
with regard to the possession. The prayer made by the petitioners of the writ petition was with regard to the cancellation of the allotment of certain land. The controversy was totally beyond the issue, which is involved in the present revision petition.

9. Resultantly, I reverse the findings of the revisional court and allow this revision petition and restore the order under Section 146, Cr. P.C., passed by the Executive Magistrate. Now the property will remain under attachment and the Naib-Tehsildar/Receiver will be deemed to have been in possession of the property in pursuance of the attachment order and he will be competent to auction the same from time to time. All the auctions made by the Receiver shall be deemed to be valid. It has been informed to this Court by the learned counsel appearing on behalf of the respondents that at present the land is in possession of the lessees, who have been declared as the highest bidders by the Receiver. The possession of such lessees or anybody else, whosoever, has got the land from the Receiver, will not be disturbed.

The revision petition is allowed as indicated above.

R.N.R.

Before G.S. Singhvi & M.L. Singhal, JJ.

G.S. OBEROI,—Petitioner

versus

THE STATE OF PUNJAB & ANOTHER,—Respondents

C.W.P. No. 6943 of 1996

7th July, 1997

Constitution of India, 1950— Arts. 226/227—Water (Prevention and Control of Pollution) Act, 1974—Ss. —61 & 62—Air (Prevention and Control of Pollution) Act, 1981—S. 47—Supersession of Punjab Pollution Control Board vide Government Notification—Notification issued without notice or opportunity of hearing being afforded—Validity of Notification.

Held that Section 62 of the Water (Prevention and Control of Pollution) Act, 1974 and Section 47 of the Air (Prevention and Control of Pollution) Act, 1981, which are almost identical empower the State Government to supersede the State Board. Section 62(1)(a) of 1974 Act and Section 47(1)(a) of 1981 Act vest power in the

Government to supersede the State Board if it persistently defaults in the performance of functions imposed on it by or under the Act. Section 62(1)(b) of 1974 Act and Section 47(1)(b) of 1981 Act also empower the State Govt. to supersede the Board if it is of the opinion that the circumstances exist which render it necessary for the Government to do so in public interest. The exercise of power in the former case is subject to the condition that the State Government shall give a reasonable opportunity to the State Board to show cause why it should not be superseded and the explanation/objection, if any, submitted by the State Board is considered before the issuance of notification superseding the Board. However, no such condition is required to be satisfied before the exercise of power in the latter case. This shows that the Legislature has designedly refrained from incorporating the requirement of notice and opportunity of hearing or an opportunity to make representation to the State Board before the Government can exercise power under Section 62(1)(b) of 1974 Act and Section 47(1)(b) of 1981 Act. The use of different languages in the two parts of the same Section is clearly indicative of the Legislature's intention to exclude the applicability of principles of natural justice in case of exercise of power under Section 62(1)(b) of 1974 Act and Section 47(1)(b) of 1981 Act. If the Legislature wanted then nothing prevented it from making a provision for giving of opportunity to the Board to submit its explanation before its supersession in public interest. Therefore, we are unable to agree with Mr. Patwalla that the power under Section 62(1)(b) and Section 47(1)(b) of the two Acts could not have been exercised without compliance of rules of natural justice. We are also unable to agree with the learned counsel that the rule of hearing should be read as implicit in the very nature of power conferred upon the Government.

(Para 9)

Further held, that in our opinion, the cases of mal-functioning, mal-administration and misfeasance fall within the ambit of Section 62(1)(b) and Section 47(1)(b).

(Para 10)

Further held, that in a case where the Government on an examination of material available with it comes to the conclusion that the Board is not being properly administered or its activities are contrary to public interest or the acts done by the Board are not in harmony with the purpose sought to be achieved by the Acts of 1974 and 1981, then it can legitimately exercise the power under Section 62(1)(b) and in such a case, it is not necessary for the Government to give notice or opportunity of hearing to the Board, its Chairman and the members.

(Para 12)

Constitution of India, 1950—Arts. 226/227—Water (Prevention and Control of Pollution) Act, 1974—Ss. 61 & 62—Air (Prevention and Control of Pollution) Act, 1981—S. 47—Whether petitioner is entitled to continue as Chairman of Board even after its supersession.

Held that the definition of 'member' includes the 'Chairman and in view of Section 62(2) read with Section 61(2) and (3) of 1974 Act and Section 47(2) and (3) of 1981 Act, the petitioner will be deemed to have vacated the office of Chairman of the Board.

(Para 17)

Constitution of India, 1950—Art. 226—Definition—Default and malfeasance.

Held that in Black's Law Dictionary, Revised Fourth Edition, page 505, the word 'default' has been defined as an omission of that which out to be done; a specifically omission or failure to perform a legal duty; to observe a promise or discharge an obligation or to perform an agreement. The term also embraces the idea of dishonesty of wrongful act or an act or omission discreditable to one's profession. At page 1109, 'malfeasance' has been defined as evil doing; ill conduct; the commission of some act which is positively unlawful; the doing of an act which is wholly wrongful and unlawful, the doing of an act which a person ought not to do at all or the unjust performance of some act which the party had not right or which he had contracted not to do. Comprehensive term including any wrongful conduct that affects, interrupts or interferes with the performance of official duties. 'Nonfeasance' means the omission of an act which a person ought to do, whereas 'misfeasance' is the improper doing of an act which a person might lawfully do.

(Para 11)

P.S. Patwalia, Advocate, *for the petitioner.*

M.L. Sarin, Senior Advocate with A.R. Takkar,
Advocate, *for respondent No. 2*

G.S. Cheema, Deputy Advocate General (Punjab),
for respondent No. 1

JUDGMENT

G.S. Singhvi, J.

1. Whether the notification dated 26th February, 1996, issued by the Government of Punjab, superseding the Punjab Pollution

Control Board (for short 'the Board') is illegal and arbitrary and whether the petitioner is entitled to continue as Chairman of the Board are the twin issues which arise for adjudication in this writ petition.

2. The respondent—Board has been constituted under Section 4 of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as 'the Act of 1974') and it is deemed to be a Board constituted under Section 4 of the Air (Prevention and Control of Pollution) 1981 (hereinafter referred to as 'the Act of 1981'). Shri F.L. Kansal, Chief Engineer, P.W.D. (Public Health) who was working as Chairman of the respondent—Board was repatriated to his parent department by an order dated 13th August, 1993 issued by the Governor of Punjab. By that very order, the services of the petitioner, who was working as Chief Engineer, Punjab, P.W.D. (Public Health) were transferred to the Science and Technology Department for his appointment as Chairman of the Board. On 16th August, 1993, the Governor of Punjab appointed the petitioner as whole-time Chairman of the Board under the Acts of 1974 and 1981. *Vide* order dated 22nd September, 1994, he was absorbed permanently as Chairman with immediate effect. After about two years of the petitioner's absorption in the service of the Board, a proposal was made by the Department of Public Health (B&R II Branch) for his retirement as Chief Engineer with effect from 16th August, 1993 and modification of the order dated 22nd September, 1994, in order to facilitate the petitioner's permanent absorption in the service of the Board with effect from 16th August, 1993. On 16th August, 1995 the Government revised the order dated 22nd September, 1994 and absorbed the petitioner permanently as Chairman of the Board with effect from 16th August, 1993. On 1st March, 1996, the Secretary to Government Punjab, Department of Public Health, issued notification Annexure P-12, retiring the petitioner as Chief Engineer, Public Health with effect from 16th August, 1993 (F.N.) i.e. the date of his permanent absorption in the services of the Board as its Chairman. After about two years and six months of the absorption of the petitioner's service in the Board, Governor of Punjab issued the impugned notification superseding the Board in exercise of his powers under Section 62(1)(b) read with Section 61(2)(a) of the Act of 1974 and Section 47(1)(b) and 2(a) of the Act of 1981. The background of the impugned notification is that several complaints were received by the Government of Punjab about the mal-administration of the Board. One enquiry was entrusted to the Vigilance Department Punjab. The other was got conducted

through Shri M.L. Sharma, Officer on Special Duty to the Principal Secretary to Chief Minister, Punjab. In his report dated 7th February, 1996, M.L. Sharma pointed out several omissions and commissions of the Chairman and the officers of the Board. The Chief Minister, who also happens to be the Minister of the concerned department, considered the report of Shri M.L. Sharma and expressed the view that the circumstances exist which necessitate the supersession of the Board. Accordingly, he directed that the Board be superseded with immediate effect.

3. The petitioner has challenged the legality of the impugned notification on the following grounds :

- (a) The notification issued by the Government for superseding the Board is void *abinitio* because it is contrary to Section 62(1)(a) of 1974 Act read with Section 47(1)(a) of 1981 Act and the principles of natural justice. The petitioner's assertion is that no action oriented notice or opportunity of hearing was given to him, before the issuance of the impugned notification.
- (b) The Government has relied on the report prepared by Shri M.L. Sharma without disclosing it to the petitioner and, therefore, its decision to supersede the Board is against the principles of natural justice.
- (c) Even if the action has been taken under Section 62(1)(b) of 1974 Act and Section 47(1)(b) of 1981 Act, the respondent No. 1 was duty bound to hold an inquiry and hear the petitioner before the Board could be superseded.
- (d) The super session of the Board is vitiated due to *mala fides* and bias.
- (e) If the supersession of the Board is held to be legally justified, then the petitioner should be reverted back to the post of Chief Engineer.

4. The State of Punjab has justified the issuance of the impugned notification by stating that the Chief Minister, Punjab, who was also holding the portfolio of ministry of Environment, felt satisfied that the circumstances exist necessitating the supersession of the Board. While doing so, he had gone through the report submitted by Shri M.L. Sharma. On the basis of the opinion expressed by the Chief Minister, Governor of Punjab notified the

supersession of the Board. According to the State Government, it was not necessary to give notice and opportunity of hearing to the State Board because power was exercised under Section 62(1)(b) of the Act of 1974 read with Section 47(1)(b) of the Act of 1981. It is also the case of respondent No. 1 that as a result of supersession of the Board, all its members including the Chairman ceased to hold their respective offices. Respondent No. 1 has also stated that there were complaints of serious irregularities in the functioning of the Board, which were got investigated into and on the basis of the fact finding reports, the Government formed a *bonafied* opinion that it was necessary and in public interest to supersede the Board. The allegations of bias and *mala fides* have been refuted by respondent No. 1 by stating that the Chief Minister had exercised the power vesting in him as Minister, Department of Environment, and not in his personal capacity.

5. The first contention of Shri P.S. Patwalia is that the notification dated 26th February, 1996, should be treated as one issued under Section 62(1)(a) of the Act of 1974 and Section 47(1)(a) of the Act of 1981, even though reference has been made to Section 62(1)(b) of the Act of 1974 and Section 47(i)(B) and 2(a) of 1974 Act and as no notice or opportunity of hearing was given to the Board and its functionaries, the impugned notification should be declared as void. Learned counsel submitted that the rule of *audi alterpartem* is an integral part of the concept of natural justice and due to the violation thereof, the supersession of the Board should be declared as illegal. The second contention of Shri Patwalia is that the impugned decision is vitiated due to malafides and arbitrariness. He invited the court's attention to the details of the action taken by the Board to prevent water and air pollution in the State during the tenure of the petitioner as Chairman and submitted that the big industries which did not like the action initiated by the petitioner manipulated his removal from the office of the Chairman. Learned counsel submitted that the exercise of power by the Government at the behest of third parties should be voided on the grounds of *mala fides*, non application of mind and arbitrariness. Lastly, he argued that even if the supersession of the Board is held to be justified, the petitioner should have been reverted back to the post of Chief Engineer, which he was holding at the time of appointment as Chairman of the Board. Learned counsel refuted the assertion made by the respondents that there were complaints against the working of the Board during the tenure of the petitioner. He pointed out that the withdrawal of the criminal

cases against the industries was not done at the behest of the petitioner, and in fact he was instrumental in moving the resolution to scrap the policy formulated by the Board in January, 1984 for withdrawal of the cases. He relied on *Gamini Krishnayya & others v. Guraza Seshachalam & others* (1), *Dr. Bool Chand v. Chancellor Kurukshetra University* (2), *Shri Balaganeshan Metals v. M.N. Shanmugham Shetty & others* (3), *S.S. Viridi v. Chandigarh Administration & others* (4), *G.S. Shergill v. State of Punjab & others* (5), *A.K. Kaul & Anr. v. Union of India & Anr.* (6), *T.R. Thandur v. Union of India & others* (7), and *Parshotam Lal Dhingra v. Union of India* (8).

6. On the other hand, Shri M.L. Sarin and Shri G.S. Cheema argued that the exercise of the power by the Government under Section 62(1)(b) is legislative in character and, therefore, it is not open to challenge on the ground of violation of the principles of natural justice or *mala fides*. Shri Sarin placed reliance on the decisions of the Supreme Court in *Ram Dial & Others v. State of Punjab* (9), *Ayodhya Prasad Vajpai v. State of U.P. and another* (10), *The Tulsipur Sugar Co. Ltd. v. The Notified Area Committee Tulsipur* (11), *Dr. D.C. Saxena v. State of Haryana & others* (12), *Sundarjas Kanyalal Bhathija & others v. Collector, Thane Maharashtra & others* (13). Shri Sarin further argued that Section 62(1)(a) empowers the Government to supersede the Board in case of persistent default in the performance of duties, but the case of mal-administration or mal-functioning or non performance are covered by Section 62(1)(b) of the Act of 1974. Learned counsel submitted that the Government is under a social obligation to protect the environment and having found that the Board has failed to take appropriate steps to achieve the directive principles of State Policy, the Government was entitled to exercise powers under Section 62(1)(b). He argued that the expression "public interest" has to be read in the context of the constitutional mandate for

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1. AIR 1965 SC 639
 2. AIR 1968 SC 292
 3. AIR 1987 SC 1668
 4. 1991(1) SLR 399
 5. 1994(1) RSJ 771
 6. JT 1995(4) SC 1
 7. JT 1996(4) SC 14
 8. AIR 1958 SC 36
 9. AIR 1965 SC 1518
 10. AIR 1968 SC 1344
 11. AIR 1980 SC 882
 12. AIR 1987 SC 1463
 13. AIR 1990 SC 261

protection of environment and, therefore, the decision taken by the Government can not be termed as arbitrary or unjustified. Shri Sarin further argued that the petitioner was Chairman as well as a member of the Board and with the supersession of the Board, he lost the right to hold the office of the Chairman or to continue to work as the member. Learned counsel submitted that the impugned notification cannot be equated with a case of termination of service inviting applicability of the principles of natural justice or the provisions like Article 311 of the Constitution.

7. The directive principles of the State policy contained in Part-IV of the Constitution, though not enforceable by any court, are fundamental in governance of the country and it is the duty of the State to apply these principles in making laws. Article 48-A imposes a duty on the State to take action to protect and improve the environment and to safeguard the forests and wild life. Article 51-A, which is contained in part IV-A, enjoins upon every citizen to protect and improve the natural environment including forests, lakes and wild life etc.

8. With a view to give content and meaning to the above referred directive principles, the Parliament enacted the various Acts including the 1974 Act and 1981 Act. Section 2(c) of 1974 Act defines the term 'member'. Section 4 provides for appointment/constitution of a State Board. Chapter IV relates to powers and functions of the Boards. Section 17 contains the detailed functions which are to be carried out by the State Board. Chapter-V contains various provisions for prevention and control of water pollution. Chapter-VII contains various provisions regarding penalties and procedure. Sections 61, 62, 63 and 64 are included in Chapter-VII. Section 64 empowers the State Government to make rules to carry out the purposes of the Act in respect of matters which do not fall within Section 63. In exercise of his powers under Section 64, the Governor of Punjab made the Punjab State Board for the Prevention and Control of Water Pollution Rules, 1977. Rule 2(c) defines the term "Chairman", whereas Rule 2(d) defines the term 'member'. Rule 3 contains provisions relating to salaries, allowances and other conditions of service of Chairman. Rule 7 specifies the powers and duties of Chairman. Section 2(1) of 1981 Act defines the term 'member'. Section 4 thereof imposes a duty on the State Government to constitute the State Board for Prevention and Control of Air Pollution. Section 7 relates to terms and service of member. Section 47 gives power to the State Government to supersede the State Board. Under Section 54, the State Government

is empowered to make rules to carry out the purposes of Act of 1981. In exercise of that power, the Punjab Government has framed the Punjab State Board for Prevention and Control of Air Pollution Rules, 1983. Rule 5 of these rules defines the powers and duties of Chairman and Member Secretary. For the purposes of deciding the issues raised in this petition, we deem it proper to reproduce Sections 2(c), 4(1), 5(8 and 9), 61 and 62 of 1974 Act, Rule 2(c) and (f) and 3 of 1977 Rules as well as Section 2(1), 5(i) and 47 of 1981 Act. The same read as under :—

“2. DEFINITIONS :—

XX XX XX

- (c) “member” means a member of a Board and includes the Chairman thereof;

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CONSTITUTION OF STATE BOARDS :—

- (1) The State Government shall, with effect from such date as it may, by notification in the Official Gazette, appoint, constitute a State Board under such name as may be specified in the notification, to exercise the powers conferred on and perform the functions assigned to that Board under this Act.

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5. TERMS AND CONDITIONS OF SERVICE OF MEMBERS :—

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- (8) The other terms and conditions of service of a member of a Board, other than the chairman and member-secretary, shall be such as may be prescribed.
- (9) The other terms and conditions of service of the chairman shall be such as may be prescribed.

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61. Power of Central Government to supersede the Central Board and Joint Boards :—

- (1) If at any time the Central Government is of opinion—

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- (a) that the Central Board or any Joint Board has persistently made default in the performance of the functions imposed on it by or under this act; or
 - (b) that circumstances exist which render it necessary in the public interest so to do;

The Central Government may, by notification in the Official Gazette, supersede the Central Board or such Joint Board, as the case may be, for such period, not exceeding one year, as may be specified in the notification :

Provided that before issuing a notification in the Official Gazette, the reasons mentioned in clause (a), the Central Government shall give a reasonable opportunity to the Central Board or such Joint Board, as the case may be, to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the Central Board or such Joint Board, as the case may be.

- (2) Upon the publication of a notification under sub-section (1) superseding the Central Board or any Joint Board,—
 - (a) all the members shall, as from the date of supersession vacate their offices as such :
 - (b) all the powers, functions and duties which may, by or under this Act, be exercised; performed or discharged by the Central Board or such Joint Board shall, until the Central Board, as the case may be, is reconstituted under sub-section (3) be exercised, performed or discharged by such person or persons as the Central Government may desired;
 - (c) all property owned or controlled by the Central Board or such Joint Board shall, until the Central Board or the Joint Board as the case may be, is reconstituted under sub-section (3) vest in the Central Government.
- (3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government may—

- (a) extend the period of supersession for such further term, not exceeding six months, as it may consider necessary; or
- (b) reconstitute the Central Board or the Joint Board, as the case may be, by fresh nomination or appointment, as the case may be and in such case any person who vacated his office under clause (a) of sub-section (2) shall not be deemed disqualified for nomination or appointment :

Provided that the Central Government may at any time before the expiration of the period of supersession, whether originally specified under sub-section (1) or as extended under this sub-section, take action under clause (b) of this sub-section.

62. Power of State Government to supersede State Board :—

- (1) If at any time the State Government is of opinion—
 - (a) that the State Board has persistently made default in the performance of the functions imposed on it by or under this Act; or
 - (b) that circumstances exist which render it necessary in the public interest so to do;

the State Government may, by **notification in the Official Gazette, supersede the State Board for such period, not exceeding one year, as may be specified in the notification :**

Provided that before issuing a notification under sub-section for the reasons mentioned in clause (a), the State Government shall give a reasonable opportunity to the State Board to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the State Board.

- (2) Upon the publication of a notification under sub-section (1) superseding the State Board, the provisions of sub-sections (2) and (3) of Section 61 shall apply in relation to the supersession of the State Board as they apply in relation to the supersession of the Central Board or a Joint Board by the Central Government.

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5. CONSTITUTION OF STATE BOARDS :—(1) In any State in which the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), is not in force, or that Act is in force but the State Government has not constituted a State Board for the Prevention & Control of Water Pollution under that Act, the State Government shall, with effect from such date as it may, by notification in the Official Gazette, appoint, constitute a State Board for the Prevention and Control of Air Pollution under such name as may be specified in the notification to exercise the powers conferred on, and perform the functions assigned to, that Board under this Act.

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47. Power of State Government to supersede the State Board:— (1) If at any time the state government is of opinion :—

(a) that a State Board constituted under this Act has persistently made default in the performance of the functions imposed on it by or under this Act, or

(b) that circumstances exist which render it necessary in the public interest so to do, the State Government may, by notification in the official gazette, supersede the State Board for such period, not exceeding six months, as may be specified in the notification :

Provided that before issuing a notification under this sub-section for the reasons mentioned in clause (a), the State Government shall give a reasonable opportunity to the State Board to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the State Board.

- (2) Upon the publication of a notification under sub-section (1) superseding the State Board :—

(a) all the members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under this Act, be exercised, performed or discharged by the State Board shall, until

the State Board is reconstituted under sub-section (3), be exercised, performed or discharged by such person or persons as the State Government may direct;

- (c) all property owned or controlled by the State Board shall until the Board is reconstituted under sub-section (3), vest in the State Government.
- (3) On the expiration of the period of supersession specified in the notification issued under sub-section (1) the State Government may :—
- (a) extend the period of supersession for such further term, not exceeding six months, as it may consider necessary; or
 - (b) reconstitute the State Board by a fresh nomination or appointment, as the case may be and in such case any person who vacated his office under clause (a) of sub-section (2) shall also be eligible for nomination or appointment :

Provided that State Government may at any time before the expiration of the period of supersession, whether originally specified under sub-section (1) or as extended under this sub-section take action under clause (b) of this sub-section."

9. Section 62 of 1974 Act and Section 47 of 1981 Act which are almost identical empower the State Government to supersede the State Board. Section 62(1)(a) of 1974 Act and Section 47(1)(a) of 1981 Act vest power in the Government to supersede the State Board if it persistently defaults in the performance of functions imposed on it by or under the Act. Section 62(1)(b) of 1974 Act and Section 47(1)(b) of 1981 Act also empower the State Government to supersede the Board if it is of the opinion that the circumstances exist which render it necessary for the Government to do so in public interest. The exercise of power in the former case is subject to the condition that the State Government shall give a reasonable opportunity to the State Board to show cause why it should not be superseded and the explanation/objection, if any, submitted by the State Board is considered before the issuance of notification superseding the Board. However, no such condition is required to be satisfied before the exercise of power in the latter case. This shows that the Legislature has designedly refrained from

incorporating the requirement of notice and opportunity of hearing or an opportunity to make representation to the State Board before the Government can exercise power under Section 62(1)(b) of 1974 Act and Section 47(1)(b) of 1981 Act. The use of different languages in the two parts of the same Section is clearly indicative of the Legislature's intention to exclude the applicability of principles of natural justice in case of exercise of power under Section 62(1)(b) of 1974 Act and Section 47(1)(b) of 1981 Act. If the Legislature wanted then nothing prevented it from making a provision for giving of opportunity to the Board to submit its explanation before its supersession in public interest. Therefore, we are unable to agree with Mr. Patwalia that the power under Section 62(1)(b) and Section 47(1)(b) of the two Acts could not have been exercised without compliance of rules of natural justice. We are also unable to agree with the learned counsel that the rule of hearing should be read as implicit in the very nature of power conferred upon the Government. Such an argument may have found favour with the Court if there did not exist any provision in the statute incorporating the requirement of hearing. However, in view of the different phrases used in the two provisions which empower the Government to supersede the Board, we cannot hold that the requirement of compliance of the rules of natural justice is implied in the exercise of power by the Government under Section 62(1)(b) and Section 47(1)(b). This view of ours finds support from the observations made by the Constitution Bench of the Supreme Court in *S.N. Mukherjee v. Union of India* (14), in the context of requirement to record reasons which is an integral part of the concept of natural justice. After reviewing Indian, American and British precedents on the subject, S.C. Aggarwal, J. who spoke for the Bench, observed :—

“Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory frame work whereunder jurisdiction has been conferred on the administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in larger public interest that the reasons for the order

passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect as to those contained in the Administrative Procedure Act, 1946 of U.S.A. and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record reasons. The said requirement cannot, therefore, be insisted upon in such a case."

10. Mr. Patwalia's argument that the Government has issued the impugned notification for extraneous purpose and it amounts to colourable exercise of statutory power and his further argument that in the garb of exercise in the power under Section 62(1)(b) and Section 47(1)(b), the Government has in fact removed the petitioner from the office of Chairman as a measure of punishment is without substance. Likewise his argument that no public interest was involved in the exercise of power with the Government and the only object behind the issuance of impugned notification is to get rid of the petitioner is without merit. While Section 62(1)(a) speaks of persistent default by the Board in the performance of functions imposed on it by or under the Act, Section 62(1)(b) lays down that the power under Section 61(1) can be exercised if circumstances exist which render the supersession necessary in public interest. This shows that the power conferred by Section 61(1)(a) can be exercised only if the Government forms an opinion that the Board has persistently failed to carry out its functions and thus the scope of power is very limited. However, under clause (b) wide and pervasive jurisdiction has been conferred upon the Government to supersede the Board if the Government considers it necessary to do so in public interest. In our opinion, the cases of mal-functioning, mal-administration and misfeasance fall within the ambit of Section 62(1)(b) and Section 47(1)(b).

11. In Black's Law Dictionary, Revised Fourth Edition, page 505, the word 'default' has been defined as an omission of that which ought to be done; a specifically omission or failure to perform

a legal duty; to observe a promise or discharge an obligation, or to perform an agreement. The term also embraces the idea of dishonesty of wrongful act or an act or omission discreditable to our's protection. At page 1109, 'malfeasance' has been defined as evil doing; ill conduct; the commission of some act which is positively unlawful; the doing of an act which is wholly wrongful and unlawful; the doing of an act which a person ought not to do at all or the unjust performance of some act which the party had no right or which he had contracted not to do. Comprehensive term including any wrongful conduct that affects, interrupts or interferes with the performance of official duties. 'Nonfeasance' means the omission of an act which a person ought to do, whereas 'misfeasance' is the improper doing of an act which a person might lawfully do.

12. We, therefore, hold that in a case where the Government on an examination of material available with it comes to the conclusion that the Board is not being properly administered or its activities are contrary to public interest or the acts done by the Board are not in harmony with the purpose sought to be achieved by the Acts of 1974 and 1981, then it can legitimately exercise the power under Section 62(1)(b) and in such a case, it is not necessary for the Government to give notice or opportunity of hearing to the Board, its Chairman and the members.

13. What has in fact happened in the present case is that on receiving complaints from the various quarters including the employees of the Board and the industries regarding mal-administration and harassment, the Government entrusted one inquiry to Sh. M.P.S. Aulakh, Inspector General-cum-Director Vigilance Bureau, Punjab. Another fact finding inquiry was entrusted to Shri M.L. Sharma, Officer on Special Duty to the Principal Secretary to the Chief Minister. Shri M.L. Sharma gave notice to the Board and called upon it to produce the relevant records. After scrutinising the record, he submitted a report on the functioning of the Board indicating that the decisions taken by the Board in various matters were highly suspicious. After going through the report, the Chief Minister who happened to be the Minister of Environment, felt satisfied that it was necessary to supersede the Board in public interest. This led to the issuance of the impugned notification. All this shows that the power under Section 62 (1) (b) of 1974 Act and Section 47 (1) (b) of 1981 Act has been exercised on the basis of a fact finding inquiry got conducted by the Government through one of its officers. Therefore,

it is not possible to hold that the Government had no material before it on the basis of which it could form opinion about the desirability of superseding the Board. It cannot also be said that the material on the basis of which the opinion was formed was extraneous or irrelevant. The mere fact that the formation of opinion by the Government is based on a report prepared in the context of the complaints received from various quarters cannot give rise to an inference that the impugned action is punitive in character.

(14) The allegations of *mala fides* and acting under the influence of extraneous forces does not require a detailed probe. The allegations, though very serious, are very bald, vague, cryptic and only suggestive in nature. The petitioner has not produced any direct or strong circumstantial evidence to establish a nexus between the alleged influence of the industries and the exercise of power by the Government. Rather, the preliminary report submitted by Shri M.L. Sharma shows that the decision taken by the petitioner and the members of the Board were favourable to those industries which were guilty of water and air pollution and in this manner, the Board had acted against the public interest. The report of Shri Sharma shows the petitioner and other members of the Board decided to withdraw a number of cases for reasons other than opinion by the Government regarding the existence of circumstances necessitating the supersession of the Board is not vitiated due to malice in fact or malice in law.

(15) While deciding the question of *malafide* exercise of power in cases like the present case, we have to bear in mind the fact that the petitioner has, for the reasons best known to him, refrained from impleading the Chief Minister-cum-Environment Minister, Punjab as party respondent by name. This omission has prevented us from giving notice to the Chief Minister to explain his position. Moreover, on the basis of vague and bald allegations, it is not at all justified for the court to record a finding of *malafide* exercise of power. The petitioner has in our considered view failed to discharge the burden which lay upon him to prove the charge of malice.

(16) In view of this and also in view of the law laid down by the Supreme Court in *E.P. Royappa v. State of Tamil Nadu* (15) and *Ashok Kumar Yadav v. State of Haryana* (16), we decline to accept the argument of Shri Patwalia that the impugned notification is vitiated by *malafides*.

15. AIR 1974 SC 5551

16. AIR 1987 SC 454

(17) We shall now deal with the submission of Shri Patwalia that even after the supersession of the Board, the petitioner is entitled to continue in service as Chairman of the Board. This argument deserves to be negated because the definition of 'member' includes the 'Chairman' and in view of Section 62(2) read with Section 61(2) and (3) of 1974 Act and Section 47(2) and (3) of 1981 Act, the petitioner will be deemed to have vacated the office of Chairman of the Board.

(18) In the end, we shall take up the argument of the learned counsel regarding the right of the petitioner to continue in service as Chief Engineer. Shri Patwalia relied on Rule 3 of 1986 Rules in support of his argument that having been appointed as Chairman while holding the post of Chief Engineer, Public Health, the petitioner should be reverted back to his substantive post immediately on supersession of the Board. In our view, the petitioner is not entitled to continue in service as Chief Engineer in view of the fact that he stands retired from the service of the Government. His permanent absorption as Chairman of the Board resulted in automatic termination of his lien in the Government service. It would have been a different situation if the petitioner had not been permanently absorbed as Chairman of the Board. Since that is not the factual situation, the petitioner cannot have the right to continue in service as Chief Engineer. Of course, he may claim pension for the period during which he had served the Government.

(19) In view of the above, we do not consider it necessary to deal with the various judgments on which reliance has been made by the learned counsel for the parties.

(20) For the reasons mentioned above, the writ petition is dismissed. However, liberty is given to the petitioner to make claim for pension for the period during which he had served the Government and we hope that the Government will decide his claim at the earliest.