been brought out in cross-examination of Gokal Chand petitioner that he became aware of the deception within about ten days, and also that he has held a money-lender's licence for twenty years, and therefore he presumably is quite experienced, and it seems impossible to me that he could have been deceived by a representation that some shops which stood in the name of the family firm were the sole property of the son whose father was present. Moreover, a man of experience in lending money could hardly have been unaware that in order to find whether a particular property had been mortgaged before, all he had to do was to make enquiries at the office of the Sub-Registrar, and on a point of this kind he need not rely on the assurances of any party to the transaction. In the circumstances the view of the learned Sessions Judge cannot possibly be regarded as perverse, and only in the most glaring cases of injustice would this Court interfere in revision at the instance of a private person against an order of acquittal. I would accordingly dismiss the petition.

KHOSLA, J.—I agree.

LETTERS PATENT APPEAL.

Before Bhandari, C. J. and Mehar Singh, J.

PARDUMAN SINGH AND OTHERS,—*Appellants*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 60 of 1953.

Administration of Evacuee Property Act (XXXI of 1950)—Sections 12 and 26—Power of Custodian to cancel allotments—Nature and extent of—Power, whether judicial—"To act judicially"—Meaning of—"Judicial act or decision"—Essential characteristics of—Judicial act and administrative act—Difference between—"Judicial approach"—Meaning of—.

Held, that in the Administration of Evacuee Property Act, 1950, the power to cancel allotments of evacuee property are provided in section 12—original power, Section 26(1) on revision and section 26(2) on review. Subsections (1) and (2) of section 26 provide for hearing of the parties concerned and the principles of natural justice require a hearing even in the case taken up under section 12. The power of cancelling an allotment, whether original (section 12) or on revision [section 26(1)] or on review [section 26(2)], can only be exercised having regard to the circumstances of the case and in accordance with the provisions of the Act and the Rules made thereunder.

Held, that while deciding a revision under section 26(1) of the Act the Custodian must act according to law in considering the legality or the propriety of an allotment for the Legislature could not have intended that in one case (while deciding the legality) he must conform to the provision of law and give what may be described as a judicial or quasi-judicial decision and in another case (while deciding the propriety) his decision should take the form of an administrative or executive act. The propriety of cancellation of an allotment has to be considered by the Custodian under section 26(1) not according to expediency, policy, executive instructions, or the dictates of a Minister, but according to sub-rule (6) of rule 14 which provides the circumstances under which an allotment may be cancelled and is made pursuant to the power derived from section 56(2)(i).

Held, that the power of review under section 26(2) of the Act is of the same nature and character as the proceeding or decision sought to be reviewed.

Held, that the Custodian in cancelling an allotment whether originally under section 12 or on revision under section 26(1) or on review under section 26(2) has to give a decision upon the evidence led by the parties and having regard to the facts and circumstances of the case and further upon the application of the provisions of the Act and Rule 14 of the Rules. He has, therefore, to decide the question of cancellation of allotment with a judicial approach and his decision or act in so doing is a judicial decision or act and not an administrative or executive decision or act. In arriving at and giving such a decision he cannot do so either

upon the advice or dictate of a Minister or in the wake of policy or executive instructions. He must dispose of the case impartially, disinterestedly and upon weighing of the adverse claims having regard to the evidence led by the parties and finding on facts. He cannot abandon his judicial function under the Act for the opinion or view of policy of the Minister.

Held, that if a competent authority, not being a Court in the ordinary sense, has power to give a binding and authoritative decision, after hearing evidence and opposition and upon consideration of facts and circumstances, and imposing liability or affecting the rights of the parties, there is a duty to act judicially.

Held, that the essential characteristic of a judicial act or decision is that it is required to be done or made with a judicial approach or by a judicial process or process analogous to the judicial. The act or decision to be judicial must be amenable to an objective test, and if it is left to the subjective determination of an authority on consideration of policy, it cannot be amenable to an objective test for the simple reason that the basis for such a test does not exist and it is not possible to probe into the mental process by which the authority arrives at its decision or takes its action. In that case the act is administrative and not judicial.

Held, that when an authority, other than a Court in the ordinary sense, is, in discharge of its duties, expected to or may act fairly and honestly, it is not answerable in a court, though it may be answerable to some other authority, but when it is bound by law to act fairly, its act or decision is amenable to the control of the courts.

Held, that the expression "judicial approach" postulates (a) that the authority in arriving at the decision or taking action must be bound to act fairly and justly, and not be merely expected to do so, and (b) that it does so on basis to which objective test can be applied, limited by the consideration of the facts and circumstances of the case and the evidence led by the parties and the application of the law to the facts and circumstances. When this test is satisfied it becomes obvious that the act or decision is judicial and not administrative, done or made in the wake of expediency or policy.

Letters Patent appeal under clause 10 of the Letters Patent against the order, dated the 29th May, 1953, passed by the Hon'ble Mr. Justice Khosla, in the Civil Writ Application No. 32 of 1952.

H. S. DOABIA, for Appellants.

S. M. SIKRI, Advocate-General and Y. P. GANDHI, for Respondents.

JUDGMENT

Mehar Singh, J.

Mehar Singh, J.—This is an appeal by Parduman Singh and Ram Narain Singh, appellants, under clause 10 of the Letters Patent from the judgment and order, dated May 29, 1953, of a learned Single Judge of this Court. The facts are these.

The two appellants and their third brother Kartar Singh, in consequence of the partition of the country in 1947, moved from Bahawalpur State back to their village Lambra, in Tehsil Hoshiarpur of that very District. Adjoining to village Lambra is village Beroon Kangri, which is be-chiragh, in other words, though the estate is there, there is no inhabited village within the area of the estate. The remote ancestor of the appellants was one Ram Das, who had two sons named Sehju and Jattu. The appellants are the descendants of Sehju and the family land of village Lambra fell to the share of the descendants of Sehju. The family land of village Beroon Kangri came to the share of the other branch of Jattu. There is another village named Bagewal which also adjoins the area of village Lambra. Of the two appellants Parduman Singh was allotted land, on temporary basis, in village Bagewal, and Ram Narain Singh in villages Beroon Kangri and Bagewal, and their third brother Kartar Singh in villages Bagewal and Tajpur Kalan. The appellants and their brother were allotted lands on

quasi-permanent basis in village Bagewal, but before the allotments could be conveyed to them and made effective, upon the application of some third persons those allotments were cancelled and the appellants and their third brother were then allotted lands in villages Lambra, including in the area of be-chiragh village Beroon Kangri, and Bagewal, that is, partly in one village and partly in the other. It is not necessary to give exact area of allotment in each one of these two villages. This was done under the orders, dated January 13, 1950, of Mr. M. S. Randhawa, who was then the Additional Custodian. The appellants and their brother were issued sanads of allotments and it appears they were put in possession of the lands allotted.

An application was made some time in March, 1950, by Singha Mal, respondent No. 5, to the then Minister of Rehabilitation in the State. Upon that application the Minister passed the following order on June 23, 1950, and forwarded it to the Director-General of Rural Rehabilitation (the Additional Custodian Mr. M. S. Randhawa)—

> "From the report above it is quite apparent that Singha Mal, a temporary allottee within his area of allocation and grade, has been disturbed from his temporary place of allotment without any justification. Parduman Singh, Ram Narain Singh and Kartar Singh were never temporary allottees of village Lambra and according to rules temporary allottees are given preference over the colonists in their original home village. D.G.R.R. to please see to it and the wrong decision taken on account of some wrong report should be reversed and the temporary allottee within his area of allocation and grade should be brought back to the place of his temporary allotment."

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This appears to have been placed before Mr. M. S. Randhawa, the Additional Custodian and Director-General Rural Rehabilitation, on June 28, 1950, whereupon he merely signed it, without writing a word more of his own on it, and passed it on to the Revenue Assistant Rehabilitation of Hoshiarpur, apparently for compliance. In pursuance thereof allotments of the appellants and their third brother were cancelled and the allotment cancellation order chit in each case when referring to the order under which the cancellation had been made says that it was made under order, No. 1369/MR-50, dated June 23, 1950, of the Hon'ble the Minister for Rehabilitation. The number of the order given above is in fact the number of the original order of the Minister and has been given correctly in the allotment cancellation chits.

The appellants and their brother, having had no notice of the application of respondent No. 5 or the order thereon of the Minister, were unaware of the order of cancellation of their allotments. It was only when attempts were made by respondent No. 5 to obtain possession of the lands under the possession of the three brothers that they came to scent that there was something wrong with their allotments. They applied for a copy of the order of the Minister and in para No. 12 of their petition they have averred that the Deputy Commissioner of Hoshiarpur informed them by an order of November 3, 1950, that the copy of the order asked for could not be supplied because it was on a "Policy File". No such order of the Deputy Commissioner has actually been traced on the file but the reply given on behalf of the respondents is significant for in para. No. 12 of the reply what is stated is that no application for supply of a copy of the order was found on the file. This appears to me not to be a straight reply. In any case, the al-

legation of the appellants has been that they applied for a copy of the order of the Minister but met with refusal on the ground that the matter related to a "Policy File".

The appellants and their brother continued making representations to the Minister concerned and also to the Chief Minister but it appears to no purpose. In the end they made an application on June 9, 1951, to Mr. P. N. Thapar, then Financial Commissioner, Relief and Rehabilitation and Custodian, who after some inquiry and treating the application as a revision petition, rejected the application on July 24, 1951, remarking "that Beroon Kangri is a separate revenue estate and has a separate *hadbast* number" that is, is not their home village.

It was after that that the appellants filed a joint petition under Articles 226 and 227 of the Constitution, and their brother Kartar Singh filed a separate petition under the same Articles, challenging the validity of the order cancelling their allotments. A large number of grounds have been urged in the petition on merits but the two main grounds, that are material for the purposes of this appeal, are (a) that the order of the Minister is without jurisdiction, and (b) that the appellants were never heard and the cancellation of their allotments was made without notice to them.

There were five respondents to the petition respectively the State of Punjab, the Financial Commissioner Relief and Rehabilitation, the Director Rural Rehabilitation, the Deputy Commissioner, Hoshiarpur, and Singha Mal. A joint return was made by the respondents in which the grounds urged by the appellants and their brother on merits of the case were controverted and with

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regard to the main two grounds, now under consideration, the position taken is (a) that the order of the Minister is correct and legal and that, in any case, Mr. M. S. Randhawa by signing that order made it his own order and he was competent to pass the order of cancellation, and (b) that the appellants presented a petition to the Custodian (Mr. P. N. Thapar) and the Custodian after thorough inquiry dismissed their petition and so they were duly heard before final decision with regard to their allotments was arrived at.

The learned Single Judge has held that Mr. M. S. Randhawa by signing the order of the Minister "appears to have incorporated the suggestion of the Minister as his own order," that the appellants were heard by the Custodian(Mr. P. N. Thapar), though not orally, but in writing, and the final order by the Custodian was passed after full inquiry. The learned Judge has further observed in relation to a Notification of the Central Government that if the appellants were in possession of the lands on May 6, 1952, their possession cannot be disturbed and that it will be for the Department to give a finding on the question of possession. But in view of his finding that the order of cancellation of the allotments of the appellants was in fact the order of the Additional Custodian and that the appellants had been duly heard in regard to the same, the petition of the appellants was dismissed and so also the petition of their brother Kartar Singh. The appellants appeal from the judgment and order of the learned Single Judge but there is no appeal by their third brother Kartar Singh.

The learned counsel for the appellants has urged—

(i) that the order of June 23, 1950, was the order of the Minister cancelling the

allotments of the appellants and mere signature under it by Mr. M. S. Randhawa, the Additional Custodian, did not make it his order and that that order is without jurisdiction,

(ii) that the order of allotment, dated January 13, 1950, of the Additional Custodian could not be revised by the Custodian and so whatever order the Custodian passed on the application of the appellants does not affect the merits of the case,

(iii) that at no stage were the appellants given notice before cancellation of their allotments and the order has been passed at their back and without hearing them and so is invalid,

(iv) that Singha Mal, respondent No. 5, did not in fact want an allotment of land in Hoshiarpur District,

(v) that respondent No. 5 was not a temporary allottee in Beroon Kangri,

(vi) that respondent No. 5 was out of allocation, and

(vii) that the appellants had been consolidated with other members of their family in village Lambra.

Upon these considerations the learned counsel has urged that the order cancelling the allotments of the appellants cannot be sustained and is both without jurisdiction and illegal and invalid. Of these, grounds (iv) to (vii) concern the merits of

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the case having regard to its facts and circumstances, and so cannot be considered in a petition of the type as in this case. They are matters for the consideration of subordinate authorities dealing with the case on merits and not for this court in considering a writ petition. The first three are, thus, the only grounds that need consideration.

The learned Advocate-General has conceded that if the finding is that the order of cancellation of the allotments of the appellants is that of the Minister, it is an illegal order for the simple reason that in the Administration of Evacuee Property Act, 1950 (Act No. XXXI of 1950), which will hereinafter be referred to as the Act, there is no provision under which the Minister has power to cancel an allotment. But the position taken by him is (a) that the Additional Custodian merely adopted what was the suggestion or advice of the Minister and in substance the order cancelling the allotments of the appellants was his order and in this behalf he places reliance upon *Commissioner of Police, Bombay* v. *Gordhandas Bhanji* (1), and (b) that in making the order of cancellation of the allotments the Additional Custodian was acting in an administrative capacity, and not judicial or quasi-judicial capacity, for he had power to cancel an allotment on revision under section 26(1) of the Act on the ground not only of legality but also of propriety, and when he cancels an allotment on the ground of propriety, he does so pursuant to executive instructions as contained in the Land Resettlement Manual, 1952. So, he says that this court cannot in an appeal from an order in a writ petition interfere with such an administrative order of the Additional Custodian.

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(1) A.I.R. 1952 S.C. 16

The learned counsel for respondent No. 5 has adopted the position taken by the learned Advocate-General and has further argued (i) that the appellants went in revision before the Custodian (Mr. P. N. Thapar), were fully heard as to their case in writing, and are bound by his decision made after thorough inquiry, (ii) that under section 6 of the Act the State Government has control over the Custodian and so the Custodian had to accept the order of the Minister, and (iii) that the brother of the appellants has not appealed from the judgment and order of the learned Single Judge, though his petition and the petition of the appellants were disposed of by the same judgment and order, so the appeal is barred by *res judicata*.

There is no question of *res judicata* in this case simply because the brother of the appellants has not appealed from the judgment and order of the learned Single Judge in regard to cancellation of his allotment. There is no substance in the argument of the learned counsel for respondent No. 5 that if this appeal results in reversal of the judgment and order of the learned Single Judge, there will be conflict of decisions, for the appellants are not affected by the omission of their brother to pursue his own case. It may be that the questions for decision in both the petitions were the same but they related to separate properties and were for all practical purposes between different parties. This argument is, to say the least, misconceived.

It has been pointed out that the original order of allotments was made by the Additional Custodian (Mr. M. S. Randhawa) on January 13, 1950, in favour of the appellants. Mr. P. N. Thapar was then the Custodian. The powers and jurisdiction of the Custodian and the Additional Custodian being concurrent, the Custodian had no jurisdiction

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to cancel an allotment made by the Additional Custodian under any provision of the Act. He equally had no power to confirm any order passed by the Additional Custodian such as his endorsement on June 28, 1950, of the order of the Minister of June 23, 1950, whereby the allotments of the appellants were cancelled. The appellants approached the Custodian for justice, and probably on the administrative side, just as they approached the Minister and the Chief Minister, but under the Act the Custodian, in the circumstances of the case, had no revisional powers either to upset or confirm the order of cancellation of the allotments of the appellants. Even if the appellants can be said to have been heard by the Custodian in these circumstances that was no hearing of them qua the order of cancellation of their allotments, for it is an undenied fact that before that order was made the appellants had no notice that any such order was about to be made and they did not come to know of it until an attempt was made to dispossess them. The fact that the Custodian entered into some kind of departmental inquiry to see justification for the order of the Minister and then refused to help the appellants, even though treating their application erroneously as revision, has really no bearing on the merits of the case and it is not correct that because of the inquiry made by him and the representation made to him in writing by the appellants, the latter have been duly heard according to law before their allotments were cancelled or in connection with cancellation of their allotments.

In the Act the powers to cancel allotments of evacuee property are provided in section 12—original power, section 26(1) on revision, and section 26(2) on review. Subsections (1) and (2) of section 26 provide for hearing of the parties concerned and it is clear that the principles of natural

justice would require a hearing even in the case taken up under section 12. Section 56 deals with the rule-making power of the Central Government and under subsection (2) (i) of that section it has power to make rules providing "the circumstances in which leases and allotments may be cancelled or terminated or the terms of any lease or agreement varied"; and in pursuance of this power the Central Government has made rule 14 in the Administration of Evacuee Property (Central) Rules, 1950, and, in so far as that rule is relevant to this case, it reads thus—

"14. *Cancellation or variation of leases and allotments.*—(1).....

"(2) In case of a lease or allotment granted by the Custodian himself, the Custodian may evict a person on any ground justifying eviction of a tenant under any law relating to the Control of Rents for the time being in force in the State concerned, or for any violation of the conditions of the lease or the allotment.

"(3) The Custodian may evict a person who has secured an allotment by mis-representation or fraud or if he is found to be in possession of more than one evacuee property or in occupation of accommodation in excess of his requirements.

"(4) .....

"(5) .....

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"(6) Notwithstanding anything contained in this rule, the Custodian of Evacuee Property in each of the States of Punjab and Patiala and East Punjab States Union shall not exercise the power of cancelling any allotment of rural evacuee property on a quasi-permanent basis, or varying the terms of any such allotment, except in the following circumstances:—

(i) where the allotment was made although the allottee owned no agricultural land in Pakistan;

(ii) where the allottee has obtained land in excess of the area to which he was entitled under the scheme of allotment of land prevailing at the time of allotment;

(iii) where the allotment is to be cancelled or varied—

(a) in accordance with an order made by a competent authority under section 8 of the East Punjab Refugees (Registration of Land Claims) Act, 1948;

(b) on account of the failure of the allottee to take possession of the allotted evacuee property within six months of the date of allotment;

(c) in consequence of a voluntary surrender of the allotted evacuee

property, or a voluntary exchange with other available rural evacuee property, or a mutual exchange with such other available property;

(d) in accordance with any general or special order of the Central Government;

Provided that where an allotment is cancelled or varied under Clause (ii), the allottee shall be entitled to retain such portion of the land to which he would have been entitled under the scheme of quasi-permanent allotment of land:

Provided further that nothing in this sub-rule shall apply to any application for revision, made under section 26 or section 27 of the Act, within the prescribed time, against an order passed by a lower authority on or before 22nd July, 1952."

There is no manner of doubt that an order cancelling an allotment under section 12 must conform to the provisions of rule 14. Indeed this has not been questioned during the arguments. The learned Advocate-General has further conceded that when exercising powers of revision under section 26(1) and interfering on the ground of legality on revision, the Custodian cannot make an order upon the advice of an extraneous body like a Minister. But his argument is that when cancelling an allotment under the same provision on the ground of propriety, the Custodian can do so in pursuance

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of the executive instructions and so he may follow the advice or instructions of a Minister. He seems to suggest that under the same subsection the same authority may proceed in one case according to law and in another case according to expediency, policy, or mere whim of a Minister. On the face of it such a construction does not appear to be reasonable and sound, for the harmonious construction of the subsection would be to hold that both in considering the legality or propriety of an allotment on revision the Custodian must act according to law for the Legislature could not have intended that in one case he must conform to the provision of law and give what may be described as a judicial or quasi-judicial decision and in another case his decision should take the form of an administrative or executive act. The subsection is dealing with one subject and the construction suggested gives incongruous meaning to it, and the Legislature could hardly have intended it to have such meaning. However, the law has not left this matter merely to be settled by an argument. In the first place, rule 31(9) provides that "any authority hearing any appeal or an application for revision may admit additional evidence before its final disposal or may remand the case for admission of additional evidence and report or for a fresh decision, as such authority may deem fit", and it follows that if, when considering the propriety of a decision of a lower authority under section 26(1), the Custodian was to dispose of the case on expediency or in pursuance of a departmental policy, or even subject to departmental instructions, he would not be giving a decision on the merits of the case upon the evidence led by the parties as is implied in the sub-rule referred to. Secondly, the matter when the government can interfere under the Act and the Rules has not been left to an argument based upon the meaning and

scope of the word "propriety", for there is specific provision in this behalf. In sub-rule (6)(iii) (d) of rule 14 power has been taken for cancellation and variation of an allotment "in accordance with any general or special orders of the Central Government", which immediately excludes any such power in the State Government, unless it can be justified under some other provision. This further makes it clear that when either the State or the Central Government interferes to cancel or vary an allotment it cannot do so by direction, guidance, or advice to the Custodian, except in exercise of the powers conferred on it under the Act. Such a power having been taken by the Central Government itself, it excludes the intention of the Legislature that the word 'propriety' in section 26(1) means a decision by the Custodian or the proper authority according to policy, expediency, or executive instructions. And thirdly, the Central Government has taken power under section 54 of the Act to take action with regard to evacuee property. The power is wide but limited by the section itself. The section says—

> "54. *Power of Central Government to take action with regard to evacuee property.*— The Central Government may, for the purpose of regulating the administration of any property which has vested in the Custodian under the provisions of this Act, pass such order or direct such action to be taken in relation thereto as, in its opinion, the circumstances of the case require and as is not inconsistent with any of the provisions contained in this Act."

It states in so many words that even the Central Government while exercising its power under section 54 is not to do anything inconsistent with any

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provision of the Act. So that everything has to be done strictly within the scope and ambit of the provisions of the Act. It is true that under section 55 the powers of the Central Government can be delegated but it has been nobody's case that the Central Government has delegated its powers either under section 54 or under sub-rule 6(iii) (d) of rule 14 to the State Government in regard to cancellation of allotments. Even if all these considerations were to be ignored, the second proviso to sub-rule (6) of rule 14 is conclusive that sub-rule (6) applies even in the case of a revision application under section 26 of the Act, for the proviso specifically exempts from the application of this sub-rule certain revision applications pending before a given date. It is apparent that even on revision under section 26(1) the Custodian can only cancel an allotment according to sub-rule (6) of rule 14. Once this is clear, the nature of the order in exercise of revisional power under section 26(1) cannot be substantially different from the nature of the order under section 12 for under both the provisions cancellation of an allotment cannot take place except in accordance with sub-rule (6) of rule 14. It has already been pointed out that the learned Advocate-General has conceded that because the Custodian in cancelling an allotment under section 12 has to comply with rule 14, so he cannot take the advice or order of a Minister in doing so. The position now turns out to be no different in the case of the revisional powers under section 26(1). The question in what circumstances an allotment is to be cancelled as an original order under section 12 and in what circumstances on revision under section 26(1) does not arise for consideration in this case. All that is being emphasised is that in cancelling an allotment under section 12 the Custodian has to comply

with rule 14 and in cancelling an allotment under section 26(1), in exercise of revisional powers, he has to comply with rule 14(6). So that the propriety of cancellation of an allotment has to be considered by the Custodian under section 26(1) not according to expediency, policy, executive instructions, or the dictates of a Minister, but according to sub-rule (6) of rule 14. That sub-rule provides the circumstances under which an allotment may be cancelled and is made pursuant to the power derived from section 56(2) (i). It is in those cirucmstances alone that the Custodian can cancel an allotment in exercise of his revisional powers under section 26(1). Those powers do not admit of interference by policy considerations, expediency, or ministerial advice excepting perhaps in the case of rule 14(6) (iii) (d) when the Central Government may choose to interfere, which is not the case here.

It has been shown that in cancelling an allotment either under section 12 or under section 26(1), the cancellation must conform to the relevant part of rule 14. It has to proceed on consideration of the circumstances stated in that rule as established by evidence of the parties and by application of the provisions of the Act and the Rules. The power of review in section 26(2) must of necessity be of the same nature and character as the proceeding or decision sought to be reviewed. The term 'review' means a judicial re-examination of the case in certain specified and prescribed circumstances. This is the ordinary legal significance of the term. But in section 26(2) no limitations appear to have been prescribed on the power of review. In *Kartar Singh-Surjan Singh* v. *The Custodian, Muslim Evacuee Property, Pepsu, and*

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another (1), it has been observed that the powers of review under section 26(2) are very wide and are not to be read with limitation. On the other hand, in *Bibi Nazma Khatoon and another* v. *R. P. Sinha, Custodian, Evacuee Properties, Bihar, and another* (2), it has been held that the Legislature has used the term 'review', which is of known legal significance, and must be taken to have used it not in its grammatical sense, but to have the same legal meaning as in Order XLVII r. 1 of the Civil Procedure Code. However, in this case it is not necessary to decide upon preference between these two views, but the reason why I have referred to these cases is that judicial opinion tends to the view that the power of review under section 26(2) is in the nature of judicial power. This only supports what has already been said that the power of review under that provision must necessarily be of the same nature and character as the proceeding or decision sought to be reviewed. Emphasis has been laid on the nature and character of the power of review for the reason that, in this case, the original order of allotment was made by the Additional Custodian and it has been suggested on behalf of the respondents that it was the Additional Custodian who cancelled the allotments. He could not have cancelled the allotments made under his own order in exercise of the powers of revision under section 26(1) and he could only have done so either exercising original powers under section 12 or exercising powers of review under section 26(2).

It has been shown clearly that power of cancellation of allotment, whether original (section 12) or on revision (section 26(1)) or on review (section 26(2)), can only be exercised having regard to the circumstances of the case and in accordance with the provisions of the Act and the

(1) A.I.R. 1952 PEPSU 82
(2) A.I.R. 1954 Pat. 43

Rules thereunder. Is then the decision or order cancelling an allotment a judicial or quasi-judicial in nature or administrative or executive in nature ?

In a number of reported cases learned Judges have considered what is or what is not the test for a judicial decision or act. In *Regina John M' Evoy* v. *Dublin Corporation* (1), at p. 376, May, C.J., observes—

> "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."

In *Huddart Parker and Company* v. *Moorehead* (2), Griffith, C.J., defines 'judicial power' thus—

> "The words 'judicial power' as used in section 71 of the Constitution mean the power which every sovereign authority must of necessity have to decide controversies between its subjects, or between itself and its subjects, whether the rights relate to life, liberty or property. The exercise of this power does not begin until some tribunal which has power to give a binding and authoritative decision

(1) (1878) 2 L.R. Ir. 371 at p. 376
(2) (1909) C.L.R. 330 at p. 357

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(whether subject to appeal or not) is called upon to take action."

In *Rex* v. *The London County Council* (1), Scrutton, L.J., giving definition of 'judicial authority, says—

> "It is not necessary that it should be a 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."

In *Rex* v. *Manchester Legal Aid Committee* (2), Lord Goddard, C.J., observes—

> "If, in order to arrive at the decision, the body concerned had to consider proposals and objections and consider evidence, then there is the duty to act judicially in the course of that inquiry."

The same learned Lord Chief Justice in *Regina* v. *Statutory Visitors to St. Lawrance's Hospital, Caterham* (3), has made the following observation on the subject—

> "It is not easy to give a definition of exactly what is meant by 'act judicially', but, in my opinion, for this purpose the expression refers to a body which is bound to hear evidence from both sides. Although there need not be anything strictly called a *lis*, it must be a body

(1) (1931) 2 K.B. 215 at p. 233
(2) (1952) 2 Q.B. 413 at p. 429
(3) (1953) 1 W.L.R. 1158 at p. 1162

which has to hear submissions and evidence and come to a judicial decision in approximately the way that a court must do."

And in *Province of Bombay* v. *Khushaldas S. Advani and others* (1), Das, J. (now C.J.), after review of the authorities, explains the law in these words—

"The principles, as I apprehend them, are: (1) 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.

"In other words, while the presence of two parties besides the deciding authority

(1) A.I.R. 1950 S.C. 222 at pp. 259 and 260

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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 views of the learned Judges may be summed up as regards the requisites of a judicial decision or act thus. If, (a) a competent authority, not being a court in the ordinary sense, (b) has power to give a binding and authoritative decision, (c) after hearing evidence and opposition and upon consideration of facts and circumstances, and (d) imposing liability or affecting the rights of the parties, there is a duty to act judicially.

However, in the *Province of Bombay* v. *Khushaldas S. Advani and others* (1), Das, J. (as his Lordship then was), with reference to the essential characteristics of a quasi-judicial act as opposed to an administrative act, further observes—

> "The two kinds of acts have many common features. Thus a person entrusted to do an administrative act has often to determine questions of facts 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

(1) A.I.R. 1950 S.C. 222 at p. 257

> 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, as was done in the several ordinances, regulations and enactments considered and construed in the several cases referred to above."

This observation of the learned Chief Justice brings out close similarity between a judicial or quasi-judicial act, on the one hand, and an administrative or executive act, on the other and the question that immediately arises is what then is in substance the distinguishing feature of the two types of acts or decisions ?

In *Rex* v. *Manchester Legal Aid Committee* (1), Lord Goddard, C.J., while considering the scope of the words 'to act judicially' points out the difficulty of giving a precise meaning to these words and observes—

> "The true view, as it seems to us, is that the duty to act judicially may arise in widely different circumstances which it would be impossible, and, indeed, inadvisable, to attempt to define exhaustively."

All the same learned Judges have given consideration to the true scope of a judicial act. In *The Province of Bombay* v. *Khushaldas S. Advani and*

(1) (1952) 2 Q.B. 413 at pp. 428-429

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others (1), Kania, C.J., has dealt with this aspect of the matter as follows—

> "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 inquiry judicial, provided in coming to the decision the well-recognised principles of approach are required to be followed."

Again in *Nakkuda Ali* v. *M. F. De S. Jayaratne* (2), Lord Radcliffe has made this observation in this connection—

> "In truth, the only relevant criterion by English law is not the general status of the person or body of persons by whom the impugned decision is made but the nature of the process by which he or they are empowered to arrive at their decision. When it is a judicial process or a process analogous to the judicial, *certiorari* can be granted."

So that the essential characteristic of a judicial act or decision is that it is required to be done or made with a judicial approach or by a judicial process or process analogous to the judicial. An act done or a decision arrived at by a judicial process or a process analogous to the judicial, in the nature of things is in the end done or arrived at with a judicial approach. This again begs a question—what is a judicial approach ?

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(1) A.I.R. 1950 S.C. 222 at p. 226
(2) 1951 A.C. 66 at p. 75

No clear cut definition of the term 'judicial approach' is to be found, though Judges certainly know what it is, but in judicial dicta sufficiently clear concept as regards the nature of this term is observable. In *Royal Aquarium and Summer and Winter Garden Society, Limited,* v. *Parkinson* (1), Lopes, L.J., dealing with the meaning of the word 'judicial', has made this observation—

> "The word 'judicial' has two meanings. It may refer to the discharge of duties exercisable by a judge or by justices in Court, or to administrative duties which need not be performed in court, but in respect of which it is necessary to bring to bear a judicial mind—that is, a mind to determine what is fair and just in respect of the matters under consideration."

But may it not be asked that a Minister in doing an administrative or executive act has also duty to act fairly and justly? This question has been considered by Lord Greene M. R. in *B. Johnson and Co. Builders, Ltd.* v. *Minister of Health* (2). The learned Master of the Rolls says—

> ".....every Minister of the Crown is under a duty, constitutionally, to the King to perform his functions honestly and fairly and to the best of his ability, but his failure to do so, speaking generally, is not a matter with which the courts are concerned. As a Minister, if he acts unfairly, his action may be challenged and criticised in Parliament. It cannot be challenged and criticised in the courts unless he has acted unfairly in

(1) (1892) 1 Q.B. 431
(2) (1947) 2 A.E.L.R. 395 at p. 400

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another sense, viz., in the sense of having, while performing quasi-judicial functions, acted in a way which no person performing such functions, in the opinion of the court, ought to act. On the assumption, for instance, that the respondents are wrong in their contention; and that there was no obligation to disclose these documents, I can well understand some people might say: 'Well, unless there was some other objection, the Minister ought, in fairness, to have let these people know what he had got in his file on this particular topic.' If the crown is right and the respondents are wrong, the statement that in fairness he ought to have disclosed that information means nothing more than that, as a Minister is expeced to act fairly, he might have been expected to do it. It would not mean that his failure to do it amounted to a breach by him of any duty imposed on him by law which could be discussed and enforced in the courts. On the other hand, if the expression 'bound to act fairly' is used in strict reference to his semi-judicial functions, it then bears a totally different meaning. It then means, not that a Minister must be expected under his general duty to act fairly, but that, if he does not act fairly, he breaks a rule laid down by the courts for the behaviour of a quasi-judicial officer."

This to my mind brings out a clear distinction between a judicial and administrative act or decision. When an authority other than a Court in the ordinary sense, is in discharge of its duties

expected to or may act fairly and honestly, it is not answerable in a court, though it may be answerable to some other authority, but when it is bound by law to act fairly, its act or decision is amenable to the control of the courts. This also finds support from the observation of Das, J., in *K. S. Advani's case* (cited above), at p. 260, for there emphasis is laid on the statutory duty to act judicially. In *Robinson and others* v. *Minister of Town and Country Planning* (1), Lord Greene M. R. was considering Minister's compulsory purchase order under a particular statute. The argument advanced was that "the matter as to the requisiteness of which for the purpose indicated the Minister is to be satisfied is the necessity of laying out the land afresh and redeveloping it as a whole. On the face of the lay-out plan itself, coupled with the evidence given on behalf of the city council at the inquiry, it appears (so the argument runs) that there is no intention of laying out or redeveloping. The Crescent, that so far as the Court is informed, the Minister had no other materials before him, and that on these materials alone it was impossible in law for him to be satisfied as to the stipulated requisiteness. Then it was said that, admitting his right to take into consideration other materials obtained *dehors* the inquiry, he was only entitled to be guided by them if he had communicated them to the objectors so as to give them an opportunity of dealing with them." In dealing with this argument, the learned Master of the Rolls observes—

> "There are, as it appears to me, a variety of grounds on which this argument should be rejected. It imports an objective test into a matter to which such a test is entirely inappropriate, since it

(1) (1947) 1 A.E.L.R. 851

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leaves it to the court to decide what matters are and what are not sufficient to justify a conclusion as to requisiteness. This is necessarily so, since the question which, according to the argument, the court has to propound to itself will be: Was the evidence before the Minister such as to entitle him to be satisfied on the point of requisiteness , and this is to substitute a test formulated, in some unexplained manner and according to some unascertainable principle, by the court itself for the opinion of the Minister to which the language of the subsection commits the decision."

So that the act or decision to be judicial must be amenable to an objective test, and if it is left to the subjective.....determination of an authority on consideration of policy, it cannot be amenable to an objective test for the simple reason that the basis for such a test does not exist and it is not possible to probe into the mental process by which the authority arrives at its decision or takes its action. There is support of this in the observation of Lord Greene M. R. in *B. Johnson and Co. (Builders)*, v. *Minister of Health* (1), at p. 399, which is—

"It may well be that, on considering the objections, the Minister may find that they are reasonable and that the facts alleged in them are true, but, nevertheless, he may decide that he will overrule them. His action in so deciding is a purely administrative action, based on his conceptions as to what public

(1) (1947) 2 A.E.L.R. 395

policy demands. His views on that matter he must, if necessary, defend in Parliament, but he cannot be called on to defend them in the courts. The objections, in other words, may fail to produce the result desired by the objector, not because the objector has been defeated by the local authority in a sort of litigation, but because the objections have been over-ruled by the Minister's decision as to what the public interest demands."

Thus where the matter is left, even after public inquiry, to be determined by the Minister on a matter of policy and not on the facts and circumstances of the case and according to the evidence led, in other words, objectively, the act is administrative and not judicial. This is stated in clear language by Agarwala, J., in *Avadhesh Partap Singh* v. *State of Uttar Pradesh and others* (1), where the learned Judge observes—

"The essential difference between an administrative or executive act on the one hand and a judicial and quasi-judicial act on the other is that while in the former case, the Authority vested with the power to give a decision affecting the rights of others, may be bound to enter upon an enquiry, he is not bound to give a decision as a result of the enquiry, but may act in his discretion, in utter disregard of the result of the enquiry, in the latter case, such authority is bound by law to act on the facts and circumstances, as determined upon the enquiry, in which

(1) A.I.R. 1952 All. 63 at p. 69

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a person to be affected is given full opportunity to place his case before the authority even though the decision of such authority, whether right or wrong, may be final and may not be liable to be challenged in a Court of Law."

On this very aspect of the matter in *Southeastern Greyhound Lines* v. *Georgia Public Service Commission* (2), Bell, J., observes—

> "It seems to be fairly well settled that judicial action is an adjudication upon the rights of parties who in general appear or are brought before the tribunal by notice or process, and upon whose claims some decision or judgment is rendered. It implies impartiality, disinterestedness, a weighing of adverse claims, and is inconsistent with discretion on the one hand for the tribunal must decide according to law and the rights of parties—or with dictation on the other; for in the first instance it must exercise its own judgment under the law, and not act under a mandate from another power. The tribunal is not always surrounded with the machinery of a court nor will such machinery necessarily make its action judicial..... What is a judicial function does not depend solely upon the mental operation by which it is performed or the importance of the act.....Wherever an act determines a question of right or obligation, or of property, as the foundation upon which it proceeds, such an act is to that extent judicial."

(1) (1935) 181 S.E.R. 834 at p. 846

The expression 'judicial approach', thus, postulates (a) that the authority in arriving at the decision or taking action must be bound to act fairly and justly, and not be merely expected to do so, and (b) that it does so on basis to which objective test can be applied, limited by the consideration of the facts and circumstances of the case and the evidence led by the parties and the application of the law to the facts and circumstances. When this test is satisfied it becomes obvious that the act or decision is judicial and not administrative, done or made in the wake of expediency or policy.

Another line of decisions gives a clearer definition of what is a judicial act or decision. In *Cooper* v. *Wilson and others* (1), Scott, L.J., says—

> "A true judicial decision presupposes an existing dispute between two or more parties, and then involves four 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 the 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 a 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

(1) (1937) 2 K.B. 309 at pp. 340 and 341

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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 (4) is in fact taken by administrative action, the character of which is determined by the Minister's free choice."

This statement has been approved by their Lordships of the Supreme Court in *Bharat Bank's case* (1), and in *Maqbool Hussain* v. *State of Bombay* (2). This definition of a judicial decision is succinctly stated in *Ramsey* v. *Home Manufacturing Co.* (3), thus—

> "Judicial action is the determination of facts as well as law and the application of law to the facts."

When a decision satisfies the fourth requisite in the definition as given above, it at once satisfies the two tests postulating 'Judicial approach as given above: it at once shows that the authority is bound to act fairly and justly and also to act on basis to which objective test can be applied.

It has already been shown that the Custodian in cancelling an allotment whether originally under section 12 or on revision under section 26(1) or on review under section 26(2) has to give a decision upon the evidence led by the parties and having regard to the facts and circumstances of the case and further upon the application of the provisions of the Act and rule 14 of the Rules. This not only satisfies the fourth requisite in the above definition but also satisfies the test for judicial approach to the case. The Custodian has, therefore,

(1) A.I.R. 1950 S.C. 188
(2) A.I.R. 1953 S.C. 325
(3) (1931) 47 Fed. Repts. 2d. Series, 621, at p. 633

to decide the question of cancellation of allotment with a judicial approach and it follows that his decision or act in so doing is a judicial decision or act and not an administrative or executive decision or act. To such a case the dictum of their Lordships of the Supreme Court in *Commissioner of Police, Bombay* v. *Gordhandas Bhanji* (1), the case relied upon by the learned Advocate-General—has no application, because in that case under the Rules, the Commissioner of Police had complete authority vested in him to grant or refuse a licence for the erection of cinema building and there was absolute discretion vested in him to cancel or issue the licence at any time. The Commissioner first refused to grant the licence, but subsequently upon the recommendation of an Advisory Committee, and persuaded by that advice, he granted the licence. Objection was taken to his having done so upon the advice of an extraneous body and their Lordships held that since the matter was entirely in his discretion he could take, among other matters, the advice of a body like the Advisory Committee, in reaching his conclusion whether or not to grant the licence. Afterwards the licence was cancelled under the direction of the Government and that was conveyed by the Commissioner of Police to the party concerned. The Government had no power under the rules to cancel such a licence and discretion in this behalf absolutely vested in the Commissioner of Police. Their Lordships held that it was not cancelled by the Commissioner of Police but by the Government and was thus invalid. It is immediately clear that on facts this case has absolutely no application to the present case.

The expression 'quasi-judicial' is not always used with clarity and accurately, and so it is with

(1) A.I.R. 1952 S.C. 16

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some reluctance that I refer to this expression, and the reason is because in regard to the powers of the Custodian this expression has been used by the learned Judges. Now, it appears to have been used in this limited sense only that the Custodian, though not a court in the ordinary sense, is an authority which exercises judicial functions or functions analogous to the judicial, and thus he is described as a 'quasi-judicial' authority. It appears to me that it is in this limited sense that the expression is used in the cases to which I now make reference. In *Abdul Majid Haji Mohomed* v. *P. R. Nayak* (1), a Division Bench of the Bombay High Court held that the Custodian in issuing a notification under section 7(3) of the Administration of Evacuee Property Ordinance and requisition under section 10(2) (1) (parallel powers existed in the Act), exercises quasi-judicial functions. Similar view has been taken in *Karam Singh* v. *The Custodian of Evacuee Property, Delhi Province* (2), and *Sardara Singh* v. *Custodian Muslim Evacuee's Property and another* (3), a case of cancellation under rule 14. In *Dulari* v. *Additional Custodian, Evacuee Property and another* (4), in regard to an order under section 40 of the Act on review under section 26(2), the learned Judges have held that the Custodian is a judicial or a quasi-judicial authority. Similarly with regard to the powers of the Custodian under section 7 of the Act in *Ebrahim Aboobaker and another* v. *Tek Chand Dodwani* (5), it has been held that the Custodian is not a court though the proceedings held by him are of a quasi-judicial nature. So that the proceedings before the Custodian under the various sections of the Act, including his proceedings in

(1) A.I.R. 1951 Bom. 440
(2) A.I.R. 1951 Simla 171
(3) A.I.R. 1952 PEPSU 12
(4) A.I.R. 1953 All. 718
(5) A.I.R. 1953 S.C. 298

regard to cancellation of an allotment, are quasi-judicial in nature and his functions are quasi-judicial, according to these cases. In *Advani's case* (1), Kania, C.J., observes that "the word 'quasi-judicial' itself necessarily implies the existence of the judicial element in the process leading to the decision", and again at p. 226, the learned Chief Justice further observes that a quasi-judicial decision requires a judicial approach. The decision of the Custodian being quasi-judicial or his functions in arriving at the decision being quasi-judicial, it follows that his approach in arriving at the decision is a judicial approach in the exercise of various functions under the Act as referred to in the cases cited above and particularly in regard to cancellation of an allotment wherein the application of rule 14 is involved. He has to adjudicate upon the question of cancellation of an allotment according to the provisions of the Act and the Rules thereunder and as he must adhere to law his approach has to be judicial and so is his decision.

Once it is found, as it has been in this case, that the Custodian in cancelling an allotment must bring to bear judicial approach having regard to the facts and circumstances of the case and the application of the law, his decision is a judicial decision, and in arriving at and giving such a decision he cannot do so either upon the advice or dictate of a Minister or in the wake of policy or executive instructions. He must dispose of the case impartially, disinterestedly, and upon weighing of the adverse claims having regard to the evidence led by the parties and finding on facts and the application of the law to that finding of facts. Assuming, therefore,—though

(2) A.I.R. 1950 S.C. 222 at p. 225

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there is nothing to support the assumption—that Mr. M. S. Randhawa, in merely signing under the order, dated June 23, 1950, of the Minister adopted that order to be his own as the Additional Custodian, that order is manifestly and from any consideration illegal and invalid for, it being an order of judicial nature, the Additional Custodian could not pass such an order either upon the advice or under the dictates of the Minister. In other words, he could not abandon his judicial function under the Act for the opinion or view of policy of the Minister. It has been pointed out that if it is the order of the Additional Custodian, it can only be an order on review under section 26(2) and in the case of such an order on review under that subsection in *Dulari* v. *Additional Custodian, Evacuee Property and another* (1), learned Judges were disposed to take the view that the Custodian exercising the power of review under that subsection was a judicial or quasi-judicial authority.

However, the facts of this case are quite clear that Mr. M. S. Randhawa never made the order of the Minister as his own order. He did not say a word of his own in passing any order cancelling the allotments of the appellants. He merely signed what was received from the Minister and passed it on to his subordinates for compliance. It has already been shown that in the allotment-cancellation chits it is clearly stated that the cancellation took place under the orders of the Minister. We have no manner of doubt at all that in this case there has been nothing of the sort as the adoption of the order of the Minister by Mr. Randhawa as his own order in the capacity of the Additional Custodian. There is nothing at all to justify such a conclusion. Upon this consideration the order of the Minister cancelling the allotments of the

(1) A.I.R. 1953 All. 718.

appellants is unquestionably without jurisdiction for under the Act, the Minister has no power to cancel an allotment. In this respect I may consider for a moment the argument of the learned counsel for respondent No. 5 that according to section 6, the Custodian is under the control of the State Government, but section 6 says nothing of the sort for subsection (1) of that section only relates to the appointment of a Custodian and in subsection (3) the power of the State Government is limited only to the distribution of work. So that there is no validity in this contention.

The consequence is that whether the order cancelling the allotments of the appellants is considered as the order of the Minister or that of Mr. Randhawa as the Additional Custodian, it cannot be maintained and must be quashed, for in the first case it is without jurisdiction and in the second it is illegal and invalid.

It has been held that the order cancelling the allotments of the appellants was that of the Minister but again for the moment assuming that it was that of the Additional Custodian, subsection (2) of section 26 requires that an order can only be reviewed under that provision "after giving notice to the parties concerned". In this case the appellants were given no notice when their allotments were cancelled. That subsequently their case was considered by the Custodian on their application and he dismissed their application after inquiry cannot be taken to mean that before the allotments of the appellants were cancelled they were heard according to the provisions of section 26 of the Act. Any hearing otherwise than in accordance with the statutory provisions is non-compliance with such provisions. So that in this case the appellants were not heard, as required by the

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statute, before their allotments were cancelled. This would also have required interference with the impugned order whether it be taken as the order of the Minister or that of the Additional Custodian.

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This appeal is, therefore, for the reasons stated, accepted and the order cancelling allotments of the appellants whether considered that of the Minister as made on June 23, 1950, or of the Additional Custodian as Minister's order signed by him on June 28, 1950, is quashed. In the circumstances of this case there is no order as to costs in this appeal.

Bhandari, C. J.

BHANDARI, C.J. I find myself in complete agreement with what my learned brother has said and have nothing to add to the admirable judgment delivered by him.

SUPREME COURT

Before B. Jagannadhadas, Syed Jafer Imam, and P. Govinda Menon, JJ.

GURBACHAN SINGH,—*Appellant.*

versus

THE *STATE OF PUNJAB*,—*Respondent.*

1957

Criminal Appeal No. 48 of 1957.

April, 24th

Code of Criminal Procedure (V of 1898)—Section 162—Copies of statements recorded under section 161 in a connected case—Whether are to be made available to the defence—Trial conducted substantially in the manner prescribed by the Code—Irregularity occurring in the course of such trial—Whether curable under section 537 of the Code—Principles of the applicability of section 537, stated —Code of Criminal Procedure (Amendment) Act (XXVI of 1955)—Provisions regarding supply of copies—Whether retrospective.

Held, that there is no provision in the Code of Criminal Procedure that copies of statements recorded under