42. The rest of the contentions, which have been raised in this case by learned counsel for the petitioner, have already been dealt with by me in the earlier part of this judgment, while dealing with the case of detenu Vinod Kumar Garg. For the same reasons, the similar contentions raised in this case are also rejected. In these circumstances, I do not find any illegality in the impugned order of detention of petitioner Narsi Dass Garg also.

43. In view of the aforesaid discussion, both these petitions are dismissed with no order as to costs.

R.N.R

Before G.S. Singhvi & S.S. Saron, JJ

RAJBIR SINGH,—*Petitioner*

versus

COMMISSIONER & SECRETARY TO GOVERNMENT OF HARYANA & ANOTHER,—*Respondents*

C.W.P. NO. 5103 OF 2003

The 5th August, 2003

Constitution of India, 1950—Arts. 14, 16 & 226—Haryana Panchayati Raj Act, 1994—Ss. 51(1)(b) & 51(2)—Principles of natural justice—On a complaint of Sarpanch BDPO finding the Panches guilty for non-participation in the meetings—During pendency of regular enquiry, suspension of Panches ordered by Deputy Commissioner without considering their reply and without assigning any reason for not accepting the same—S. 51(1)(b) entitles the Panches an adequate opportunity to explain in case of removal during the course of an enquiry—D.C. ignoring the facts & explanation given by Panches–Order of D.C. suspending Panches is vitiated by arbitrariness & violates the rules of natural justice—Government also failing to consider their reply & dismissing the appeals—Petitions allowed—Orders of respondents liable to be quashed.

Held, that the expression "adequate opportunity to explain" appearing in clause (b) of Section 51(1) of the Act has not been defined in the Act or the rules framed thereunder but on the basis

of the jurisprudence which has developed in this country in the last five decades, we can say, that the said expression represents statutory embodiment of one of the fundamental postulates of natural justice i.e. *audi alteram partem* which signifies that any authority entrusted with a power to take action against any person should give an action oriented notice to that person, consider his reply and pass order indicating application of mind. When an executive authority takes action against a person affecting his right to livelihood or right to hold an office/post or position, then the concerned authority should not only given an opportunity to affected person to explain the circumstances appearing against him or material sought to be used against him, but also pass an appropriate order by assigning reasons, howsoever briefly, for not accepting the reply or explanation given in response to the notice.

(Para 11 & 16)

Further held, that the executive authorities, like the Director or the Deputy Commissioner, who are bestowed with the power and authority to place an elected representative at the grass-root level under suspension has to exercise this power with great care and circumspection because his/her action not only affects the concerned representative but also his/her electorates. The cases in which elected representatives of the Panchayat or other local body are accused of committing grave criminal offence from a class unto themselves and, therefore, there may be sufficient justification to keep such elected representatives out of office till the conclusion of the trial but the cases in which only enquiry is contemplated or pending, the concerned authorities can exercise the power of suspension only if the allegation/charge on which such enquiry is contemplated or initiated is extremely serious and if proved, may lead to removal of such representative.

(Para 17)

S.K. Verma, Advocate, *for the petitioners.*

Jaswant Singh, Senior Deputy Advocate General, Haryana, *for the respondents*

JUDGMENT

G.S. SINGHVI, J

(1) In these petitions, the petitioners have prayed for quashing orders dated 10th January, 2003 passed by Deputy Commissioner, Bhiwani (respondent no. 2) under Section 51(1)(b) read with Sectioin 51(2) of the Haryana Panchayati Raj Act, 1994 (for short, 'the Act') and orders dated 19th February, 2003 passed by Financial Commissioner and Secretary to Government of Haryana, Development and Panchayat Department (erroneously described in the writ petitions as Commissioner and Secretary to Government of Haryana, Rural Development and Panchayat Department) (respondent no. 1) under Section 51(5) of the Act.

(2) The petitioners were elected as Panches and Shri Ghisa Ram was elected as Sarpanch of Gram Panchayat, Kaliyana, Block Dadri-II, District Bhiwani in March, 2000. After some time, the petitioners jointly submitted a representation to respondent no. 2 highlighting grave financial irregularities committed by Shri Ghisa Ram, Respondent no. 2 entrusted the preliminary enquiry to District Development and Panchayat Officer, Bhiwani. The latter submitted report dated 30th August, 2001 with the finding that the allegations levelled against the Sarpanch are not proved. He, however, recommended departmental action against Gram Sachiv—Shri Hemant Kumar. Respondent no. 2 did not accept the enquiry report and issued notice dated 31st October, 2001 to Shri Ghisa Ram for holding regular enquiry on the following charges :-

"1. That your term total income of the Panchayat in the month of 5/2000 to 6/2001 is assessd at Rs. 1,51,000 from which Rs. 18097 are incurred on electricity bills which was the necessary expense. In addition to this, the remaining amount expensed by you is expensed without quorum which is against rule. In this way, you misused your post and caused financial loss to Panchayat.

2. You have kept the amount more than Rs. 5000 of Panchayat Fund as cash in hand, which is more than the prescribed amount as given below :—

Month 6/2000	..	13491.54
Month 7/2000	..	16846.54
Month 8/2000	..	19331.54

Month 9/2000	..	46271.54
Month 12/2000	..	6017.45
Month 1/2001	..	6517.45
Month 2/2001	..	7992.45
Month 3/2001	..	17032.45
Month 4/2001	..	17667.45
Month 5/2001	..	11787.45
Month 6/2001	..	23002.45

In this way according to the facts mentioned above and keeping cash in hand the more than the amount fixed, you caused financial loss to Panchayat and misused the post."

(3) Sub Divisional Officer (Civil), Charkhi Dadri, who was appointed as enquiry officer, submitted report dated 18th November, 2002 with the finding that the Sarpanch had committed financial irregularities. However, by an order dated 7th March, 2003 (Annexure R2), respondent No. 2 exonerated Shri Ghisa Ram.

(4) In the meanwhile, Shri Ghisa Ram made a counter complaint against the petitioners by alleging that they did not participate in the meetings of the Gram Panchayat held on 20th May, 2000, 10th June, 2000, 26th June, 2000, 4th July, 2000 and 14th July, 2000 in spite of issuance of the agenda and in this manner, they were frustrating the activities of the Gram Panchayat. His complaint was referred to Block Development and Panchayat Officer, Dadri-II for preliminary enquiry, who submitted report with the finding that allegation of non-participation by the petitioners in the meetings of the Gram Panchayat is *prima facie* correct. Acting on that report, respondent No. 2 issued notices dated 2nd Dececmber, 2002 to the petitioners to show cause as to why regular enquiry be not held against them for removal from the posts of Panches. The petitioiners filed detailed reply dated 17th December, 2002 to controvert the allegations levelled against them. The relevant extracts of the reply as contained in Annexure P7 are reproduced below :—

"Ghisa Ram Sarpanch took this charge alone, we are not informed anything about income and expenses. When the Panchayat constituted, we seven Panches made

aware the Sarpanch and B.D.O, regarding this, when the agenda of meetings dated 20th May, 2000, 10th June, 2000, 26th June, 2000 and 4th July, 2000 was received, we all the seven Panches went in the Panchayat Ghar according to the agenda. After that Secretary Hemant Kumar and Sarpanch Ghisa Ram met there and in each meeting before telling us anything about meetings, we were asked to append our signatures on blank papers without writing any proceeding. Against this we said to them that we will not sign without explaining us about income and expenditure and without writing the proceedings. In each meeting Sarpanch misbehaved with us. Regarding this we informed the B.D.O, according to rules, copy' of which is attached herewith as well as the question relating to the meetings held on 6/2000 and 7/2000. In those meetings, Secretary, Hemant Kumar and Sarpanch, Ghisa Ram asked us to put the signatures and threatened to got out if not to put signatures, we had walked out of the meeting. Regarding this, we informed the B.D.O., Dadri and the office concerned about all the proceedings,—*vide* letters No. 814, dated 21st August, 2000, 22nd May, 2000, Endorsement No. 1757, dated 9th November, 2000 and 10th November, 2000. In reply to this, we obtained only letters but no action was taken. The copies of these are attached herewith. The allegation regarding meeting dated 28th June, 2002 is also the same.

At first when District Development Officer called us at Bhiwani on 25th June, 2002 convened the meeting. In that meeting our statement was recorded and we were ordered to convene a meeting on 28th June, 2002 at Block Office, Dadri-II. On 28th June, 2002 a meeting was convened in the presence of District Development Officer and B.D.O. Also in this meeting we are not informed anything. Inspite of asking by us and District Development Officer asked to sign regarding development work in the village. But we said to the officer that in previous meetings nothing was explained

to us and the record produced is forgery and misbehaved with us in the meetings. So that we requests you that in today's meeting after passing the No Confidence Resolution and after taking the brief of the proceeding, next development work, resolution please be passed because Ghisa Ram Sarpanch is a corrupt man and written the proceeding expenses without quorum, allowed illegal possession on the panchayat land taking rupees and allowed to cut down the trees on shamlat land after taking rupees. Record of the village and Panchayat is the proof of this. Besides this District Officer has also investigated this. The letter No. A-2001/ 6711 Panchayat, dated 31st October, 2001 is available in your office and in this way also prior to this on 15th December, 2000 Vikas Samiti has been constituted without quorum in the village. Against this we filed the writ petition in the High Court of Punjab and Haryana after taking the copy of the Vikas Samiti and matter is stayed till, today. And case is pending. Taking in view all these things we refused to sign. After refusing, District Development Officer forced to out and used the unofficial language such as "Get Out". We went out after the insult. A copy of these proceedings is given to the B.D.O, and to the Deputy Commissioner for information. But no action was taken till today. The copy of which is attached. So the allegation against us on the subject cited above is not proved."

(5) However, without assigning any reason to discard the points raised by them in their reply to the show cause notice, respondent No. 2 passed identical orders dated 10th January, 2003,—*vide* which he suspended the petitioners from the posts of Panches. For the sake of convenient reference, the relevant portion of one such order passed by respondent No. 2 (as annexed with C.W.P. No. 5103 of 2003) is reproduced below :—

"By issuing office letter No. 5397-5400/Panchayat, dated 2nd December, 2002 against Shri Rajbir Singh, Panch, Gram Panchayat Kaliyana, Block Dadri-II, District Bhiwani, U/s 51(3)(g) of the Haryana Panchayati Raj

Act, 1994, Sub- Divisional Officer (Civil), Dadri was appointed as Enquiry Officer. In addition to this, to suspend the aforesaid Panch during the pendency of enquiry, a show cause notice,—*vide* registered letter No. 5401/Panchayat, dated 2nd December, 2002 of this office was issued and it was written that he should submit his reply within 10 days on receipt of this letter. Shri Ram Avtar, Panch, Gram Panchayat, Kaliyana submitted his reply to this office on 17th December, 2002 to the show cause notice issued to him. From perusal of the reply to the show cause notice it was found that there is no substantial proof in reply. In this case the reply filed by the Panch is not satisfactory.

So, I H.S. Malik, I.A.S., Deputy Commissioner, Bhiwani exercising the powers conferred under section 51(1)(b) of Haryana Panchayati Raj Act, 1994 suspend Shri Rajbir Singh, Panch, Gram Panchayat, Kaliyana from his post of Panch with immediate effect and restrain him to participate in any meeting of the Panchayat under Section 51(2) of Haryana Panchayati Raj Act, 1994. In additioin to this it is also ordered to hand over any amount, record and other property, if any, of the Panchayat to the Sarpanch immediately." (Underlining is ours)

(6) The petitioiners challenged the orders of their suspension by filing separate appeals under Section 51(5) of the Act which were dismissed by respondent No. 1 with the observation that such an interim order did not warrant interference, more-so because the explanation given by them was unsatisfactory.

(7) The petitioners have now challenged the impugned orders on the ground of violation of Section 51(1)(b) of the Act and *mala fide* exercise of power.

(8) In their written statement, the respondents have averred that the petitioners were placed under suspension keeping in view the seriousness of the allegations levelled against them. They have also accused the petitioners of obstructing the development works by remaining absent from the meetings of the Gram Panchayat. Alongwith the written statement, the respondents have placed on

record copy of letter dated 16th July, 2002 sent by Block Development and Panchayat Officer, Charkhi Dadri-II in which he recommended that action be taken against the petitioners.

(9) We have heard learned counsel for the parties and perused the record.

(10) Section 51(1) of the Act empowers the Director or the Deputy Commissioner of a District to suspend any Sarpanch or Panch on the follwing grounds :—

> "(a) where a case against him in respect of any criminal offence is under investigatioin, enquiry or trial, if in the opinion of the Director, or Deputy Commissioner concerned the case made or proceeding taken against him, is likely to embarrass him in the discharge of his duties or involves moral turpitude or defect of character
>
> (b) during the course of an enquiry for any of the reasons for which he can be removed, after giving him adequate opportunity to explain."

(11) The expression "adequate opportunity to explanation" appearing in clause (b) of Section 51(1) of the Act has not been defined in the Act or the rules framed thereunder, but on the basis of the jurisprudence which has developed in this country in the last five decades, we can, without any hesitation of contradiction, say that the said expression represents statutory embodiment of one of the fundamental postulates of natural justice i.e. *audi alteram partem* which signifies that any authority entrusted with a power to take action against any person should give an action-oriented notice to that person, consider his reply and pass order indicating application of mind. The Supreme Court and the High Courts have repeatedly held that the rule of *audi alteram partem* is a part of the concept of rule of law and is not an empty formality. In **State of Orissa** *Versus* **Dr. (Miss) Binapani Dei and others, (1),** their Lordships of the Supreme Court recognised the applicability of this rule to purely administrative actions and observed :—

> "An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay.

(1) AIR 1967 S.C. 1269

The deciding authority, it is true, is not in the possition of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedures may not be insisted upon. He is, however, under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose, the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set up that every citizen is protected against exercise of arbitrary authority by the State or its, officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed ; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nulity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.

** ** ** ** ** ** **

It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence."

(12) In **A.K. Kraipak and other** *versus* **Union of India and others (2),** a Constitution Bench of the Supreme Court gave new dimension to the rules of natural justice by making the following observations :—

> "The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it, the concept of natural justice has undergone a great deal of change in recent years.
>
> In the past only two rules were recognised but in course of time many more subsidiary rules came to be added to these rules. Till very recently it was the opinion of the Courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice there is no reason why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry."

(13) In **Sayeedur Rehman** *versus* **The State of Bihar and others (3),** the Apex Court highlighted the importance of the rule of *audi alteram partem* in the following words :—

> "This unwritten right of hearing is fundamental to a just decision by any authority which decides a controversial issue affecting the rights of the rival contestents. This

(2) AIR 1970 S.C. 150
(3) AIR 1973 S.C. 239

right has its roots in the notion of fair procedure. It draws the attention of the party concerned to the imperative necessity of not overlooking the other side of the case before coming to its decision, for nothing is more likely to conduce to just and right decision than the practice of giving hearing to the affected parties. The omission of express requirement of fair hearing in the rules or other source of power claimed for reconsidering an order is supplied by the rule of justice which is considered as an integral part of our judicial process which also governs quasi-judicial authorities when deciding controversial points affecting rights of parties."

(14) In **Smt. Maneka Gandhi** *versus* **Union of India (4),** the Supreme Court observed :—

"Although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature. The principle of audi alteram partem, which mandates that no one shall be condemned unheard, is part of the rules of natural justice.

Natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. The inquiry must, always be : does fairness in action demand that an opportunity to be heard should be given to the person affected?

The law must now be taken to be well settled that even in an administrative proceeding, which involves civil consequences, the doctrine of natural justice must be held to be applicable."

(15) In **Olga Tellis** *versus* **Bombay Municipal Corporation, (5)** a Constitution Bench of the Supreme Court read

(4) AIR 1978 S.C. 597
(5) AIR 1986 S.C. 180

the rules of natural justice as part of the larger concept of life and liberty and observed :—

> "The procedure prescribed by law for the deprivation of the right conferred by Art. 21 must be fair, just and reasonable. Just as a *mala fide* act has no existence in the eye of law, even so, unreasonableness vitiates law and procedure alike. It is therefore essential that the procedure prescribed by law for depriving a person of his fundamental right must conform to the norms of justice and fairplay. Procedure, which is unjust or unfair in the circumstances of a case, attracts the vice of unreasonableness, thereby vitiating the law which prescribes that procedure and consequently, the action taken under it. Any action taken by a public authority which is invested with statutory powers has, therefore, to be tested by the application of two standards ; the action must be within the scope of the authority conferred by law and secondly, it must be reasonable. If any action, within the scope of the authority conferred by law, is found to be unreasonable, it must mean that the procedure established by law under which that action is taken is itself unreasonable. The substance of the law cannot be divorced from the procedure which it prescribes for, how reasonable the law is, depends upon how fair is the procedure prescribed by it. If a law is found to direct the doing of an act which is forbidden by the Constitution or to compel, in the performance of an act, the adoption of a procedure which is impermissible under the Constitution, it would have to be struck down."

(16) Another fact of the rules of natural justice which has been duly recognised by the Courts is that when an executive authority takes action against a person affecting his right to livelihood or right to hold an office/post or position, then the concerned authority should not only give an opportunity to affected person to explain the circumstances appearing against him or material sought to be used against him, but also pass an appropriate order by assigning reasons, howsoever briefly, for not accepting the reply or explanation given in response to the notice.

(17) In the light of the above, we shall now consider whether the suspension of the petitioners from the posts of Panches is legally sustainable. Before doing that, we deem it proper to observe that by virtue of the Constitution (Seventy-third Amendment) Act, 1992 and the Constitution (Seventy-fourth Amendment) Act, 1992, Panchayats and Municipalities have been declared institutions of self-government. This signifies the importance of these democratic institutions at the grass-root level. The Sarpanch and Panches elected to the Gram Panchayats and President and Members of the Municipalities represent the voice of the people in the rural as well as urban areas. They hold position of trust on behalf of the people who elect them. The importance of these posts and offices cannot be undermined by casual and arbitrary exercise of power conferred upon the executive authorities to place the Sarpanch etc. under suspension. In our considered view, the executive authorities, like the Director or the Deputy Commissioner, who are bestowed with the power and authority to place an elected representative at the grass-root level under suspension has to exercise this power with great care and circumspection because his/her action not only affects the concerned representative, but also his/her electorates. The cases in which an elected representatives of the Panchayat or other local body are accused of committing grave criminal offence form a class unto themselves and, therefore, there may be sufficient justification to keep such elected representatives out of office till the conclusion of the trial, but the cases in which only enquiry is contemplated or pending, the concerned authorities can exercise the power of suspension only if the allegation/charge on which such enquiry is contemplated or initiated is extremely serious and if proved, may lead to removal of such representative. The experience has, however, shown that the power conferred upon the Director or the Deputy Commissioner under Section 51(1) of the Act and similar power conferred on the other authorities under the Municipal Acts has been misused to subserve the political ends of the party in power. This is perhaps due to the fact that the authorities concerned and their political masters do not realise the importance of democracy at the grass-root level.

(18) The orders impugned in these petitions are illustrative of the abuse of power vested in the officers concerned. They have deprived the petitioners of their elective offices on extremely trivial allegation of not attending the meetings of the Gram Panchayat. Respondent

No. 2 did give notice to the petitioners to explain their position qua the allegation of not attending the meetings of the Gram Panchayat, but without considering the detailed reply filed by them and without assigning any reason worth the name for not accepting the same, he suspended them enblock. The one line observation contained in orders dated 10th January, 2003 that there is no substantial proof in the reply to show cause notices and the reply of the Panches is not satisfactory shows that respondent No. 2 had acted with a pre-determined mind. He conveniently overlooked the assertion made by the petitioners that they had went to Panchayat Ghar to attend meetings on 20th May, 2000, 10th June, 2000, 26th June, 2000 and 4th July, 2000 and met the Sarpanch and the Panchayat Secretary, but no meeting was conducted and they were asked to sign blank papers and that the Sarpanch had misbehaved with them. He also overlooked the fact that the petitioners had made complaints in that regard to the Block Development and Panchayat Officer. The explanation given by the petitioners for not signing the proceedings of the meeting held by the Block Development and Panchayat Officer on 28th June, 2000 has also been ignored. Thus, there is no escape from the conclusion that the orders passed by respondent No. 2 suspending the petitioners from the posts of Panches are vitiated by arbitrariness and violation of the rules of natural justice.

(19) Misfortune of the petitioners did not end with the passing of order dated 10th January, 2003 because respondent No. 1 dismissed their appeals by adopting a hyper-technical approach. He too did not bother to go through the detailed reply filed by the petitioners to the show cause notices issued by respondent No. 2 and the points raised by them in the memos of appeal and dismissed the appeals by recording stock reasons. In our opinion, the failure of the appellate authority to deliberate on the issue raised by the petitioners has resulted in the substantial failure of justice and calls for intervention by this Court.

(20) Hence, the writ petitions are allowed and orders dated 10th January, 2003 and 19th February, 2003 passed respectively by respondent Nos. 2 and 1. However, it is made clear that this order shall not have any adverse effect on the enquiry proceedings pending against the petitioners which the enquiry officer is expected to finalise expeditiously.

R.N.R.