FULL BENCH

Before R. S. Narula, C.J., Bal Raj Tuli and M. R. Sharma, JJ.

HANS RAJ SACHDEVA—*Petitioner.*

versus.

THE STATE OF PUNJAB, ETC.—*Respondents.*

Civil Writ No. 1675 of 1971.

July 29, 1974.

Punjab Municipal Act (III of 1911 as amended by Act XXIV of 1973)—Section 41 before amendment—Exercise of power under—Whether quasi-judicial or purely administrative—Principles of natural justice—Whether to be observed in the inquiry, if any, before passing an order under the section—Nature and extent of such inquiry—Stated.

Held, that the exercise of power by State Government under section 41 of Punjab Municipal Act, 1911, even before its amendment by addition of proviso thereto in 1973, was quasi-judicial and not merely administrative, because an opinion had to be formed by the State Government that an officer or servant of a Municipal Committee was unfit for his employment. The dismissal from service of a municipal employee by the Municipal Committee at the requisition of the State Government has far-reaching civil consequences as such an employee is debarred from seeking or holding any appointment under any State Government or a local body. It will amount to giving arbitrary power to the State Government to require the dismissal of a municipal employee on its subjective or personal satisfaction without affording an opportunity of hearing to the employee concerned. The language of section 41 before amendment does not in any way prohibit the holding of an enquiry by the State Government in order to form its opinion that a particular municipal officer or servant is unfit for his employment. That opinion has necessarily to be formed on the basis of some material which means after objective consideration of the allegations against him and the material in support of those allegations. The opinion is not subjective but has to be objective. The municipal officer or servant concerned has to be afforded a chance of rendering his explanation to the various charges levelled against him and the adjudicating authority has to apply its free and unbiased mind to the facts of the case and come to a decision objectively on the material placed before it, which the person concerned had an opportunity to rebut, before passing an order to his prejudice under section 41 of the Act requiring the Municipal Committee to dismiss him. Unamended section 41 neither specifically nor by necessary intendment excluded the application of the rule of natural justice *audi alteram partem*. The fact that by recognising the weight of judicial opinion the State Legislature has amended the section so as to oblige the Government to act in accordance with that principle is a clear indication that it was not inconsistent with the statutory provision that, before issuing an order to the Municipal Commit-

tee to dismiss any of its officers or servants on the ground that he was unfit for his employment, he should be afforded an opportunity of hearing to clear his position. (Paras 6, 7, 8 and 9).

Held, that since it was implicit in section 41, even before the amendment, that the petitioner was to be afforded an opportunity of hearing, the procedure to be followed by the State Government for passing an order under section 41 at any time, that is, whether before or after the amendment of the section is that the State Government should first collect the material on the basis of which it is called upon to form an opinion that a particular officer or servant of a Municipal Committee is unfit to hold his office, and then consider it by an objective appraisal. Once the opinion is formed against the municipal employee, he should be issued a notice to show cause why action should not be taken against him for dismissal on the ground that he is unfit to hold his post. While giving him an opportunity of hearing, the material collected by the State Government on the basis of which the requisite opinion has been formed, should be disclosed to him and he should be afforded an opportunity to tender his explanation to the allegations and rebut the same if so desired by him. Whether an enquiry, after consideration of the explanation tendered, should be held or not will depend on the facts of each case, keeping in view the keen desire of the authority to do complete justice to the officer or servant concerned in view of the drastic consequences of the order that may be passed under section 41 of the Act to his prejudice. Justice should not only be done but also should appear to have been done. (Para 8)

Case referred by Hon'ble Mr. Justice Bal Raj Tuli to a Full Bench for decision of an important question of law vide order dated 29th September, 1971. The Full Bench, consisting of Hon'ble the Chief Justice Mr. R. S. Narula. The Hon'ble Mr. Justice Bal Raj Tuli and Hon'ble Mr. Justice M. R. Sharma, finally decided the case on 24th July, 1974.

Petition under Articles 226/227 of the Constitution of India praying that a writ in the nature of Certiorari or any other appropriate writ, order or direction be issued quashing the impugned order dated 29th March, 1971 contained in Annexure 'F' and directing the Municipal Committee, Abohar, not to act upon the impugned order and further praying that an ad interim order be issued directing the Municipal Committee, Abohar, respondent No. 4 not to act upon the impugned order pending the decision of the writ petition.

Anand Swaroop, Senior Advocate with R. S. Mittal, Advocate, *for the petitioner.*

S. K. Jain, Advocate, for the Advocate-General, Punjab, *for the respondents.*

JUDGMENT

TULI, J—(1) This writ petition came up for hearing before me and, by my order dated September 29, 1971, I referred it for decision by a Full Bench and that is how this petition has been placed for disposal before this Bench.

(2) The petitioner is a Law Graduate and holds the diploma in Local Self Government. He also passed the examination for Accountants of Local Bodies held by the Local Government Department of Punjab State. He was selected for the post of Secretary, Municipal Committee, Abohar, by the Punjab Public Service Commission in 1966 and his appointment was approved by the Director of Local Bodies, Punjab, under section 38 of the Punjab Municipal Act, 1911 (hereinafter referred to as the Act). The petitioner actually joined his post on May 25, 1967, and was confirmed by a resolution of the Municipal Committee dated June 11, 1967. On December 18, 1968, a charge-sheet was issued to him by the President of the Municipal Committee to which he submitted his explanation which was not considered satisfactory with the result that he was suspended by a resolution of the Municipal Committee dated December 30, 1968. After holding an enquiry through Shri Hans Raj, Municipal Commissioner, the petitioner was dismissed from service by a resolution of the Municipal Committee dated May 11, 1969. The petitioner filed an appeal before the Commissioner, Jullundur Division, against the order of his dismissal which was accepted on December 5, 1969, and the resolution of the Municipal Committee dated May 11, 1969, dismissing the petitioner from service was set aside. As a result of the order of the Commissioner, the petitioner was reinstated in his post of Secretary on January 4, 1970, and was paid full back wages.

(3) Some members of the Municipal Committee made a complaint to the State Government levelling certain charges against the petitioner and the State Government ordered an enquiry into those charges. The enquiry was held by the Deputy Director, Local Government, on various dates in the months of September, October and November, 1970, and he submitted a report in respect of some charges to the Director, Local Government, on December 14, 1970, which was considered to be incomplete by the Secretary of the Department. The case was then sent to the Minister Incharge for his orders. He agreed with the opinion of the Secretary and returned the case to him. The Secretary thereafter passed an order dated

January 25, 1971, to the effect that complete enquiry should be made. The case was referred back to the Deputy Director, Local Government, who held an enquiry into the charges which had earlier remained unenquired by him. Those charges were Nos. 8, 10, 11, 13 and 16. With regard to charges Nos. 8, 10 and 11, the Inquiry Officer reported that the enquiry into those charges was being made by Deputy Director (R), Ferozepore, and a report thereon might be sent for from him. Regarding charges Nos. 13 and 16 he suggested that he would have to go to Abohar in case further probe was required.. It appears that no enquiry into those five charges was held by any one; at least no report was received in respect of them as is clear from the note of the Director, Local Government, dated March 16, 1971, which reads as under:—

> "A statement of the charges which have been enquired into is placed below at flag 'W'. From it, it is clear that charges Nos, 1, 2, 3, 4, 5, 9, 12, 14, 15 and 17 have been proved against the Secretary, Municipal Committee, Abohar. In these charges, the charges of temporary embezzlement, wrong charging of T.A., promotion of junior employees, mal-practice in leasing out of land, illegal retention of Rs. 500 from the payments made to the contractor are proved.
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> As recommended earlier, the Secretary should be dismissed from service under section 41 of the Punjab Municipal Act.
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> There is no need for waiting the reports of those cases which have not been received so far.
>
> The Hon'ble Minister has desired this case to be put up to him today. Therefore, the Secretary should submit the same to him after giving his comments."

With this note, the Director, Local Government, forwarded the case to the Secretary of the Department, who sent it to the Minister Incharge after appending his signatures on March 27, 1971, but without expressing any opinion of his own on the merits. The Minister then passed the following order:—

> "I have read the whole file of Shri Hans Raj Sachdev, Secretary, Municipal Committee.

Charges Nos. 1, 2, 3, 4, 5, 9, 12, 14, 15 and 17 levelled against the Secretary have been proved. Therefore, I agree with the recommendation of the Director, Local Government, that Shri Sachdev, Secretary, Municipal Committee, Abohar, should be dismissed from service under section 41 of the Municipal Act."

Accordingly, an order was issued to the Municipal Committee, Abohar, on March 29, 1971, as under :—

"ORDER OF THE GOVERNOR OF PUNJAB

In exercise of the Powers conferred by section 41 of the Punjab Municipal Act, 1911, the Governor of Punjab is pleased to require the Municipal Committee, Abohar, District Ferozepore, to dismiss Shri Hans Raj Sachdeva from the post of Secretary, Municipal Committee, Abohar, forthwith, since he has been found to be unfit for employment."

That order has been challenged in this petition to which the respondents are the State of Punjab, Shri Daulat Ram, Ex-President of Municipal Committee, Abohar, Shri Rawel Singh, Ex-Minister of State, Municipal Committee, Abohar, and Shri Radha Krishan, Ex-Minister. Written statements were filed by the State of Punjab, Shri Daulat Ram and the Municipal Committee, Abohar. Shri Rawel Singh and Shri Radha Krishan did not choose to file any affidavits although allegations of *mala fide* were made against them by the petitioner.

(4) The State Government passed the order in exercise of the powers conferred by Section 41 of the Act, which then read as under:—

"41. *Power to demand punishment or dismissal.* If in the opinion of the State Government any officer or servant of the committee is negligent in the discharge of his duties, the committee shall on the requirement of the State Government suspend, fine, or otherwise punish him; and if in the opinion of the State Government he is unfit for his employment, the committee shall dismiss him."

A proviso has been added to this section by the Punjab Municipal (Amendment) Act, 1973, reading as under:—

"Provided that before requiring the committee to suspend fine or otherwise punish any officer or servent or before

declaring any officer or servant as unfit for employment, the State Government shall give to the concerned officer or servant an opportunity of being heard."

Since this proviso was not there on March 29, 1971, when the impugned order of the Governor of Punjab was passed, the question has arisen whether before passing the order the State Government was under an obligation to follow the principles of natural justice and issue a notice to the petitioner to show cause against the action proposed. According to the proviso now added, it has become obligatory on the State Government to afford an opportunity of being heard to the concerned officer or servant whose dismissal is required by it under the said section.

(5) The learned counsel for the petitioner has vehemently argued that the exercise of power by the State Government under section 41 of the Act is quasi-judicial and not merely administrative because an opinion has to be formed by the State Government that an officer or servant of the Commttee is unfit for his employment, and, therefore, he should be dismissed from service. The dismissal of an officer or servant of the Committee on this ground bars him from seeking any employment in any local body thereafter. An order passed by the State Government under section 41 of the Act thus affects very prejudicially the whole future career of the officer or servant of the Municipal Committee in respect of whom such an order is passed. It is, therefore, submitted that such an order should be passed after affording an adequate opportunity of hearing to the municipal officer or servant concerned and the consideration of the entire material on an objective basis. The learned counsel for respondent 1, however, submits that no enquiry is necessary to be made by the State Government and the municipal officer or servant can be dismissed by the order of the State Government under section 41 of the Act on its subjective opinion. Reliance is placed for this submission on Notification No. 2537-C-41/43374, dated 4th August, 1941, issued by the Punjab Government which reads as under :—

"No officer or servant of a committee shall be dismissed except after an enquiry as provided in rule 3, provided that no such enquiry shall be necessary if the accused is absconding or if he is to be dismissed on facts or inferences based on the findings of a Court *or if Government orders his dismissal under section 41 of the Act.*"

According to the learned counsel, if Government orders the dismissal of a municipal officer or servant under section 41 of the Act, no enquiry is necessary to be made under this notification. In my opinion, it is a misreading of this notification. This notification added rule 2 to the rules framed under section 240 of the Act with regard to the dismissal of municipal employees and pertains to the dismissal of an officer or servant by the Municipal Committee itself. If the Municipal Committee is required by the State Government under section 41 of the Act to dismiss a particular officer or servant, it is not entitled to hold an enquiry in order to find out whether the order of the State Government is justified or not but this notification or rule does not prescribe that the State Government is not to hold an enquiry or issue notice or afford a hearing to the concerned officer or servant before requiring his dismissal by the Municipal Committee. This argument is, therefore, repelled.

(6) The learned counsel then submits that a Division Bench of this Court (Bhandari, C.J. and Dulat J.) in *Shri Ram Piara* v. *Municipal Committee, Hoshiarpur* (1) took the view that since section 41 of the Act did not provide for an enquiry to be held before the Government passed an order requiring the Municipal Committee to dismiss a municipal officer or servant, there was no necessity to hold an enquiry or afford a hearing to the officer or servant concerned. The learned Judges of the Division Bench compared the provisions of section 39 with those of section 41 of the Act and after pointing out the distinction between the two, the learned Chief Justice, with whom Dulat J., agreed, observed as under :—

> "As Government had full powers to require the removal of the petitioner at will and was under no obligation to give reasons for the action that was proposed to be taken in regard to him, the Committee was in my opinion fully justified in putting an end to his services without putting him to the trouble and expense of defending himself at a hearing.
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> Nor was the Provincial Government under an obligation to frame charges against the petitioner and to afford him an

(1) I.L.R. 1955 Pb. 786.

opportunity of being heard. Section 41 confers full powers on the Provincial Government to require a Committee to dismiss a municipal officer or servant if in the opinion of the Government the said officer or servant is unfit for his employment. The language of this section makes it quite clear that the power of removal has been reposed by the Legislature in the discretion of the Provincial Government and that the said Government has been made the sole Judge of deciding, in exercise of its personal judgment whether a person is or is not fit for his employment. The Provincial Government has come to the conclusion, in the exercise of its personal judgment, that the petitioner in the present case is not fit for his employment and that his services should be dispensed with. It has been held repeatedly that no formal charges or hearings are as a rule required where the removal depends on the exercise of personal judgment on the question whether the cause of removal exists (*Trainor* v. *Board of Auditors* (2). * *

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There is another aspect of the matter which needs to be considered and that is that if there is an inconsistency between the statute which declares that the Provincial Government shall have full power to demand the dismissal of an officer without enquiry and a statutory rule which declares that an enquiry shall be an essential prerequisite to an order of dismissal, it is obvious that the statute will take precedence over the statutory rule and that the Court will give effect to the purpose of the statute and the intention of the Legislature."

I may point out, with great respect to the learned Judges of the Division Bench, that the language of section 41 of the Act does not in any way prohibit the holding of an enquiry by the State Government in order to form its opinion that a particular municipal officer or servant is unfit for his employment. That opinion has

(2) 89 Mich. 162 L.R.A. 95.

necessarily to be formed on the basis of some material which means after objective consideration of the allegations against him and the material in support of those allegations. The opinion is not subjective but has to be objective and in view of the later decision of this Court and of the Supreme Court, referred hereinafter, the proceedings for the formation of the opinion are quasi-judicial in nature while the ultimate order may be administrative in character. There are no statutory rules framed for the exercise of the power under section 41 of the Act by the State Government which may spell out a contradiction between the provisions of the section and any statutory rule.

(7) This matter again came up for consideration before another Division Bench (Bishan Narain and I.D. Dua, JJ.) in *Arjan Singh* v. *The State of Punjab and another* (3). In that case, after holding that section 41 of the Act could not be struck down as being violative of Article 14 of the Constitution, Dua J., speaking for the Bench, said :—

> "But then the counsel has contended that this power is arbitrary and uncontrolled and should on this account be held to be unconstitutional. Here again it is difficult to agree with the counsel. This power cannot be described to be arbitrary, for the simple reason, that it is only when the State Government forms an opinion that a particular municipal employee is unfit for his employment that the committee can be required to dismiss him. It has also been settled by the Supreme Court that merely because the power is discretionary, it cannot necessarily be considered to be discriminatory : see *Messrs Pannalal Binjraj* v. *Union of India* (4), *Shri Harish Chand* v. *Collector of Amritsar* (5), *Ram Krishan Dalmia* v. *S. R. Tendolkar J.* (6) and *Matajog Dobey* v. *H. C. Bhari* (7). It is also not uncontrolled because the control is implicit in the power being exercised only if the State Government forms an opinion about the employee's unfitness for his employment. Mr. Gujral, however, argues that this power is liable to be

(3) I.L.R. 1960(2) Pb. 645.
(4) A.I.R. 1957 S.C. 397.
(5) A.I.R. 1959 Pb. 19 (F.B.):
(6) A.I.R. 1958 S.C. 538.
(7) (1955) 2 S.C.R. 925.

abused and, therefore, in that sense it is arbitrary and uncontrolled. This argument is inadmissible. It has authoritatively been laid down by the Supreme Court that a discretionary power is not necessarily a discriminatory power and abuse of power is not easily to be assumed where the discretion is vested in the Government and not in a minor official.

But then it is argued that even if the State Government has the power to form an opinion about the petitioner's unfitness and then to direct his dismissal, the State Government must not form any opinion prejudicial to the petitioner at his back and without giving him notice of the inquiry. This contention has for its basis, as the counsel puts it, the rule of natural justice. It is argued that the principle of natural justice requires that the petitioner should not have been condemned as unfit without a notice having been given to him to show that he was not unfit. This submission is seemingly attractive on the surface, but on a little deep scrutiny the fallacy underlying it becomes apparent.

The concept of natural justice is not capable of any precise and clear cut legal definition. The expression 'natural justice' is sadly lacking in precision. Whether or not the rules of natural justice have been violated in a particular case must be determined in the light of the rights violated and of the constitution of the authority which has to function in accordance with the rules laid down by the Legislature, and in that sense the legislative rules themselves may vary. Now, in the present case it must not be forgotten that it is not claimed that the petitioner has any inherent or fundamental right to be employed by the Municipal Committee or to be continued to be so employed except in so far as the relevant rules may lay down. It is also agreed that the rules in question merely require that the Municipal Committee can punish or dismiss the petitioner only after giving show-cause notice and that there is no such condition expressly imposed on the State Government when acting under section 41 of the Punjab Municipal Act. Indeed the State Government while functioning under section 41 is not determining a *lis*, and is not adjudicating on

the respective rights of two or more contending parties; it has merely to see, under this provision, if a particular employee is a fit person to continue in service or if he should not be retained in service on account of unfitness for serving the municipal committee. No right vesting in the petitioner is violated by the conclusion to which the State Government would thus arrive. It is true that the conclusion based on the opinion of the State Government may result in the employee's unemployment, but then whenever a candidate applies for a job and the prospective employer refuses to employ him, without requiring him to show cause as to why his application for employment should not be refused, almost similar result would follow. It can hardly be contended that omission to give such a notice, in the case of refusal to employ a person initially, attracts the applicability of the rule of natural justice. In the absence of any statutory provision or of any principle or binding precedent, I, for my part, do not see any real difference between the case of such initial refusal to employ a person and the termination of an employee's services.

Mr. Gujral has, however, contended that by his dismissal the petitioner suffers a disability of not being able to get into Government service again. This may or may not be so, depending as it does on the rules framed by the various Governments. But this by itself would not create a right in the petitioner which otherwise does not vest in him. The essential feature of the principle of natural justice is merely that no person should be deprived of any right by a judicial or a quasi-judicial order without a hearing before an independent authority, not interested in the proceedings or in any party to the proceedings. This in my opinion can hardly apply to service matters. It is not disputed that the exercise of the power to appoint or dismiss an officer is the exercise not of a judicial power but of an administrative power, and this is so even where, by virtue of statute or administrative rules, opportunity to show cause and an inquiry simulating judicial standards have to precede the exercise thereof. It is conceded that there is no rule or other provision of law applicable to the instant case which enjoins the State Government to give a

show-cause notice or to hold any other inquiry coming up to judicial standards before opinion under section 41 is formed. It is, therefore, not easy to apply the so-called rules of natural justice to the present case."

In view of the later judgments to be noticed hereafter, the observations of the learned Judges do not seem to lay down correct law. The correctness of these two judgments was doubted in *Kewal Krishan Sabharwal* v. *The State of Punjab and others* (8) decided by a Division Bench of this Court (Mehar Singh C.J. and myself) on the basis of the judgment of their Lordships of the Supreme Court in *Ram Dial and others* v. *The State of Punjab* (9). The argument advanced was that section 41 was *ultra vires* Article 14 of the Constitution but the Bench did not accept the contention and held that in view of the decisions of this Court in *Ram Piara's case* (1) (supra) and *Arjan Singh's case* (3) (supra), it was not called upon again to pronounce on the constitutional validity of section 41 of the Act. The Bench, however, held that the municipal officer or servant concerned was to be afforded a chance of rendering his explanation to the various charges levelled against him and the adjudicating authority was to apply its free and unbiased mind to the facts of the case and come to a decision objectively on the material placed before it which the person affected had an opportunity to rebut, before passing an order to his prejudice under section 41 of the Act requiring the Municipal Committee to dismiss him. In that case a show-cause notice stating charges against the petitioner along with the statement of allegations in support of each charge was, in fact, served on him to which he tendered his explanation, which was duly considered by the Director, Local Government, the Secretary of the Department, and the Minister concerned. On these facts, it was observed :

"From the file it is apparent that all the three officers applied their minds to the facts of the case and a speaking order was passed by the Minister concerned. It is true that in the order passed by the Director, Local Government, Punjab, the reasons were not given. That was only an administrative order passed in the wake of a quasi-judicial proceeding. From the perusal of the file we are satisfied that

(8) C.W. No. 1143 of 1969 decided on 15th December, 1969.
(9) A.I.R. 1965 S.C. 1518.

the officers concerned and the Minister-in-charge considered the charges, the statement of allegations in support thereof and the explanation tendered by the petitioner, which was a detailed one. It is nowhere provided that an enquiry should be held in order to find out the fitness or unfitness of the employee concerned. The rules of natural justice are amply complied with and satisfied if the person against whom action has to be taken is afforded an opportunity to render an explanation. The learned counsel for the petitioner has, however, greatly relied upon the observations of their Lordships of the Supreme Court in *A. K. Kraipak and others* v. *Union of India and others* (10) to the effect that there is a great deal of fresh thinking on the subject and the horizon of natural justice is constantly expanding. Their Lordships nowhere held that an enquiry is essential in every case where action has to be taken in accordance with a statutory provision against a person. Their Lordships emphasised that 'the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice'. It is also to be borne in mind that the powers of this Court under Article 226 of the Constitution are limited and this Court does not sit as a Court of appeal to determine the correctness of the decisions arrived at by the quasi-judidcial or administrative tribunals or authorities. This Court has to satisfy itself that the person affected was given a chance of rendering his explanation to the various charges against him, that the adjudicating authority has applied its free and unbiased mind to the facts of each case and has come to a decision objectively on the material placed before it which the person affected had an opportunity to rebut. We are satisfied on the facts of this case that these principles were observed and the petitioner has no cause of complaint."

These observations help the petitioner inasmuch as it was held that under section 41 of the Act, an administrative order is passed in the wake of quasi-judicial proceedings and that the Court has to satisfy itself that the person effected was given charges against him, that the

(10) A.I.R. 1970 S.C. 150=1969 S.L.R. 445.

adjudicating authority has applied its free and unbiased mind to the facts of the case and has come to a decision objectively on the material placed before it which the person affected had an opportunity to rebut. In that case the Bench was satisfied after the perusal of the file that these conditions had been satisfied and, therefore, dismissed the writ petition.

(8) The learned counsel for the petitioner has relied on various judgments of this Court as well as of the Supreme Court which may now be noticed. In *The workers Co-operative Gardening and Mixed-Farming Society, Ltd.* v. *The State of Delhi and another* (11), Dua. J., speaking for the Division Bench, observed that—

> "when an act partakes of an administrative character, if it carries with it a determination on a consideration of facts which prejudicially affect valuable rights of citizens, the recent trend of authoritative judicial opinion in this Republic tends to clothe such determination with quasi-judicial robes. The whole substance of judicial control of administrative justice, as I understand it, is that to allow a drastic power affecting valuable rights of citizens without hearing the victim thereof must inevitably shock Judges in a system like ours for in the very conception of democracy based on Rule of law, one sees a moral aspect. It is, therefore, a sound rule of law of public administration that drastic power should be exercised only with due consideration for those, who may suffer, in that, it is calculated to improve the technique of decision by the Government departments and to help them avoid the temptation to overlook or ignore the other side of the case. I am not unaware of some judicial thinking presumably inspired by the trend of some observations in a few recent decisions of English Courts apparently influenced by the complete supremacy of the British parliament and the doctrine of ministerial responsibility in that country where there is no written Constitution but such judicial thinking does not, in my view, appropriately serve as a clear beacon-light or

(11) I.L.R. 1964(2) Pb. 589.

a sure guide-post for adequately enforcing Rule of Law in this Republic. Every country has its own peculiar problems to solve, and we in India cannot with any sense of safety ignore to complex problems created by the past historical events and somewhat unfortunate political phases through which our nation had to pass during the past few centuries, which have largely influenced the people's outlook and behaviour towards society and the State. In this Republic the Constitution alone is Supreme and it is only the Constitution to which each one of the three wings of our Government must look for the extent and limit of its authority and power. Judicial control in our country is based on the fundamental principle inherent in our system that power can be validly exercised only within true limits and if the authority exceeds or abuses its power, the Court can, in the absence of a valid law to the contrary, quash it, declaring it invalid.

Failure to give a proper hearing may from one point of view properly be regarded as one of the varieties of abuse or excess of power; and exercise of power would accordingly seem to be unauthorized or illegal when the person who will suffer has not been fairly heard in his own defence. It would not be an overstatement to point out that no man in this Republic is high enough to be above the law and not even an officer of the law can be permitted with impunity to defy that law; all Government Officers, irrespective of their position or status in the hierarchy, are under a solemn obligation to obey and not merely feign or pretend to obey the law for, not only are they its creatures but law alone is the supreme power and source of authority in our set-up. Government under the law really means that the Government is obliged to keep both the governed and itself under the law and this seems not only to distinguish a civilised Government from tyranny but also serves to keep the individual content with the State. The principle just stated, unless enforced would, in my opinion, be meaningless. In view of this and in view of our heritage from the past few centuries, as also of our day-to-day experience of the working of democracy under the Rule of Law, the horizon of judicial control in our set-up must inevitably be and is

being broadened, for, it is only through such control judiciously exercised that the Rule of Law, which is one of the main pillars of our system, can be sustained and vitalised and without which our infant democracy may tend to drift towards authoritarianism.

Democracy in our Republic appears to be somewhat tempered with the traditional and instinctive authoritarianism; this factor may at times tend to tempt the overzealous administrator owing exclusive allegiance to administrative policy and convenience to ignore and overlook the judicious dictates of the Rule of Law, a tendency which once allowed to grow unchecked, may ultimately root out democracy itself. The cause of democracy under the Rule of Law would thus seem to be better served and promoted by reasonably liberal than by unduly restricted judicial control of administrative justice, for the administrator who is conscious of his being liable to justify the legality of his action before an impartial tribunal will perhaps make a more just and responsible official, or at least would endeavour in his own interest to do so."

These observations really water down the observations of the learned Judge in *Arjan Singh's case* (3) (supra) and they strike a wholly different note. Delivering the majority judgment of a Full Bench in *K. R. Erry* v. *The State of Punjab* (12), Dua, J., made similar observations. In that case cut in the pension of K. R. Erry was made without issuing any notice to him which was challenged in the writ petition and it was held by the majority (as per head note 1):—

"That the right to superannuation pension—including its amount—is a valuable right vesting in a Government servant, and before that right is prejudicially affected, he is entitled to a notice to show cause against the proposed cut. The fact that a right of appeal has been conferred on an aggrieved Government servant in this respect lends additional support to this view. The right to be heard before a cut is imposed on his pension cannot be denied to a Government servant on the ground that an opportunity had already been afforded to him on an earlier occasion for

(12) I.L.R. 1967 (1) Pb. & Hr. 278.

showing cause against the imposition of penalty for a lapse or misconduct on his part as a Government servant. Even if the rules of natural justice were not attracted for showing cause against the service as a whole not being thoroughly satisfactory, the question of the amount of cut would, in any event, be a matter on which the Government servant concerned may justifiably be held entitled to an opportunity of stating his case. Not only is the question of imposition of a cut a quasi-judicial function, but the determination of the amount of the cut is also a quasi-judicial function of equal importance. The amount of cut may have a far more serious impact on a retired Government Servant than the question of its mere imposition. Failure to afford hearing on the question of the amount of cut, and the amount of pension to be left to the pensioner concerned, so that the party affected may explain his side of the problem, can scarcely be considered either fair or reasonable or just."

The State of Punjab filed an appeal before the Supreme Court against the judgment of the Full Bench, but the same was dismissed and the decision of the Full Bench was upheld. The pertinent observations of their Lordships of the Supreme Court in paras 19 to 21 of the judgment reported in *State of Punjab* v. *K. R. Erry and Sobhag Rai Mehta* (13) are very instructive and lay down the law on the basis of which this petition can be easily decided. These observations are:—

"19. The question for our consideration is whether the orders imposing a cut in the pension should be set aside for the reason that the officers were not given reasonable opportunity to show cause. The law on the point is not in doubt. Where a body or authority is judicial or where it has to determine a matter involving rights judicially because of express or implied provision, the principle of natural justice *audi alteram partem* applies. See: *Province of Bombay* v. *Kusaldas S. Advani and others* (14) and *Board of High School and Intermediate Education, U.P. Allahabad* v. *Ghanshyam Das Gupta and others* (15).

(13) 1972 S.L.R. 836.
(14) 1950 S.C.R. 621.
(15) 1962 Supp. (3) S.C.R. 36.

With the proliferation of administrative decisions in the welfare State it is now further recognized by courts both in England and in this country (especially after the decision of House of Lords in *Ridge* v. *Baldwin* (16), that where a body or authority is characteristically adminstrative the principle of natural justice is also liable to be invoked if the decision of that body or authority affects individual rights or interests, and having regard to the particular situation it would be unfair for the body or authority not to have allowed a reasonable opportunity to be heard. See: *State of Orissa* v. *Dr. (Miss) Binapani Dei and ors.* (17) and in *Re. H. K. (An Infant)* (18). In the former case it was observed at page 628 as follows:

'An order by the State to the prejudice of a person in derogation of his vested rights may be made only in acordance with the basic rules of justice and fair-play. The deciding authority, it is true, is not in the position of a judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure 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

(16) 1964 A.C. 40.
(17) 1967 S.L.R. 465=1967(2) S.C.R. 625:
(18) 1967(2) Q.B.D. 617.

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 nullity. That is a basic concept of the Rule of Law and importance thereof transcends the significance of a decision in any particular case.'

These observations were made with reference to an authority which could be described as characteristically administrative. At page 630 it was observed:—

'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.'

20. This case and the English case in *re*: *H. K.* (*An Infant*) (18) (supra) were specifically referred to with approval in a decision of the constitutional bench of this Court in *A. K. Kraipak and ors. etc.* v. *Union of India and ors.* (10) (supra).

21. It is, therefore, clear that the State in the case of these three officers could not have applied a cut in the pension of the officers without giving them a reasonable opportunity to make their defence. The rule which declares that even an administrative authority has to act fairly after giving an opportunity to the person whose rights and interests are affected by its decision is no more than an extension of the well-known rule which Courts in England had recognised in the 19th century. In *Cooper* v. *Wandsworth Board of Works* (19), the Board, which had under the Act of 1855, the authority to demolish any building constructed if the owner thereof had failed to give proper notice, was held bound to give the owner an opportunity of being heard before the demolition. It was contended in that case by the Board that their discretion to order demolition was not a judicial discretion. But the Court decided

(19) (1863) 14 C.B.N.S. 180.

unanimously in favour of the owner. Erle, C. J., held that the power was subject to a qualification repeatedly recognised that no man is to be deprived of his property without his having an opportunity of being heard and that this had been applied to many exercises of power which in common understanding would not be at all a more judicial proceeding than would be the act of the district board in ordering 'as house to be pulled down'. Willies, J. observed: 'that the rule was of universal application, and founded upon the plainest principles of justice.' In the case before us the officers are being deprived of part of their property by applying a cut to the pension. Therefore, it was quite essential in all fairness and elementary justice that they should have been given reasonable opportunity to show cause against the proposed action."

Even if it is held that the State Government in the case of the petitioner acted under section 41 of the Act as a characteristically administrative body, since it had to decide about his fitness or unfitness to hold the post on which he was employed, it had to act in a quasi-judicial manner and had to afford an opportunity of hearing, as has now been enacted in the proviso to the said section. It was nesessary to do so in view of the observations in the above-noted cases as the petitioner acquired a vested right to hold his post till he attained the age of superannuation or his services were terminated by dismissal, discharge or otherwise in accordance with the statute or statutory rule governing his service and prescribing conditions in respect thereof. He was selected by the Public Service Commission for the post of Secretary and his appointment to that post was approved by the State Government as required under section 38 (1) of the Act. His dismissal from service by the Municipal Committee at the requisition of the State Government had far reaching civil consequences as he was debarred from seeking or holding any appointment under any State Government or in a Local Body. It will amount to giving arbitrary power to the State Government to require the dismissal of a municipal employee on its subjective or personal satisfaction without affording an opportunity of hearing to the employee concerned as has now been recognised by the Legislature. Since it was implicit in section 41, even before the amendment, that the petitioner was to be afforded an opportunity of hearing, the procedure to be followed by the State Government for passing an order under section 41 at any time, that is, whether before or after

the amendment of the section, appears to me to be that the State Government should first collect the material on the basis of which it is called upon to form an opinion that a particular officer or servant of a Municipal Committee is unfit to hold his office, and then consider it by an objective appraisal. Once the opinion is formed against the municipal employee, he should be issued a notice to show cause why action should not be taken against him for dismissal on the ground that he is unfit to hold this post. While giving him an opportunity of hearing, the material collected by the State Government on the basis of which the requisite opinion has been formed, should be disclosed to him and he should be afforded an opportunity to tender his explanation to the allegations and rebut the same if so desired by him. Whether an enquiry, after consideration of the explanation tendered, should be held or not will depend on the facts of each case, keeping in view the keen desire of the authority to do complete justice to the officer or servant concerned in view of the drastic consequences of the order that may be passed under section 41 of the Act to his prejudice. Guidelines for such an enquiry, if it is decided to hold one, can be gathered from various judgments of the High Courts and the Supreme Court but the basic feature is to observe the principles of natural justice which have been defined with precision in various judgments and are by now well-known and the desire to secure justice to the officer or servant concerned so that he may not suffer undeserved harm as a result of the order of the Government. In short, justice should not only be done but also should appear to have been done.

(9) As against the above-noted judgments, the learned counsel for the State relies on the following observations of the Supreme Court in *Union of India* v. *J. N. Sinha and another* (20):—

> "Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. As observed by this Court in *Kraipak* v. *Union of India* (10) 'the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law but supplement it'. It is true that if a statutory provision can be read consistently with the principles of natural justice, the Courts should do so because it must be

(20) A.I.R. 1971 S.C. 40.

> presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But, if on the other hand, a statutory provision either specifically or by necessary implication excludes the application of any or all the rules of principles of natural justice then the Court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power."

In support of his submission that since section 41, before the amendment, did not require that an opportunity of hearing should be afforded to the concerned officer or servant of the Municipal Committee, the observance of the principle of natural justice *audi alteram partem* could not be insisted upon and the State Government could form the requisite opinion about his unfitness for his employment on a subjective satisfaction, as was held in the cases of *Shri Ram Piara* (1) and *Arjan Singh* (3) (supra) by two Division Benches of this Court. I regret that the observations of the Supreme Court do not afford such a support to the learned counsel. Section 41 of the Act nowhere provided that an opportunity of hearing was not to be afforded to the concerned officer or servant of the Municipal Committee before passing the order to his prejudice nor was the observance of the rule of natural justice *audi alteram partem* inconsistent with the statutory provision. It has been clearly stated by their Lordships that "if a statutory provision can be read consistently with the principles of natural justice, the Court should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice." Unamended section 41 neither specifically nor by necessary intendment excluded the application of the rule of natural justice *audi alteram partem.* The fact that by recognising the weight of judicial opinion the State Legislature has amended the section so as to oblige the Government to act in accordance with that principle is a clear indication that it was not inconsistent with the statutory provision that, before issuing an order to the Municipal Committee to dismiss any of its officers or servants on the ground that he was unfit for his

employment, he should be afforded an opportunity of hearing to clear his position. The observations of the Supreme Court in *J. N. Sinha's case* (20) (supra) do not run counter to what has been laid down in other judgments some of which have been noticed above. No other argument has been advanced by the learned counsel for the State.

(10) Having enunciated the position of law, as I understand it, I now proceed to decide the present petition in the light thereof. The facts have been mostly stated in the opening part of this judgment and all that is necessary to add is that, according to the report of the Inquiry Officer, he read out each charge to the petitioner and recorded his reply thereto. He examined certain witnesses in support of the charges in the presence of the petitioner, but did not permit him to cross-examine them. Some complaints were received by him at the spot and without any order from the Government he enquired into them without affording any opportunity to the petitioner. No formal charge-sheet was ever issued to the petitioner nor was his explanation called. After the submission of the enquiry report, no notice was issued to him informing him that certain charges alleged against him had been proved on the basis of which it was proposed to take action against him under section 41 of the Act. If such an opportunity had been allowed to him, he might have been able to covince the Government that his dismissal could not be ordered or should not be ordered on the basis of that enquiry report. It is thus apparent that the petitioner was not afforded an opportunity of hearing or tendering his explantion to the allegations made against him and the result of the enquiry. He was given no opportunity to rebut the material that had been collected against him and although he was present at some of the hearings of the enquiry, when evidence was recorded, he was not allowed to cross-examine the witnesses. Thus, the rules of natural justice were not observed in the present case and the order of the State Government cannot be sustained.

(11) Since the petition is being accepted on legal grounds, I do not find any necessity to decide whether Shri Rawel Singh and Shri Radha Krishan, ex-Ministers, were actuated by malice and the impugned order was a *mala fide* one. That matter is left undecided.

(12) For the reason given above, I accept this writ petition, quash the impugned order and direct the Municipal Committee not to act

upon it. Since the matter was not free from difficulty and there was conflict of judicial decisions, the parties are left to bear their own costs.

R. S. NARULA, C. J.

(13) It is impossible to make any useful addition to the lucid judgment prepared by my learned brother Tuli, J., I agree with every word of it.

M. R. SHARMA, J.—I entirely agree.

K. S. K.

FULL BENCH

Before R. S. Narula, C.J. and Prem Chand Jain and M. R. Sharma, JJ.

SHAM RATTAN NEWAR,—*Petitioner.*

versus.

THE STATE OF HARYANA ETC.,—*Respondents.*

Civil Writ No. 2876 of 1970.

August 6, 1974.

Punjab State Aid to Industries Act (V of 1935)—*Section* 35—*Whether* ultra vires *Article* 14, *Constitution of India.*

Held, that merely because a certain statute prescribes two procedures for effecting recovery of Government dues, one of which is harsher and more onerous than the other, without laying down any guidelines for the appropriate authorities to choose to follow one or the other of those two alternative courses, it does not make the statute repugnant to Article 14 of the Constitution. Hence section 35 of Punjab State Aid to Industries Act, 1935 is not *ultra vires* Article 14 of the Constitution. (Para 1).

Case referred by the Hon'ble Mr. Justice Prem Chand Jain on 2nd September, 1971 to the Full Bench for reconsidering the decision of this Court in Shri Harish Chand's case. The Full Bench consisting of Hon'ble the Chief Justice R. S. Narula, Hon'ble Mr. Justice Prem Chand Jain and the Hon'ble Mr. Justice M. R. Sharma finally decided the case on 6th August, 1974.