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petitioner has thus hopelessly failed to show that she is a citizen of India.

Lastly, Mr. Partap Singh has submitted that the impugned order is invalid because it has not been passed by the Governor and has merely been passed by the Deputy Secretary. This contention is wholly devoid of force. The order purports to be an order of the Governor and merely because the Deputy Secretary has conveyed this order to the petitioner it does not cease to be the Governor's order and does not on this account become invalid.

For the reasons given above, this writ petition fails and is hereby dismissed with costs.

B.R.T.

LETTERS PATENT APPEAL

Before G. D. Khosla and S. B. Capoor, JJ.

SHIVJI NATHUBHAI,—*Appellant*

versus

THE UNION OF INDIA AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 47-D of 1955.

1959

Feb., 25th

Mines and Minerals (Regulation and Development) Act (LIII of 1948)—Section 5—Rules framed under—Mineral Concession Rules, 1949—Right to obtain mining lease under—Whether a fundamental right—Constitution of India (1950)—Article 19(1)(f) & (g)—Mineral Concession Rules—32, 57 and 59—State Government and the Central Government acting under—Whether act as quasi-judicial bodies and bound to afford a hearing to the applicant—Rule 29—Deposit to be made under—Amount not determined by the State Government—Whether maximum amount to be deposited.

Held, that the right to work a mine upon another's land does not exist before the licence or lease is granted to him.

No man can claim as of right to go upon another's territory and extract minerals from it. This right is, in no way, analogous to the fundamental right of a citizen to trade and buy and sell in the open market. The fundamental rights as contemplated by the Constitution are rights which already exist and not rights which are created by a contract, whether that contract be between private individuals or between the Government and a private individual. Nor can the appellant say that he had a right to acquire mining concessions in another's land. The owner of immovable property has every right to refuse to lease it out to another. Neither the Act nor the mining rules framed under the Act can, therefore, be said to amount to interference with the fundamental rights of a citizen. The object of the Act was to provide for the regulation of mines and oil fields and for the development of the minerals "in the public interest". It is obvious that every one cannot be allowed to dig mines indiscriminately even on private land, and as far as Government property is concerned, the grant of a lease confers contractual rights, but its refusal does not infringe any fundamental right because no right in the property existed.

Held, that neither the State Government nor the Central Government are required by the Mines and Minerals (Regulation and Development) Act, 1948, or by the Mineral Concession Rules, 1949, to act in a judicial or *quasi*-judicial manner. The orders passed by them are no more than ministeral or administrative acts. The fact that the order of the State Government has been made subject to review by the Central Government under rules 57 and 59 does not mean that these authorities act in a *quasi*-judical manner. Therefore, the authorities are not bound to hear the applicants because it is not a case of adjudicating the rights of any individual applicant or deciding the comparative merits of the various applicants. Except in so far as the priority between rival applicants may be determined with regard to time under rule 32, no guiding principles are laid down for determining the merits of the various applicants.

Held, that rule 29 of the Mineral Concession Rules requires the deposit of a sum to be fixed by the State Government but not exceeding Rs. 500. If no sum is fixed by the State Government, the applicant for lease is not bound to deposit the maximum amount of Rs. 500. It is

enough if he undertakes to pay whatever amount is fixed by the State Government. Even if the model application form contains a footnote directing that the maximum deposit was to be made where the amount had not been determined by the State Government, such a direction is not mandatory and the applicant for lease will be within his rights in not making any deposit under Rule 29 and merely undertaking to make the necessary deposit when the amount to be deposited was determined.

Appeal under Clause 10 of the Letters Patent of the Punjab High Court against the Judgment of Hon'ble Mr. Justice Kapur, dated 28th November, 1955, in Civil Writ No. 306-D of 1954.

PARSHOTAM DASS TRIKAM DASS, J. B. DADACHANJI, D. K. KAPUR and YOGESHWAR DAYAL, for Appellant.

C. K. DAPHTARY, JINDRA LAL, S: S: SHUKLA and DALJIT SINGH, for Respondents.

JUDGMENT

G. D. Khosla, J. G. D. KHOSLA, J.—This appeal under clause 10 of the Letters Patent arises out of a petition under Article 226 of the Constitution in which an order made by the Central Government under rule 59 of the Mineral Concession Rules, 1949, was unsuccessfully challenged before a learned Single Judge of this Court.

The facts which have given rise to these proceedings are briefly as follows : Upon an application for a mining lease the ruler of Gangpur granted a lease for 15 years to the appellant before us on 30th December, 1947. He had a few days previously (14th December, 1947) signed the merger agreement and the merger actually took place on 1st January, 1948. The Orissa Government examined the various leases which had been issued by the ruler of Gangpur and on 29th June, 1949, issued a notification annulling some of the leases on the ground that they were "not reasonable and bona

fide". Thereafter the Mineral Concession Rules were issued by the Ministry of Steel, Mines and Fuel of the Government of India in exercise of the powers conferred by section 5 of the Mines and Minerals (Regulation and Development) Act, 1948. These Rules provided that a certificate of approval had to be issued by the Government of the State in which the mining concessions were sought, before a mining lease or prospecting licence could be issued. On 15th December, 1949, a notification was issued asking the public to apply for approval certificates required by these Rules. The appellant obtained an approval certificate and made applications for a lease in respect of five mining areas. After some technical irregularities had been set right the applications were accepted on 6th September, 1950, at 12.10 p.m. The State Government of Orissa granted the leases in respect of these five areas to the appellant on 22nd December, 1952. The appellant was provisionally put into possession of these areas in pursuance of the proceedings of the Orissa Government on 21st April, 1953. The proceedings which are Annexure 'B' to the writ petition indicate that the possession of the said land was being given "subject to the result of any appeal or revision that may be preferred and subject" to certain conditions which are set out in Annexure 'B'.

Respondent No. 3 had, in the meantime, made an application for a mining lease in respect of two out of these five areas on 10th July, 1950. Rule 20 required the deposit of a fee of Rs. 200 with every application and rule 29 required the deposit of a sum to be fixed by the State Government but not exceeding Rs. 500. The appellant had with each of his applications made the necessary deposit of Rs. 200 under rule 20 and Rs. 500 under rule 29, although the amount to be levied under rule 29

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had not been fixed by the State Government. The respondents paid the fee of Rs. 200 under rule 20 with their application but did not make any deposit under rule 29 on the ground that the amount to be deposited had not been determined by the Government. The respondents, however, undertook to pay whatever amount was fixed by the State as soon as they were ordered to do so. On 24th July, 1950, the Deputy Collector ordered the respondents to make a deposit of Rs. 500 under rule 29. The deposit was made on 3rd August, 1950. Some minor defects in the respondents' applications were pointed out and on 6th September, 1950, fresh applications were submitted by them.

The State Government had all these applications before them on 22nd December, 1952, when the order granting a lease in respect of five mining areas to the appellant was passed. The priority between the two applicants (appellant and respondent No. 3) was determined according to the principle laid down in rule 32 which provided that preference should be given to the application received first "unless the State Government, for any special reason, and with the prior approval of the Central Government, decides to the contrary". There are two provisos to this rule, but they were enacted after the matter was disposed of by the Orissa Government.

Therefore, on 22nd December, 1952, the position was that there were two applicants for two of the mining areas and the question of who should be preferred was decided by the Orissa Government in accordance with the principles laid down in rule 32. The order of the State Government stated that since the deposit required by rule 29 had not been made by the respondents, the appellant was entitled to preference because his applications were complete in every respect on 27th

July, 1950, by which date the approval certificate had been obtained by him and all necessary deposits had been made. On the other hand, the respondents' applications were only completed on 3rd August, 1950, when the deposit under rule 29 was made.

The respondents were dissatisfied with this order and moved the Central Government for a review of it under rule 57. The Central Government on 28th January, 1954, informed the Orissa Government (Annexure 'D') that the question of priorities had been wrongly decided and the respondents were not at fault because they had made the necessary enquiries regarding the amount of deposit to be made under rule 29 and they had given an undertaking to deposit this amount as soon as it was determined by the State Government. They, in fact, deposited the amount on 3rd August, 1950, in compliance with the order of the Deputy Collector, Sundargarh. The Central Government, therefore, took the view that the applications of the respondents should be deemed to be complete with effect from 10th July, 1950. This was earlier than the date when the applications of the appellant were made on 27th July, 1950. The lease in favour of the appellant in respect of two of the mining areas was, therefore, cancelled and the respondents were granted the lease. It is this order of the Central Government, dated 28th January, 1954, which was challenged in the present proceedings on the ground that it was not passed in accordance with the Mineral Concession Rules and because it violated the principles of natural justice ; the order had acted to the detriment of the appellant, and the rules under which it purported to have been passed imposed unreasonable restrictions on the appellant's fundamental rights. It is pointed out that there was an

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error apparent on the record, because although the State Government had not determined the exact amount which had to be deposited under rule 29, the maximum of Rs. 500 should have been deposited in pursuance of a direction given on the model application form for a mining lease printed with the Mineral Concession Rules.

Kapur, J., who dealt with the petition sitting singly dismissed it holding that the Central Government was not acting judicially or *quasi*-judicially under rule 59 but the order of 28th January, 1954, amounted to a mere administrative decision. He further held that there was no *lis* in the case, no infringement of Article 19(1)(f) or (g) and that rule 59, in no way, contravened the provisions of the Constitution. In appeal the following four points were argued before us—

(1) The fundamental right of the appellant granted to him under Article 19(1)(f) and (g) was contravened by the unrestricted power given to the Central Government under rule 59. Also the appellant had been deprived of his property and so Article 31 had been infringed ;

(2) the appellant had been deprived of property without the observance of the principles of natural justice ;

(3) the State Government and the Central Government were required by the rules to act in a *quasi*-judicial capacity and they should, therefore, have given the appellant an opportunity to be heard before deciding the case ; and

(4) there was an error apparent on the face of the record in-asmuch as the model form attached to the Rules provided for the deposit of the maximum sum of

Rs. 500 under rule 29 in those cases where the State Government had not determined the exact amount to be deposited.

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The first point regarding fundamental rights may be disposed of very briefly. The right which the appellant claims cannot be considered to be a vested right. The right to work a mine upon another's land does not exist before the licence or lease is granted to him. No man can claim as of right to go upon another's territory and extract minerals from it. This right is, in no way, analogous to the fundamental right of a citizen to trade and buy and sell in the open market. The fundamental rights as contemplated by the Constitution are rights which already exist and not rights which are created by a contract, whether that contract be between private individuals or between the Government and a private individual. Nor can the appellant say that he had a right to acquire mining concessions in another's land. The owner of immovable property has every right to refuse to lease it out to another. Neither the Act nor the mining rules framed under the Act can, therefore, be said to amount to interference with the fundamental rights of a citizen. The object of the Act was to provide for the regulation of mines and oilfields and for the development of the minerals "in the public interest". It is obvious that everyone cannot be allowed to dig mines indiscriminately even on private land, and as far as Government property is concerned, the grant of a lease confers contractual rights, but its refusal does not infringe any fundamental right because no right in the property existed. In *Ananda Behera and another* v. *The State of Orissa and another* (1), the Supreme Court considered the question of fishery rights which were cancelled after

(1) (1955) 2 S.C.R. 919

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the Orissa Estates Abolition Act. The persons to whom fishery rights had been granted by the previous ruler contended that the cancellation of the rights had infringed the rights guaranteed to them under Articles 19(1)(f) and 31(1) of the Constitution. Bose, J., observed—

> "There can be no doubt that the lake is immoveable property and that it formed part of the Raja's estate. As such it vested in the State of Orissa when the notification was issued under the Act and with it vested the right that all owners of land have, to bar access to their land and the right to regulate, control and sell the fisheries on it. If the petitioners' rights are no more than the right to obtain future goods under the Sale of Goods Act, then that is a purely personal right arising out of a contract to which the State of Orissa is not a party and in any event a refusal to perform the contract that gives rise to that right may amount to a breach of contract but cannot be regarded as a breach of any fundamental right."

The learned Judge went on to say that the right given to the licensees was nothing more than a licence to enter upon the land coupled with the grant to catch and carry away the fish. It was, therefore, not a fundamental right. Nor can the right granted to the appellant before us be said to constitute property. Moreover, he has not been deprived of this property without due process of law. I would, therefore, hold that there has been no infringement of the rights guaranteed to the appellant by Article 19(1)(f) or (g) or by Article 31(1) of the Constitution.

The most important point to consider in this case is whether the State Government and the Central Government, when dealing with this matter, were acting as *quasi*-judicial bodies and whether they were bound to follow the procedure which *quasi*-judicial tribunals are required to follow ; in particular, whether the appellant should have been given an opportunity to represent his case before the Central Government when the application of the respondents was considered and an order adverse to the appellant was made on 28th January, 1954.

I have already referred to the object for which the Mines and Minerals (Regulation and Development) Act, 1948, was passed. Section 2 of the Act declared that it was "expedient in the public interest that the Central Government should take under its control the regulation of mines and oilfields and the development of minerals to the extent hereinafter provided". Under section 4 leases were to be granted in accordance with the provisions of the Act and the rules made thereunder. Section 5 empowered the Central Government to make rules for regulating the grant of mining leases, etc. Section 7 empowered the Central Government to make rules for the purpose of modifying or altering the existing leases. Section 12 was in the following terms:—

> "The Central Government may, if satisfied that it is in the public interest so to do, authorise in any case the granting of any mining lease or the working of any mine or terms and conditions different from those laid down in the rules made under sections 5 and 6".

Rule 57 provided that a person aggrieved by an order of the State Government could within two

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months of the order apply to the Central Government for review. Section 59 authorised the Central Government to review the order and section 60 provided that the order of Central Government passed on review would be final.

The contention of the learned counsel for the appellant is that although there is no express direction that the State Government or the Central Government are to act in a judicial or *quasi*-judicial capacity, the phraseology of the rules appears to indicate that the matter of granting lease was to be dealt with by these authorities in a *quasi*-judicial manner. It is pointed out that the decision was not to be a subjective one but was to be made according to certain stated principles which are set out in the rules. Power was given to the Central Government to call for records and ask for the explanation of the State Government. Application for review could only be made within a period of two months of the order of which the review was sought. Rule 32 laid down the principles on the basis of which the priority between rival claimants was to be determined. The rules, as originally framed, did not provide that the State Government should give reasons in writing for refusing a certificate of approval, a prospecting licence or a mining lease, but this provision was added later on, and it would appear that the Legislature had always intended the authority dealing with these matters to act in a *quasi*-judicial manner and give reasons for the decision arrived at. Reliance was placed on the Supreme Court decision in *Nagendra Nath Rora and another* v.*Commr. of Hills Division* (1), In this case the orders passed by certain authorities under the Eastern Bengal and Assam Excise Act were considered. The Supreme Court pointed out that although no one

(1) A.I.R. 1958 S.C. 398

had an inherent right to the settlement of liquor shops, and the object of the Act and the rules made thereunder was to control and restrict the consumption of liquor, yet "section 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." "The circumstances of that case, however, differed vastly from the procedure laid down by the Mineral Concession Rules. It was pointed out by Sinha, J., that the rules framed under that Act provided a procedure very analogous to judicial procedure. The memorandum of appeal had to be presented within one month from the date of the order appealed against subject to the requisite time for obtaining a certified copy, the memorandum of appeal had to be accompanied by a certified copy of the order appealed against and the memorandum had to be stamped with the requisite court fee stamp. Appeals and revisions arising out of cases in some instances lay to the Assam High Court and the jurisdiction to entertain appeals and revisions in matters arising under the provisions of the Excise Act was vested in the Excise Appellate Authority. Sinha, J., observed—

> "Thus, the Excise Appellate Authority, for the purposes of cases arising under the

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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."

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In this state of affairs Sinha, J., came to the conclusion that the Excise Appellate Authority was not altogether an administrative body which had no judicial or *quasi*-judicial functions. In the matter before us the question of granting or refusing a lease has been left to the discretion of the State Government. The rules do not lay down any set principles which are to be followed by the Government. The only thing required is that there should be a certificate of approval and certain information should be furnished in the application form. There is no doubt a rule regarding the determination of priority between rival applicants, but beyond that the rules do not require the State Government to act in a judicial or *quasi*-judicial manner. The act of granting or refusing a lease is nothing more than an administrative matter. There is undoubtedly a provision for review to the Central Government, but this is no more than a precaution to provide against any unreasonableness on the part of the State Government or the exercise of caprice by one of its officials. There may be provisions for reviewing administrative or ministerial acts and by this very circumstance the act does not become *quasi*-judicial. In the Supreme Court case cited above there were circumstances present which indicated that the Excise Appellate Authority was not to act in an administrative capacity.

Reliance was next placed on *Province of Bombay* v. *Kusaldas S. Advani and others* (1), In this

(1) 1950 S.C.R. 621

case the Supreme Court while considering the Bombay Land Requisition Ordinance discussed the requisites of a *quasi*-judicial tribunal. They referred to the conditions stated by Atkin, L.J., in *The King* v. *The Electricity Commissioners* (1), which read as follows :—

> "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."

Kania, C.J., analysed this statement by stating that there are four conditions which must obtain for a writ to issue. They are:—

> "Wherever any body of persons (1) having legal authority (2) to determine questions affecting rights of subject and (3) having the duty to act judicially (4) act in excess of their legal authority—a writ of *certiorari* may issue."

Kania, C.J., went on to say that the authority must be presumed to act judicially or semi-judicially where the law under which the authority is making a decision itself requires a judicial approach, and in that case the decision will be *quasi*-judicial. The learned counsel for the appellant drew our attention to a passage at page 725 in which Das, J., observed that an authority may act judicially even if the rights of only one party are adjudicated upon. He observed—

> "If a statutory authority has power to do any act which will prejudicially affect

(1) (1924) 1 K.B. 171

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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."

The argument of the learned counsel for the appellant is that the conditions laid down in this ruling obtained. The State Government and the Central Government, while considering the applications for mining lease or prospecting concessions, were required to act judicially. Whether they were considering the comparative claims of two rival applicants or considering the claims of a sole applicant, they were required to act according to the principles laid down in the rules framed under the Act. But when we come to consider these principles in detail, we find that the State Government was not required to follow any definite rule or principle. The only direction given was with regard to the determination of priorities as between rival claimants as set out in rule 32. With regard to the Central Government the only incident which bears some resemblance to judicial proceedings is the right of the aggrieved party to file an application for review within two months of the order complained against. It is not denied that even orders passed by an executive authority may be subject to review, and in that event the executive authority cannot be said to act judicially or *quasi*-judicially. The power of superintendence alone, when it is exercised in reviewing the orders passed by a subordinate authority, does not invest either the superior authority or the inferior one with the characteristics of a judicial tribunal.

As pointed out in *Advani's case*, it must be the actor law itself which must require a judicial approach. In the present case we do not find that the Act or the rules framed thereunder require the State Government or the Central Government to act judicially. The object of the Act was to regulate the mines and oilfields and develop the minerals of the country.

The next case relied upon was *Rameshwar Prasad Kedarnath* v. *The District Magistrate and others* (1), In this case the Allahabad High Court considered the provisions of the U.P. Controlled Cotton Cloth and Yarn Dealers' Licensing Order. The licence of the petitioner was in that case cancelled and his application for renewal was refused. The Judges took the view that the licence-holder had the right to buy and sell cotton cloth. The petitioner in that case was not given an opportunity of being heard before his licence was cancelled. Mootham, J., referred to a number of cases and observed—

> "I think these cases are, as I have said, authority for the salutary principle that a man must not be deprived of his property without being given the opportunity of being heard."

He went on to say—

> "It is common ground that in this case the petitioner was not afforded an opportunity of being heard. I would on that ground and for the reasons which I have endeavoured to state, hold that the order of the Licensing Authority, even though it be an administrative order, is one which we should quash in the exercise of our powers under Article 226."

(1) A.I.R. 1954 All. 144

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In that case the decision was based on the premises that the licence-holder was possessed of property and he was deprived of his property when his licence was cancelled. That was so because the licence-holder had a right to trade in cotton cloth which he could buy in the open market and sell. There is no analogy between that case and the case before us because, as I have already pointed out, the appellant had no right to do mining operations on another's land, whether it belonged to Government or to a private individual. A licence to buy and sell cotton cloth stands on a wholly different footing as compared to a lease permitting a person to enter upon the owner's land and dig for minerals. Our attention was also drawn to an observation of Mukherjea, J., in *T. C. Basappa* v. *T. Nagappa and another*, (1), which runs as under :—

> "A Tribunal may be competent to enter upon an enquiry but in making the enquiry it may act in flagrant disregard of the rules of procedure or where no particular procedure is prescribed, it may violate the principles of natural justice."

This observation, however, applies only to those tribunals which are enjoined by law to act in a quasi-judicial manner. There is no question of violating the principles of natural justice where an authority acts in a purely ministerial or administrative capacity. In passing an executive order which may or may not react to the detriment of a subject, the authority is not bound to give the subject an opportunity of being heard. The opportunity is furnished only in those cases where the rights of subjects are being determined in a judicial or *quasi*-judicial manner and the law

(1) (1955) 1 S.C.R. 250

requires that they should be determined in that manner.

It seems to me that in this case neither the State Government nor the Central Government were required by the Act or by the rules to act in a judicial or *quasi*-judicial manner. The orders passed by them were no more than ministerial or administrative acts. The fact that the order of the State Government was made subject to review by the Central Government under rules 5'. and 59 does not mean that these authorities were acting in a *quasi*-judicial manner. Therefore, tl.e authorities were not bound to hear the applicants because it was not a case of adjudicating the rights of any individual applicant or deciding the comparative merits of the various applicants. Except in so far as the priority between rival applicants may be determined with regard to time under rule 32, no guiding principles are laid down for determining the merits of the various applicants. The Central Government took the view that the application of respondent No. 3 must be given priority because it must be deemed to have been completed before the application of the appellant.

A similar matter was considered by Bishan Narain, J., in *Ittigi Veerabhadrappa* v. *The Union of India and others* (1), He took the view that the orders passed by the Central Government under rule 59 were merely administrative orders. He relied upon the decision of Kapur, J., which is in appeal before us now and also on a decision of Falshaw, J., in *N. N. Anshi* v. *Union of India* (2), which has also been appealed against according to the information given to us. The decision of Bishan Narain, J., is also the subject-matter of an appeal and, therefore, although the considered

(1) 1959 P.L.R. 140
(2) C.W. 998 of 1957

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views of the three learned Judges of this Court must be read with great respect, I do not wish to reiterate the arguments of the learned Judges because they have all been appealed against. I consider it more appropriate to consider the matter independently and to base my decision on the principles laid down in the various Supreme Court rulings and the decision of the Allahabad High Court. I may now refer to some observations of their Lordships of the Privy Council in *Nakkuda Ali* v. *F. De S. Jayaratne* (1), which read as under :—

> "But it does not seem to follow necessarily from this that the Controller must be acting judicially in exercising the power. Can one not act reasonably without acting judicially ? It is not difficult to think of circumstances in which the Controller might, in any ordinary sense of the words, have reasonable grounds of belief without having ever confronted the licence holder with the information which is the source of his belief. It is a long step in the argument to say that because a man is enjoined that he must not take action unless he has reasonable ground for believing something he can only arrive at that belief by a course of conduct analogous to the judicial process. And yet, unless that proposition is valid, there is really no ground for holding that the Controller is acting judicially or *quasi*-judicially when he acts under this Regulation. If he is not under a duty so to act then it would not be according to law that his decision should be amenable to review and, if

(1) 54 C.W.N. 883

necessary, to avoidance by the procedure of *certiorari.*"

These observations, if I may say so with great respect, are applicable with force to the matter before us. I am, therefore, clearly of the view that neither the Act nor the rules framed thereunder cast upon the State Government or upon the Central Government the duty to act judicially in the matter of considering applications for mining leases. Nor can it be said that the necessary intendment of the Act or the rules is that these matters should be considered, judicially. No fundamental right of the appellant has been infringed, because it cannot be said that he had any right to conduct mining operations on Government land. It was only a question of giving a concession or a lease to him if he was considered suitable. In comparing the respective merits of the two applicants the Central Government decided to prefer the respondents for reasons which appear even on merits to be good. There is no error apparent on the record. The model application form given in the printed rules does not appear to have been given with the rules which were originally framed in 1949. But even if the model form existed with the foot-note directing that the maximum deposit was to be made where the amount had not been determined by the State Government, it cannot be said that this direction given in the model form was mandatory. We were shown a printed form which did not contain any such note or direction. The respondents were clearly within their rights in not making any deposit under rule 29 and merely undertaking to make the necessary deposit when the amount which they had to deposit was determined. There is, therefore, no force in this appeal and I would dismiss it with costs.

CAPOOR, J.—I agree.

B.R.T.