Quasi Judicial

By

Justice (R) Shabbir Ahmed

Quasi-Judicial.

The dictionary meaning of the word quasi is 'not exactly' and it is just in between a judicial and administrative function. It is true, in many cases, the statutory authorities were held to be quasi-judicial authorities and decisions rendered by them were regarded as quasi judicial, where there were contest between the two contending parties and the statutory authority was required to adjudicate upon the rights of the parties. In Cooper vs. Wilson (1937) 2 KB 309, it is stated that "the definition of a quasi-judicial decision clearly suggests that there must be two or more contending parties and an outside authority to decide those disputes".

In view of the aforesaid statement of law, where there are two or more parties contesting each other's claim and the statutory authority is required to adjudicate the rival claims between the parties, such a statutory authority was held to be quasi-judicial and decision rendered by it as a quasi-judicial order. Thus, where there is a lis or two contesting parties making rival claims and the statutory authority under the statutory provision is required to decide such a

dispute, in the absence of any other attributes of a quasi-judicial authority, such a statutory authority is quasi-judicial authority.

But there are cases where there is no lis or two contending parties before a statutory authority yet such a statutory authority has been held to be quasi-judicial and decision rendered by it as quasi-judicial decision when such a statutory authority is required to act judicially. In Queen vs. Dublin Corporation (1878) 2 Ir. R. 371, it was held thus :

"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 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. And if there be a body empowered by law to enquire into facts, makes estimates to impose a rate on a district, it would seem to me that the acts of such a body involving such consequence would be judicial acts."

Atkin L.J. as he then was, in Rex vs. Electricity Commissioners (1924) 1 KB 171 stated that when any body of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially, such body of persons is a quasi-judicial body and decision given by them is a quasi-judicial decision. In the said decision, there was no contest or lis between the two contending parties before the Commissioner. The Commissioner, after making an enquiry and hearing the objections was required to pass order. In nutshell, what was held in the aforesaid decision was, where a statutory authority is empowered to take a decision which affects the rights of persons and such an authority under the relevant law required to make an enquiry and hear the parties, such authority is quasi-judicial and decision rendered by it is a quasi-judicial act.

The legal principles laying down when an act of a statutory authority would be a quasi-judicial act, are these :

Where (a) a statutory authority empowered under a statute to do any act;

(b) which would prejudicially affect the subject;

(c) although there is no lis or two contending parties and the contest is between the authority and the subject; and

(d) the statutory authority is required to act judicially under the statute, the decision of the said authority is quasi-judicial.

The presence of a lis or contest between the contending parties before a statutory authority, in the absence of any other attributes of a quasi-judicial authority is sufficient to hold that such a statutory authority is quasi judicial authority. However, in the absence of a lis before a statutory authority, the authority would be quasi-judicial authority if it is required to act judicially.

What distinguishes an administrative act from quasi-judicial act is, in the case of quasi-judicial functions under the relevant law the statutory authority is required to act judicially. In other words, where law requires that an authority before arriving at decision must make an enquiry, such a requirement of law makes the authority a quasi-judicial authority.

The following passage from Wade & Forsyth's Administrative Law is instructive:

"A quasi-judicial function is an administrative function which the law requires to be exercised in some respects as if it were judicial. A typical example is a minister deciding whether or not to confirm a compulsory purchase order or to allow a planning appeal after a public inquiry. The decision itself is administrative, dictated by policy and expediency. But the procedure is subject to the principles of natural justice, which require the minister to act fairly towards the objections and not (for example) to take fresh evidence without disclosing it to them. A quasi-judicial decision is therefore an administrative decision which is subject to some measure of judicial procedure."

The question which arises, is whether in the absence of any express or implied power, the quasi-judicial authority is empowered to withdraw a quasi-judicial order on the strength of the provisions of Section 21 of the General Clauses Act. Section 21 of the General Clauses Act runs as under:

Section 21. "Power to issue, to include power to add to amend, vary or rescind, notification, orders, rules or bye-laws. Where by any central Act or regulation, a power to

issue notifications, orders, rules or bye-laws is conferred, then that power includes a power exercisable in the like manner and subject to the like sanction, and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."

On perusal of Section 21 of the General Clauses Act, the expression 'order' employed in Section 21 shows that such an order must be in the nature of notification, rules and bye-laws etc. The order which can be modified or rescinded on the application of Section 21 has to be either executive or legislative in nature. The order which is neither a legislative nor an executive order but is a quasi-judicial order, the provisions of Section 21 of the General Clauses Act cannot be invoked to confer powers of recall.

Case of Venkatesh Yeshwant Deshpande v. Emperor (AIR 1938 Nagpur 513) (full bench), is also instructive in this regard, wherein the question was whether order granting remission of sentence to the prisoner in terms of Section 401 of the Criminal Procedure Code falls in the category of the ‘order’ contemplated of S. 21 of General Clauses Act.

“It is well recognized rule of construction that the words used in a statute must be interpreted according to their context. S. 21 General Clauses Act must therefore be read in the light of Ss. 14 to 20 which precede and Ss. 22 to 24 which follow. S. 21 occurs among Sections which are grouped under the heading “provisions as to orders, rules, etc. made under enactments”. The relevant words in S. 21 are:-

‘Where by any Central Act or Regulation, a power to issue notifications, orders, rules or bye-laws is conferred’. The power to issue orders, etc. is the power indicated in S. 14 of the Act, and such provisions are to mention a few to be found in S. 6 Air Craft Act, (22 of 1934), S. 6 Factories Act, 25 of 1934 ---------- S. 21 Prisoners Act, and Ss. 9 to 39 Criminal Procedure Code. The word ‘Order’ is used in S. 21 alongwith “notifications, rules and bye-laws”. They are all comprised in the expression Indian Laws which is defined in S. 27 (a) of S. 3 (read Clause 37 (b) Pakistan Laws). There the law is described as including any law, ordinance, order, bye-law, rule or regulation passed or made at any time by any competent Legislature,

authority or person in India. The meaning of the word ‘Order’ becomes clear when S. 21 is read in conjunction with S. 24. These considerations make it clear that the word ‘Order’ is used in S. 21 General Clauses Act, is a legislative or statutory order, that is an order having the force of law. The order passed under Section 401granting remission of punishment falls in a category different from the order contemplated in S. 21 of General Clauses Act. The applicability of Section therefore highly doubtful.”

Justice (R) Shabbir Ahmed.