from the Chief Minister, the necessary notification will be issued.
>
> Sd/-Illegible
> 27-10. "

On November 7, 1967, the Chief Minister passed the following order on the above note.

> "I agree with the notes as at *Kha* of page 33. 99 villages be left to the New Siwan Mill and 109 villages to the Pratabpur Mill. None of the two mills will have the right to keep the weigh bridge of sugar-cane collecting centre in the area of each other.
>
> Sd/- Mahamaya Pd. Sinha
> 7-11-67."

On the basis of this direction the Cane Commissioner made the impugned orders on November 14, 1967, which were duly published in the Gazette.

In the High Court the validity of the order made by the Cane Commissioner on November 14, 1967 was challenged on six different grounds *i.e.* (1) that the Cane Commissioner had no jurisdiction to pass those orders; (2) in passing those orders, the Cane Commissioner practically abdicated his statutory functions and mechanically implemented the directions issued by the Chief Minister; (3) the orders are vitiated as the proceeding before the authority culminating in those orders was a quasi-judicial proceeding and the authority had failed to afford a reasonable opportunity to the appellant to represent against the orders proposed to be made; (4) even if the proceeding in question should be

A considered as an administrative proceeding as the orders made involve civil consequence and the proceeding having not been conducted consistently with the rules of natural justice, the impugned orders cannot be sustained; (5) those orders were passed *mala fide* and lastly (6) they are discriminatory against the petitioner and hence hit by Art. 14 of the Constitution. The High B Court rejected every one of the contentions. It came to the conclusion that the Cane Commissioner who had the power to make reservations under cl. 6 of the 'order' had also the power to modify or cancel those reservations in view of s. 21 of the General Clauses Act; the impugned orders were that of the Cane Commissioner both in fact as well as in law; the proceeding before the Cane C Commissioner which resulted in making the impugned orders is a purely administrative proceeding; even if it is considered to be *quasi-judicial* proceeding, reasonable opportunity had been given to the appellant to represent its case and in fact it had represented its case fully and effectively; the plea of *mala-fide* is unsubstantiated and the orders in question did not contravene Art. 14 of the Constitution.

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In this Court Shri A. K. Sen, learned Counsel for the appellant attacked the impugned order on the following grounds :

(1) The orders in question though purported to have been made by the Cane Commissioner, were in fact not so; the Cane Commissioner merely acted as the mouth-piece of the Chief E Minister; in truth he had abdicated his statutory functions and therefore the orders are bad; (2) Every proceeding to modify any reservation made under cl. 6 of the 'order' is a quasi-judicial proceeding. As the impugned modifications were made without affording the appellant reasonable opportunity for representing its case they are bad in law; (3) Even if the said proceeding is F considered as an administrative proceeding, the impugned orders are liable to be set aside on the basis of the rule laid down by this Court in *State of Orissa* v. *Dr. (Miss) Binapani Dei and Ors.*(1), and (4). The impugned modifications contravene Art. 301 of the Constitution.

Shri Sen did not address any arguments on the last ground G formulated by him. Therefore we shall not deal with the same.

The contentions of Shri M. C. Chagla, learned Counsel for the State of Bihar as well as the 5th respondent were as follows :

Though the Cane Commissioner had consulted the Chief H Minister, the impugned orders were really made by the former, hence it cannot be said that he had abdicated his statutory func-

(1) [1967] 2 S.C.R. 625.

tions. According to him, the proceeding before the Cane Commissioner was administrative in character and to such a proceeding rules of natural justice are not attracted. He further urged that even if it is held that the said proceeding was a *quasi-judicial* proceeding, there was no contravention of the principles of natural justice as the appellant had represented his case fully both before the Chief Minister as well as before the Cane Commissioner.

Before we proceed to examine the contentions advanced on behalf of the parties, it is necessary to refer to the relevant provisions of law. Clause 5 of the 'order' which deals with the power to regulation, distribution and movement of sugarcane reads as under :

(i) The Central Government may, by order notified in the official gazette :

(a) reserve any area where sugarcane is grown (hereinafter in this clause referred to as reserved area) for a factory having regard to the crushing capacity of the factory, the availability of sugarcane in the reserved area and the need for production of sugar, with a view to enabling the factory to purchase the quantity of sugarcane required by it;

(b) determine the quantity of sugarcane which a factory will require for crushing during any year;

(c) fix, with respect to any specified sugarcane grower or sugarcane growers generally in a reserved area, the quantity or percentage of sugarcane grown by such grower or growers, as the case may be, which each such grower by himself or, if he is a member of a co-operative society of sugarcane growers operating in the reserved area, through such society; shall supply of the factory concerned;

(d) direct a sugarcane grower or a sugacane growers' cooperative society supplying sugarcane to a factory, and the factory concerned to enter into an agreement to supply or purchase, as the case may be, the quantity of sugarcane fixed under paragraph (c);

(e) direct that no gur (jaggery) or khandsari sugar or sugar shall be manufactured from sugarcane except under and in accordance with the conditions specified in the licence issued in this behalf;

(f) prohibit or restrict or otherwise regulate the export of sugarcane from any area (including a reserved

A area) except under and in accordance with a permit issued in this behalf.

(2) Every sugarcane grower, sugarcane growers' co-operative society and factory, to whom or to which an order made under paragraph (c) of sub-clause (1) applies, shall be bound to supply or purchase, as the case may be, that quantity of sugarcane B covered by the agreement entered into under the paragraph and any wilful failure on the part of the sugarcane growers' co-operative society or the factory to do so, shall constitute a breach of the provisions of this Order :

Provided that where the default committed by any sugarcane C growers' co-operative society is due to any failure on the part of any sugarcane grower, being a member of such society such society shall not be bound to make supplies of sugarcane to the factory to the extent of such default.

Clause (11) deals with delegation of powers. It reads :

D "The Central Government may, by notification in the Official Gazette, direct that all or any of the powers conferred upon it by this Order shall, subject to such restrictions, exceptions and conditions, if any, as may be specified in the direction, be exercisable also by :

(a) any officer or authority of the Central Govern- D ment;

(b) a State Government or any officer or authority of a State Government."

As seen earlier, the Central Government had delegated its power under cl. (6) to the State Government of Bihar as well as F to the Cane Commissioner, Bihar.

In the matter of exercise of the power under rule 6(1) the State Government and the Cane Commissioner are concurrent authorities. Their jurisdiction is co-ordinate. There was some controversy before us whether a Cane Commissioner who had reserved an area for a sugar factory for a particular period can G alter, amend, or modify the area reserved in the middle of the period fixed. As seen earlier 208 villages with which we are concerned in this case were reserved for the appellant for two seasons *i.e.* 1966-67 and 1967-68. The contention was that the Cane Commissioner could not have interfered with that reservation within that period. The High Court has come to the con- H clusion that the Cane Commissioner who had the power to make the reservation in question must be held to have had the power to alter or modify that reservation. But it is not necessary for us to pronounce on this question as we are of the opinion that the

impugned orders though purported to have been made by the Cane Commissioner were in fact made by the Chief Minister and hence they are invalid. We have earlier seen that the Cane Commissioner was definitely of the view that the reservation made in favour of the appellant should not be disturbed but the Chief Minister did not agree with that view. It is clear from the documents before us that the Chief Minister directed the Cane Commissioner to divide the reserved area into two portions and allot one portion to the 5th respondent. In pursuance of that direction, the Cane Commissioner prepared two lists 'Ka' and 'Kha'. Under the orders of the Chief Minister, the villages contained in list 'Ka' were allotted to the appellant and in list 'Kha' to the 5th respondent. The Cane Commissioner merely carried out the orders of the Chief Minister. It is true that the impugned orders were issued in the name of the Cane Commissioner. He merely obeyed the directions issued to him by the Chief Minister. We are unable to agree with the contention of Shri Chagla that though the Cane Commissioner was initially of the view that the reservation made in favour of the appellant should not be disturbed, he changed his opinion after discussion with the Chief Minister. From the material before us, the only conclusion possible is that the Chief Minister imposed his opinion on the Cane Commissioner. The power exercisable by the Cane Commissioner under cl. 6(1) is a statutory power. He alone could have exercised that power. While exercising that power he cannot abdicate his responsibility in favour of anyone—not even in favour of the State Government or the Chief Minister. It was not proper for the Chief Minister to have intefered with the functions of the Cane Commissioner. In this case what has happened is that the power of the Cane Commissioner has been exercised by the Chief Minister, an authority not recognised by cl. (6) read with cl. (11) but the responsibility for making those orders was asked to be taken by the Cane Commissioner.

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The executive officers entrusted with statutory discretions may in some cases be obliged to take into account considerations of public policy and in some context the policy of a Minister or the Government as a whole when it is a relevant factor in weighing the policy but this will not absolve them from their duty to exercise their personal judgment in individual cases unless explicit statutory provision has been made for them to be given binding instructions by a superior.

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In *Commissioner of Police, Bombay* v. *Gordhandas Bhanji*[1] this Court struck down the order purported to have been passed by the Commissioner of Police in the exercise of his powers

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(1) [1952] S.C.R. 135.

A under the Bombay Police Act and the rules made thereunder as the order in question was in fact that of the Government. The rule laid down in that decision governs the question under consideratiin. This Court reiterated that rule in *State of Punjab* v. *Hari Kishan Sharma*(1). Therein this Court held that the State Government was not justified in assuming jurisdiction which had B been conferred on the licensing authority by s. 5(1) and (2) of the Punjab Cinemas (Regulation) Act. For the reasons mentioned above we hold that the impugned orders are liable to be struck down as they were not made by the prescribed authority.

C This takes us to the question whether the proceeding which resulted in making the impugned orders is a *quasi-judicial* proceeding or an administrative proceeding. There was some controversy before us whether a proceeding under cl. 6(1) of the 'order' is a *quasi-judicial* proceeding. It is not necessary for us to decide that question as in this case we are only concerned with the proceeding which resulted in making the impugned or- D ders. In that proceeding the only question before the authorities was whether all or some of the villages reserved for the appellant should be taken out from the reserved area and reserved for the 5th respondent. The plea of the 5th respondent was that all those villages should be reserved for it whereas the appellant insisted that the reservation made in its favour should not be dis- E turbed. Whether there was a *lis* between the appellant and the 5th respondent at an earlier stage or not, we are of the opinion, as soon as the 5th respondent moved the Government for altering or modifying the reservation made in favour of the appellant, a *lis* commenced. The dispute that arose between the appellant and the 5th respondent had to be decided on the basis of the F objective criteria, prescribed by cl. 6 of the 'order' *i.e.* (1) the crushing capacity of the appellant mill; (2) the availability of the sugarcane in the reserved area and (3) the need for the production of sugar.

There is hardly any doubt that the modification of the reservation made in favour of the appellant would have had serious G repercussions on the working of the appellant's mill. It was bound to affect its interests adversely. Hence it is not possible to accept the conclusion of the High Court that the proceeding before the Cane Commissioner was not a *quasi-judicial* proceeding.

The impugned orders are similar to orders revoking or modifying licenses. It would not be proper to equate an order H revoking or modifying a licence with a decision not to grant a licence. Therefore Shri Chagla is not right in his contention that

(1) A.I.R. 1966. S.C. 1081.

in this case we are called upon to deal with a privilege and not a right. As observed by S.A. De Smith in his *Judicial Review of Administrative Action* (2nd Edn.) at p. 211 :

> "To equate a decision summarily to revoke a licence with a decision not to grant a licence in the first instance may be still more unrealistic. Here the "privilege" concept may be peculiarly inapposite; and its aptness has not been enhanced by the manner in which it has been employed in some modern cases. It is submitted that the courts should adopt a presumption that prior notice and opportunity to be heard should be given before a licence can be revoked. The presumption should be rebuttable in similar circumstances to those in which summary interference with vested property rights may be permissible. That the considerations applicable to the revocation of licences may be different from those applicable to the refusal of licences has indeed been recognised by some British statutes and a number of judicial decisions in other Commonwealth jurisdictions."

In *Province of Bombay* v. *Kusaldas S. Advani and Ors.*(1) Das, J. formulated the following tests to find out whether a proceeding before an authority or a tribunal is a *quasi-judicial* proceeding :—

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

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

These tests were adopted by this Court in *Shivji Nathubhai* v. *The Union of India and Ors.*(2). Therein this Court was

(1) [1950] S.C.R. 621 at p. 725. (2) [1960] 2, S.C.R. 775.

considering the validity of cancellation in review by the Central Government a mining lease granted by the State Government. In that context this Court held that even if the act of the State Government in granting a mining lease was an administrative act, it was not correct to say that no right of any kind passed to the lessee until the review was decided by the Central Government where a review had been applied for. Rule 52 of the rules framed under the Mines and Minerals (Regulation and Development) Act, No. 53 of 1941 which gives the aggrieved party the right to a review created a *lis* between him and the lessee and, consequently, in the absence of anything to the contrary either in rule 54 or the statute itself there could be no doubt that the Central Government is required to act judicially under rule 54.

This Court in *Board of High School and Intermediate Education U.P., Allahabad* v. *Ghanshyam Das Gupta and Ors.*(1) held that where the statute in question is silent as to the manner in which the power conferred should be exercised by the authority acting under it, the exercise of power will depend on the express provisions of the statute read alongwith the nature of the rights affected, the manner of disposal provided, the objective criteria, if any, to be adopted, the effect of the decision on the persons affected and other indicia afforded by the statute. The mere fact that the Act in question or the relevant Regulations do not make it obligatory on the authority to call for an explanation and to hear the person concerned is not conclusive on the question whether the authority has to act as a *quasi-judicial* body when exercising its power under the statute.

On applying the various tests enunciated in the above decisions, there is hardly any doubt that the proceeding before the Cane Commissioner was a quasi-judicial proceeding. In this connection reference may be usefully made to the decision of the Court of Appeal of New Zealand in *New Zealand Dairy Board* v. *Okitu Co-operative Dairy Co., Ltd.*(2). We are referring to that decision because the facts of that case bear a close resemblance to the facts of the present case. Therein as a result of a Zoning Order made by the Executive Commissioner of Agriculture in May 1937, the respondent dairy company, carrying on business in Gisborne and the surrounding district, and the Kia Ora Co-operative Dairy Co. Ltd. became entitled to operate exclusively in a defined area in the Gisborne district. They were excluded from operating outside that area. The zoning conditions so established continued to exist until 1950, when the appellant Board issued the zoning orders which were impugned in that case. It may be noted that the zoning orders were made in the exercise of the statutory power conferred on the appellant board.

(1). [1962] Supp. 3 S.C.R. 36. (2). (1953) New Zealand Law Reports p. 366.

Before 1942, the respondent Co. was approached by the Health Department with a request that it undertakes the treatment and supply of pasteurised milk to the public schools, and it was informed that other dairy companies had declined the proposal. The company complied with the request, after overcoming the difficulties of finance. The scheme was put into operation. In 1942 the respondent company put up a treatment plant and expanded its business. This expansion resulted in an annual turnover in the company's milk department going upto about £90,000 as against £43,000 in its butter department. In March, 1950, the Kia Ora company, by letter, expressed its desire that the appellant Board (which had been substituted by regulation for the Executive Commission) should examine the question of cream and milk supplies in the Gisborne and surrounding districts. This letter was, in substance, an application to the Board to review the whole question of zoning and to require the respondent company to cease the manufacture of butter. Moreover the letter set out the circumstances in a manner prejudicial to the respondent company. After various meetings and negotiations between the appellant Board, companies concerned, and interested parties, at none of which were the contents of the Kia Ora company's letter to the Board disclosed to the respondent company, no agreement was reached. The result of discussions with the Kia Ora company and detailed replies to complaints were given to the Board by the respondent company, and its letter ended with a statement to the effect that it would appreciate the privilege of appearing before the full Board with the object of stating its case more fully or of answering any questions. The Board ignored this specific request. At a full meeting of the Board held on May 31, 1950, the Board decided that only one butter factory should operate in the Gisborne district. On August 3, the Board by resolution, decided to give notice of its intention of issuing a zonal order to operate as from October 1, 1950 assigning to the Kia Ora company the cream collection area over which the two companies then operated. On August 29, the respondent company wrote to the Board protecting against its proposal and asking for recession of the Board's resolution and for an opportunity of being heard. On September 2, 1950, the appellant Board in exercise of the power conferred upon it by Regulation 16 of the Dairy Factory Supply Regulations, 1936 and in terms of its resolution of August 3, 1950, made Zoning Order No. 120 which was the subject of the proceedings before the Supreme Court of New Zealand. That order was to come into force on October 1, 1950. Its effect was to assign exclusively to the Kia Ora Co. the area defined in Zoning Order (No. 30) of 1937 as that in which the two companies could jointly collect cream produced in supplying dairies situated in that area, and to prohibit the res-

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pondent dairy company after October 1, 1950 from collecting or receiving any cream so produced for the purposes of manufacture into cream or butter.

The respondent company and others presented a petition to the Parliament praying for relief and remedy by way of legislation either in the direction of reversing and setting aside the Board's decision in the matter of the zoning order or setting aside such decision and rehearing of the matter by an independent tribunal. The petition was heard by a select Committee of the House of Representatives, which decided to make no recommendation on the petition. On August 4, the Board made an amended Zoning Order (No. 120A) postponing until June 1, 1951, the date of the coming into operation of Zoning Order No. 120 already made, but otherwise confirming that order. The respondent company commenced an action against the Board claiming (a) a declaration that Zoning Orders Nos. 120 and 120A issued by the Board were invalidly passed and were of no legal effect; (b) an order of *certiorari* to remove into the Supreme Court and quash the zoning orders; and (c) an injunction restraining the Board from carrying out its intention of promulgating the zoning orders or from proceeding further or execising any jurisdiction in accordance with the same. The action was heard by Mr. Justice Hay, who found that, in the conduct of the inquiry instituted by the Board, following the application made to it by the Kia Ora Company, there was, in the various respects mentioned in the judgment, a departure from those principles of natural justice which were incumbent on the Board; and in particular, the plaintiff company was denied a hearing on the crucial issue as to whether or not a zoning order should be made. The learned Judge held that the plaintiff company was entitled to succeed in the action in respect of all the reliefs it claimed and he gave the judgment in its favour with costs against the Board. The Court of Appeal affirmed by majority the judgment of the learned trial judge. The Court held that the New Zealand Dairy Board in making its zoning order No. 120 on September 1, 1950 was determining a question affecting the rights of the respondent company and further that the order of the Board was that of a body that was, at least primarily, an administrative body and the question whether such a body was under a duty to act judicially in the course of arriving at an administrative decision was to be determined on the true construction of the authorising legislative provisions and the conditions and circumstances under which, and in which, the jurisdiction fell to be exercised. It held that on the facts and circumstances of the case the power exercised by the Board vitiated as the Board had failed to conform to the principles of natural justice in making the zoning order in question and hence the same is unsustainable. The decision

of the Privy Council in *James Edward Jeffs and Ors.* v. *New Zealand Dairy Production and Marketing Board and Ors.*(1) proceeded on the basis that the aforementioned decision of the Court of Appeal is correct.

Shri Chagla contended that even if we are to hold that the power exercised by the authorities in making the impugned orders had to be exercised judicially, on the facts of his case we must hold that there was no contravention of the principles of natural justice. He took us to the various representations made by the appellant. According to him the appellant had stated in its representations to the authorities all that it could have said on the subject. Therefore we should not hold that there was any contravention of the principles of natural justice. It is true as observed by this Court in *Suresh Koshy George* v. *The University of Kerala and Ors.*(2) that "the rules of natural justice are not embodied rules. The question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case in point, the constitution of the tribunal and the rules under which it functions." In this case what has happened is that both the appellant as well as the 5th respondent were making repeated representations to the Chief Minister as well as to the Cane Commissioner. The representations made by the 5th respondent or even the substance thereof were not made available to the appellant. The proposal to split the reserved area into two or the manner in which it was proposed to be split was not made known to the appellant and his objections invited in that regard. The appellant complains that the manner in which the area had been divided had caused great prejudice to it. Its grievance may or may not be true but the fact remains that it had no opportunity to represent against the same. Hence the appellant is justified in complaining that the principles of natural justice had been contravened.

In view of our finding that the proceeding which resulted in the making of the impugned orders was a *quasi-judicial* proceeding, it is unnecessary to decide whether the impugned orders could have been validly made in an administrative proceeding. We see no merit in the contention advanced on behalf of the 5th respondent that the Cane Commissioner was not competent to reserve the area in question for the appellant as its mill is in U.P. The reserved area is in Bihar. The Cane Commissioner of Bihar had power to reserve that area for any sugar mill whether situated in Bihar or not.

(1). [1967] A.C. 551. (2) [1969] 1 S.C.R. 317

A The contention of Shri Chagla that as no orders had yet been passed under cls. 6(c) and (d) of the 'order' the appellant cannot be considered as an aggrieved party is not correct. As soon as a portion of the area reserved for the appellant was ordered to be taken away and added to the reserved area of the 5th respondent, the appellant's interest was adversely affected. Therefore it is immaterial for the appellant what orders are passed under sub-cls. (c) and (d) of cl. 6 of the 'order', because it can no more get any sugarcane from the area in question. What hurts the appellant is the impugned orders and not the further orders that may be passed.

For the reasons mentioned above this appeal is allowed and the orders impugned quashed. The State of Bihar as well as the 5th respondent shall pay the costs of the appellant both in this Court as well as in the High Court.

G.C. *Appeal allowed.*