There is still another aspect of this matter. It has often been held that dismissal of a writ petition *in limine* decides nothing and does not by itself bar the filing of a fresh petition for the same relief. The petitioner could, therefore, file a fresh petition on the new facts gathered by him. At the preliminary hearing of such a new petition, the respondent would admittedly have no right to claim notice before admission of the writ petition. For practical purposes I see no distinction in the circumstances of this case between the petitioner filing a fresh petition for asking for review on the basis of new facts. I would, therefore, hold that there is no force whatever in the preliminary objection of the learned counsel for the respondent.

In view of the fact that the counsel for the respondent has conceded that after the decision of this Court in *Jai Narain's case*, the University has no defence to this petition on merits, this writ petition is allowed and the impugned order disqualifying the petitioner for two years under Regulation 12(b) of the Punjab University Calendar, 1962 from taking the matriculation examination of the Punjab University is set aside and quashed. There will however be no order as to costs.

B.R.T.

FULL BENCH

Before Mehar Singh, C.J., A. N. Grover and Harbans Singh, JJ.

SAHELA RAM, —*Petitioner*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents*

Civil Writ No. 2189 of 1963

May 30, 1966

Punjab Agricultural Produce Markets Act (XXIII of 1961)—S. 15—Order removing a member of the Market Committee—Whether administrative or quasi-judicial—Reasons for removal mentioning grounds some of which not relating to but others relating to his conduct as such member—Explanation submitted by member found to be unsatisfactory—Order of removal—Whether illegal.

Held, that the test that finally determines the nature of the order is whether the authority making the order has or has not duty to act judicially. If it has

the duty to act judicially, the order is judicial or quasi-judicial, but if it has not such a duty and may proceed on consideration of expediency or policy, the order is not a quasi-judicial order but an administrative order. Another way of saying the same thing is that where the imperative requirement of the law is that the authority deciding a matter must act fairly, in which inheres objective consideration based on definite and defined material, its decision or order is quasi-judicial, but if it may act fairly or is expected to act fairly, and it is not obligatory to do so under the law, its order or action based on expediency or police is administrative in nature. It is very rare that a statute in so many words provides that a particular authority is to act judicially in deciding a particular matter. The duty to act judicially may be inferred from the provisions of a particular statute under consideration, which would provide for the nature of the proceedings, the opportunity of hearing the party adversely affected or aggrieved, and the nature of consequences flowing from the order or decision of the authority concerned. Having regard to the provisions of section 15 of the Punjab Agricultural Produce Markets Act, 1961, an order removing a member is a quasi-judicial order. Before an order of removal is passed (a) charges are settled on the basis of definite materials made available to the member concerned, (b) he is given an opportunity to render an explanation on his side of the charges against him and, to help him in his defence, he can have recourse to the material forming basis of the charges and (c) that it is on consideration of such material, the nature of charges, and the explanation rendered by the member concerned that the State Government forms an opinion on the question whether or not he has been guilty of misconduct and /or neglect of duty. This meets practically all the substantial requirements of an enquiry. When an opinion is formed by the State Government as to the guilt or otherwise of the member concerned in the terms of the section in those circumstances, the opinion of the Government as to such a conclusion is reached objectively and consequently the order made under the section in the wake of such an opinion is a quasi-judicial order.

Held, that as the proceedings under section 15 of the Punjab Agricultural Produce Markets Act, 1961, for removal of a member of a Market Committee and the consequent order of his removal are quasi-judicial in nature, the order of the State Government does not become illegal because of inclusion of matters which do not relate to the conduct of the member as a member of the Market Committee when there are matters included in it which relate to the conduct of the member as such member and upon which the action taken or order made by the State Government can be sustained. In other words after ignoring the irrelevant grounds, on the grounds remaining if the action could have been taken by the State Government, then its action cannot be interfered with by the High Court in a writ petition.

Case referred by the Division Bench consisting of the Hon'ble Mr. Justice S. S. Dulat and the Hon'ble Mr. Justice Harbans Singh, by order, dated the

6th May, 1964 *to a Full Bench for decision of the important questions of law involved in the case. The case was finally decided by the Full Bench consisting of the Hon'ble the Chief Justice Mr. Mehar Singh, the Hon'ble Mr. Jusitce A. N. Grover and the Hon'ble Mr. Justice Harbans Singh on the* 30*th May,* 1966.

Petition under Article 226 *of the Constitution of India praying that a writ of* Certiorari, mandamus *or any other appropriate writ, order or direction be issued directing respondent No.* 1 *to consider the petitioner as continuing to be a Member and Chairman of the Hissar Market Committee, till the New Committee is set up under the provisions of the Act, and not to fill up his place as member of the committee by some one else and not to hold a fresh election of the Chairman of the Hissar Market Committee.*

ANAND SARUP AND R. S. MITTAL, ADVOCATES, for the Petitioner.

P. S. JAIN, ADVOCATE, FOR ADVOCATE-GENERAL WITH N. C. JAIN, ADVOCATE, for the Respondents.

ORDER OF THE FULL BENCH

MEHAR SINGH, C.J.—This is the question for consideration of the Full Bench in relation to section 15 of the Punjab Agricultural Produce Markets Act, 1961 (Punjab Act 23 of 1961), hereinafter to be referred as the Act:—

> "If the State Government, acting under section 15 of the Punjab Agricultural Produce Markets Act, 1961, mentions among the reasons for the proposed removal of a member of the Market Committee, certain grounds which do not relate to the conduct of the member concerned as a member, but at the same time mentions several grounds which relate to his conduct as a member of the Market Committee and an order for the member's removal is made under section 15 of the Act on the view that the explanation obtained from the member is unsatisfactory, does the order of the State Government become illegal because of the inclusion of matters which do not relate to the conduct of the member as a member of the Market Committee?"

The question arises in a petition under Article 226 of the Constitution by Sahela Ram, petitioner, who was Administrator of the Hissar Market Committee between February 14, 1959, and April 12, 1961. On April 15, 1961, a new Market Committee for the Hissar Market area was constituted under the provisions of the previous Agricultural

Produce Markets Act, 1939, and the same has been deemed to have been constituted under the Act by reason of section 47. Section 15 of the Act is in these words—

> "15. The State Government may by notification remove any member if, in its opinion; he has been guilty of misconduct or neglect of duty or has lost the qualification on the strength of which he was appointed:
>
> Provided that before the State Government notify the removal of a member under this section, the reasons for his proposed removal shall be communicated to the member concerned and he shall be given an opportunity of tendering an explanation in writing."

On June 4, 1963, the petitioner was served, through a registered letter, with three heads of charges alleging gross misconduct and neglect of duty in him in the performance of his duties as a member and chairman of the Hissar Market Committee. In the statement of allegations the first head concerns the drawal of excess T.A., under the second head, which relates to misuse of powers, there are four sub-heads out of which three sub-heads concern the conduct of the petitioner after his becoming the chairman of the Hissar Market Committee on its constitution on April 15, 1961, but one head concerns his conduct as an Administrator and hence his conduct before April 15, 1961, although it has been said that that head partly also covers the period after April 15, 1961, and in the third head relating to misuse of market committee funds, out of three sub-heads, two definitely concern his conduct as Administrator of the Hissar Market Committee, before April 15, 1961, and the third to his conduct as chairman of Hissar Market Committee after that date. The petitioner was given opportunity to render explanation of the charges against him in the wake of the proviso to section 15 of the Act and in paragraph 2 of the letter addressed to him, with the statement of allegations, it was stated that "if for the purposes of giving your explanation, you wish to inspect any official record in the office of the Market Committee, Hissar, and/or in the office of the State Agricultural Marketing Board, Patiala, you may do so at your own expense and after fixing up an appointment with the concerned officials". It is obvious that the charges in the statement of allegations were based on the material before the proper authority communicating to the petitioner the reasons for his proposed removal from membership of the Market Committee on the grounds of his

guilt of misconduct and neglect of duty as detailed in the statement of allegations. It has not been the case of the petitioner that there was no material or evidence in support of the charges in the statement of allegations.

After consideration of the explanation rendered by the petitioner, the Governor of Punjab by his order of November 4, 1963, removed the petitioner from membership of the Hissar Market Committee, under section 15 of the Act on being satisfied that the petitioner had been guilty of gross misconduct and neglect of duty within the scope of that section. It is this order of removal that has been challenged by the petitioner in the petition under Article 226. When the petition came for hearing before Dulat and Harbans Singh, JJ., it was urged by the learned counsel for the petitioner that the Governor had taken into consideration at least three of the eight charges against the petitioner which did not concern him as member and chairman of the Hissar Market Committee since April 15, 1961, and it was not clear from the order of removal whether the Governor was satisfied as to the guilt of the petitioner of misconduct and neglect of duty on the basis of such of the remaining five charges which relate to a period after April 15, 1961, when the petitioner became member and chairman of the Hissar Market Committee. It was pressed that it is not possible to reach a conclusion whether the order of removal is based on the three irrelevant charges or the five relevant charges or on all or each one of those charges. So the learned counsel contended that the order could not be sustained. The learned Judges considered two cases, *State of Orissa* v. *Bidyabhushan Mohapatra* (1) and *Railway Board and another* v. *Niranjan Singh* (2) and finding certain inconsistency they have referred the question as above to a larger Bench.

The learned counsel for the petitioner contends in the words of S. A. De Smith in Judicial Review of Administrative Action, 1959 Edition, page 203, that "if the exercise of a discretionary power has been influenced by considerations that cannot lawfully be taken into account, or by the disregard of relevant considerations, a court will hold that the power has not been validly exercised, unless the jurisdiction of the courts to interfere has been excluded", and the statement by the learned author follows observations in three English cases. The first case is *Roberts* v. *Hopwood* (3) in which a metropolition borough council, having discretion to allow wages to its

(1) A.I.R. 1963 S.C. 779.

(2) I.L.R. (1963)1 Punj. 862=1963 P.L.R. 571.

(3) 1925 A.C. 578.

servants, had paid the same without regard to the fall in the cost of living index, and the district auditor, pursuant to his statutory duty; had surcharged the excess payment upon the councillors, and it was held by the House of Lords that the fixing of the wages was arbitratory without regard to existing labour conditions and was not a proper exercise of its discretion in that behalf by the borough council. It was on such facts that Lord Atkinson observed at page 600 that "the council have evidently been betrayed into the course they have followed by taking into consideration the several matters mentioned in Mr. Scurr's affidavit, which they ought not properly to have taken into their consideration at all, and consequently did not properly exercise the discretion placed in them, but acted contrary to law". The second case is *Associated Provincial Picture Houses Limited,* v. *Wednesbury Corporation* (4), which was a case of a licence granted to a cinema by the authority concerned to open the licensed place and use the same on Sundays, but subject to the condition that children under 15 years of age were not to be admitted to the performances. The authority could impose conditions on the licence as it thought fit. It was held that the authority had not acted unreasonably or *ultra vires* in imposing the condition. At page 233 Lord Greene M. R. observes, in regard to the particular type of case, that "the court is entitled to investigate the action of the local authoriy with a view to seeing whether they have taken into account matters which they ought not to take into account, or, conversely, have refused to take into account or neglected to take into account matters which they ought to take into account. Once that question is answered in favour of the local authority, it may be still possible to say that, although the local authority have kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere. The power of the court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority have contravened the law by acting in excess of the powers which Parliament has confined in them." The third case is *Pilling* v. *Abergele Urban District Council* (5), which was a case of a local authority having refused licence for the use of land to the occupiers as sites for movable dwellings on the ground that that was detrimental

(4) (1948) 1 K. B. 223.
(5) 1950 K.B. 636.

to the amenities of the district, but the statute applicable only gave power to take into consideration matters relating to health and sanitation when exercising discretion in the matter of grant of licence, and it was on that that it was held that "the discretion which the section gives to the local authority is to consider such an application for the grant of a licence from the point of view of public health and the sanitary conditions at the site, and that they are not entitled under this section to take into account the question of local amenities." All these cases are apparently cases of administrative action or administrative orders made by the authorities concerned. The learned counsel for the petitioner has then referred to *Keshav Talpade* v. *Emperor* (6), *Dr. Ram Krishan Bhardwaj* v. *The State of Delhi* (7), *Shibban Lal Saxena* v. *State of Uttar Pradesh* (8), and *Dwarka Das Bhatia* v. *The State of Jammu & Kashmir* (9), all cases under the Preventive Detention Law, in which irrelevancy or vagueness of some of the grounds was held to invalidate the order of detention, and the principle underlying has been stated thus at page 168 of the last-mentioned case:—

> "The principle underlying all these decisions is this. Where power is vested in a statutory authority to deprive the liberty of a subject on its subjective satisfaction with reference to specified matters, if that satisfaction is stated to be based on a number of grounds or for a variety of reasons, all taken together, and if some out of them are found to be non-existent or irrelevant the very exercise of that power is bad. That is so because the matter being one for subjective satisfaction, it must be properly based on all the reasons on which it purports to be based. If some out of them are found to be non-existent or irrelevant, the Court cannot predicate what the subjective satisfaction of the said authority would have been on the exclusion of those grounds or reasons. To uphold the validity of such an order in spite of the invalidity of some of the reasons or grounds would be to substitute the objective standards of the Courts for the subjective satisfaction of the statutory authority. In applying these principles, however, the Court must be satisfied that the vague or

(6) A.I.R. 1943 F.C. 1.
(7) A.I.R. 1953 S.C. 318.
(8) A.IR. 1954 S.C. 179.
(9) A.I.R. 1957 S.C. 164.

> irrelevant grounds are such as, if excluded, might reasonably have affected the subjective satisfaction of the appropriate authority. It is not merely because some ground or reason of a comparatively unessential nature is defective that such an order based on subjective satisfaction can be held to be invalid."

Here again the question of preventive detention is a matter purely for the subjective satisfaction of the authority concerned and obviously the order of an administrative nature. A similar case, though under the Punjab Coal Control Order of 1955, is *Maharaj Krishan Khanna* v. *The State of Punjab and another* (10), in which the order considered was administrative. The principle on which the Supreme Court cases under the Preventive Detention Law proceed was extended by my Lord, the Chief Justice, Tek Chand, J., concurring, in *Railway Board; New Delhi* v. *Niranjan Singh* (2), to a case of disciplinary action against a delinquent Government servant consequent upon a departmental enquiry when it was found that one of the charges on which disciplinary action was based could not be sustained, and *Nripendra Nath Bagchi* v. *Chief Secretary, Government of West Bengal* (11), is a case in the same direction. However, that can no longer be said to be good law in view of the decision of their Lordships in *State of Orissa* v. *Bidyabhushan Mohapatra* (1), in which there were two charges proved against the delinquent Government servant, but the Orissa High Court found that out of five heads under one charge, two could not be sustained, the Inquiry Tribunal having already found one other of those five heads as not established, and it proceed to quash the order made against the Government servant with a direction that the matter of disciplinary action be reconsidered in the light of its own conclusions. On appeal their Lordships reversed the order of the High Court and observed that "the constitutional guarantee afforded to a public servant is that he shall not be dismissed or removed by an authority subordinate to that by which he was appointed, and that he shall not be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. The reasonable opportunity contemplated has manifestly to be in accordance with the rules framed under Article 309 of the Constitution But the Court in a case in which an order of dismissal of a public servant is impugned,

(10) I.L.R. (1961)2 Punj. 595=1961 P.L.R. 593.
(11) A.I.R. 1961 Cal. 1.

is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanour established. The reasons which induce the punishing authority, if there has been an enquiry consistent with the prescribed rules, are not justiciable: nor is the penalty open to review by the Court. If the High Court is satisfied that if some, but not all of the findings of the Tribunal were 'unassailable', the order of the Governor on whose powers by the rules no restrictions in determining the appropriate punishment are placed, was final, and the High Court had no jurisdiction to direct the Governor to review the penalty for as we have already observed the order of dismissal passed by a competent authority on a public servant, if the conditions of the constitutional protection have been complied with, is not justiciable. Therefore, if the order may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction if the findings of the enquiry officer or the Tribunal *prima facie* make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings, but not all it appears that there had been violation of the rules of natural justice. The High Court was, in our judgment, in error in directing the Governor of Orissa to reconsider the question." The learned counsel for the petitioner argues that this case is distinguishable from the present case because (a) it involves the doctrine of pleasure concerning Government servants and the only protection available to a Government servant is the one provided by the Constitution, (b) that in fact in that case both the charges had been established, but only two heads out of five of one charge could not be sustained, and so the case is not one in which the punishment or the penalty was imposed on charges which could not be sustained, and (c) that the above two matters were not a matter of argument in the Supreme Court. None of these considerations has any substance for the observation of their Lordships cited above is clear and distinct and is not affected by any such considerations. The learned counsel for the petitioner has also referred to *Rameshwar Dayal Gupta* v. *The Regional Transport Authority, Meerut* (12) which was a case of suspension of a motor vehicle permit under section 60 of the Motor Vehicles Act, 1939, and the suspension had been made on two grounds, one of which was not found sustainable by the learned

(12) A.I.R. 1958 All. 575.

Judges, and they proceeded to quash the order of the Regional Transport Authority, but that case cannot now be held to have been correctly decided in view of the decision in *Bidyabhushan Mohapatra's case,* because in *Raman and Raman Ltd.* v. *The State of Madras* (13) at page 698, their Lordships have held that the procedure in regard to the suspension or cancellation of a permit under section 60 of the Motor Vehicles Act, 1939, is clearly quasi-judicial in nature. The learned counsel for the petitioner then refers to this observation of their Lordships in *Dhirajlal-Girdharilal* v. *Commissioner of Income-tax, Bombay* (14)—"It is well established that when a court of fact acts on material, partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the court was affected by the irrelevant material used by it in arriving at its finding. Such a finding is vitiated because of the use of inadmissible material and thereby an issue of law arises", but this observation of their Lordships is on the question whether there should or should not be interference on a finding of fact when interference can only be on a question of law, and all that their Lordships observe is that in the circumstances stated a question of law would arise, and so this case does not advance the argument by the learned counsel.

It is then clear that where administrative action is to be taken by an administrative authority, or an order is made by an administrative authority on its subjective satisfaction in the wake of expediency or policy, the action taken or the order made is administrative, and it is to such a case only that what has been observed by their Lordships at page 186 of the report of *Dwarka Das Bhatia's case* applies, but not where the conclusion reached by an administrative authority is of a judicial or quasi-judicial nature as appears from *Bidyabhushan Mohapatra's case.* In the latter case it has been held that where a conclusion is reached on a finding on a number of charges, if some cannot be sustained, but action under the law can be taken on all or any of those charges which are not open to challenge, the High Court in exercise of its jurisdiction under Article 226 of the Constitution cannot interfere. The learned counsel for the petitioner, however, urges that for the matter of his argument it makes no difference whether the order made or action taken is administrative or quasi-judicial, but this obviously is not correct in view of the dicta of their Lordships in the cases cited above. The question posed then is what is the nature of the order made by the State Government or the Governor under

(13) A.I.R. 1959 S.C. 694.

(14) A.I.R. 1955 S.C. 271.

section 15 of the Act; is it an administrative order or a quasi-judicial order; for it is the answer to this question that to my mind would settle whether there is substance or not in the only argument urged by the learned counsel for the petitioner on the question referred to this Bench.

The matter when is an order an administrative order and when judicial or quasi-judicial, has come for consideration of their Lordships of the Supreme Court in a number of cases, the latest reported case being *Dwarka Nath* v. *Income-tax Officer, Special Circle, D. Ward, Kanpur* (15). It is, however, not necessary to go into the details of the discussion on the matter for in the last analysis the test that finally determines the nature of the order is whether the authority making the order has or has not duty to act judicially. If it has the duty to act judicially, the order is judicial or quasi-judicial, but if it has not such a duty and may proceed on consideration of expediency or policy, the order is not a quasi-judicial order but an administrative order. Another way of saying the same thing is that where the imperative requirement of the law is that the authority deciding a matter must act fairly, in which inheres objective consideration based on definite and defined material, its decision or order is quasi-judicial, but if it may act fairly or is expected to act fairly, and it is not obligatory to do so under the law, its order or action based on expediency or policy is administrative in nature. It is very rare that a statute in so many words provides that a particular authority is to act judicially in deciding a particular matter. It is evident from the dictum of their Lordships in *Dwarka Nath's case* that duty to act judicially may be inferred from the provisions of a particular statute under consideration, which would provide for the nature of the proceedings, the opportunity of hearing the party adversely affected or aggrieved, and the nature of consequences flowing from the order or decision of the authority concerned. It is in this approach that it has to be seen what is the nature of the impugned order in this case.

The terms of section 15 of the Act have already been reproduced above. It is inherent in the section that when there is material before the State Government it comes to a tentative conclusion, subject to the explanation of the member concerned, on charges of misconduct or neglect of duty, for this Court will immediately quash the order if there is no material or evidence whatsoever to support

(15) A.I.R. 1966 S.C. 81.

such a conclusion. So the Government proceeds on material showing that the member concerned has been guilty of misconduct and/ or neglect of duty. After having formed a tentative opinion, it gives the reasons for the proposed action to remove him as a member of the Market Committee under the section so as to enable him to explain the charges against him. After he has rendered such explanation, the State Government takes into consideration the material before it, the nature of the charges, the explanation rendered by the member concerned, and it is then that it forms an opinion whether he is or is not guilty of misconduct and/ or neglect of duty. It appears from this case that the present petitioner was also given an opportunity of access to the material on which the charges were based. So it comes to this (a) that charges are settled on the basis of definite material made available to the member concerned, (b) that he is given an opportunity to render an explanation on his side of the charges against him and, to help him in his defence, he can have recourse to the material forming basis of the charges and (c) that it is on consideration of such material, the nature of charges, and the explanation rendered by the member concerned that the State Government forms an opinion on the question whether or not he has been guilty of misconduct and/ or neglect of duty. This meets practically all the substantial requirements of an enquiry. It is true that the nature of the enquiry is not as in the case of a trial, but that is never necessary unless it is so provided. If a person is charged with misconduct and/or neglect of duty and he is given charges clearly stated, allowed access to the material or evidence on which the charges are based, and then given an opportunity in his defence to explain away the charges having regard to the material on which the same are based, this fulfils the basic requirements of an enquiry. When an opinion is formed in regard to the guilt or otherwise of the member concerned in the terms of the section, in those circumstances, it appears to me clear that the opinion of the State Government as to such a conclusion is reached objectively and consequently the order made under the section in the wake of such an opinion is a quasi-judicial order. Some emphasis has been laid by the learned counsel for the petitioner that the main body of the section uses the words 'in its oponion', and the learned counsel presses that whenever such words are used in conferring powers on an administrative authority, the conclusion reached by such an authority is reached by it on its subjective satisfaction or consideration and not objectively. Ordinarily this would be so if the statute or the law in question does not provide indications to the contrary, but in the case of section 15, as already shown, there

are clear indications to the contrary, for the whole process of the removal of a member of a Market Committee is based on an enquiry and proceedings fulfilling all the basic requirements of an enquiry. Mere use of those words alone will not turn those proceedings as administrative and the conclusion as a subjective determination reached in the wake of expediency or policy. The consequence of removal of a member under section 15 of the Act supports this conclusion. In section 3(5) of the Act it is stated that "No person shall be eligible to become a member of the Board who ..... (c) has been removed under ..... section 15 of the Act", and according to sub-section (6) of section 12 of the Act, "Subject to rules made under this Act, the disqualifications specified in sub-section (5) of section 3 shall also apply for purposes of becoming a member of a Committee". So an order of removal under section 15 leads to disqualification to become a member of a committee in future. A Division Bench of this Court, consisting of Dulat and Mahajan, JJ., in *Hukam Singh* v. *Ram Narain Singh* (16) had also held so Taking all these matters into consideration I am of the opinion that the nature of the proceedings under section 15 of the Act are quasi-judicial, and, although the section refers to the words 'in its opinion', but in spite of that, having regard to the nature of the proceedings and the consequences flowing from the order of removal, such an order of removal has to be held to be quasi-judicial and hence, in my opinion, within the dicta of their Lordships in *Bidyabhushan Mohapatra's case.*

There is a no direct case of this Court on this aspect of the matter under section 15 of the Act. But section 16(1)(e) of the Punjab Municipal Act, 1911 (Punjab Act 3 of 1911), provides that "The State Government may, by notification, remove any member of committee if in the opinion of the State Government he has flagrantly abused his position as a member of the committee or has through negligence or misconduct been responsible for the loss, or misapplication of any money or property of the committee." There is a proviso to this which reads—"Provided that before the State Government notifies the removal of a member under this section, the reasons for his proposed removal shall be communicated to the member concerned, and he shall be given an opportunity of tendering an explanation in writing." There is then sub-section (2) of this very section according to which if a person is removed under this

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(16) 1965 P.L.R. 914.

section then he 'shall be disqualified for election for a period not exceeding five years' This provision is somewhat analogous to section 15 of the Act, with, if not exactly similar, analogous consequence. This section has come for consideration of a Full Bench of this Court consisting of Dulat, Tek Chand and Mahajan, JJ., in *Joginder Singh* v. *The State of Punjab and another* (17), the judgment of the Bench was delivered by Dulat, J., who after referring to the proviso, as reproduced above, observed—"What is sought to be read into this provision or superimposed on it is another requirement, namely, a judicial enquiry, as is held in the ordinary Courts. I am unable to see how any such thing can be read into the terms of this statute or in any other manner implied by the provisions contained in it. Mr. Sarin says that if any fact has to be considered by the State Government and an opinion formed in respect of it, then the only way to proceed is judicially, and the conclusion must be that since the State Government is required to form its opinion about certain facts while removing a member, it must necessarily proceed to determine these facts in a judicial or quasi-judicial manner. I am, however, wholly unable to agree that a fact is incapable of being discovered except in a judicial or quasi-judicial manner, for, if that were so, then every administrator who, like anybody else, has to take his decision by discovering the relevant facts, would in every case be bound to proceed judicially, even when taking an administrative decision. The fallacy lies in thinking that the manner in which the ordinary Courts proceed is the only manner in which a fact can be properly discovered. What has to be ascertained in the present case is whether the State Government, when considering the removal of a member under section 16, is at any stage required to proceed judicially. It is true that the State Government has to form an opinion whether the particular member has or has not flagrantly abused his position as a member of the Committee, but there is no indication that it must do so in a judicial or quasi-judicial manner except to the extent mentioned in the proviso in question, the requirements of which are only two—(1) that reasons for the proposed removal must be communicated to the member, and (2) that he must be allowed an opportunity of tendering an explanation in writing. In the face of these explicit terms, which both define and limit the nature of the proceedings, it is, in my opinion, idle to suggest that something more is necessary." These observations make it at once clear that the learned Judge was not inclined to hold that the removal of a municipal commissioner under section 16(1)(e) of Punjab Act 3 of 1911 is a judicial or a

(17) I.L.R. (1963) 1 Punj. 588=1963 P.L.R. 267.

quasi-judicial act, but at the same time he was satisfied that the proceedings leading to such a removal must conform to the requirements of the statute. There is, however, this observation also by the learned Judge—"Some emphasis was laid on the expression 'flagrantly' used in section 16(1)(e) and it was said that, even if the petitioner had broken the law to the detriment of the municipal committee on one or two occasions, it cannot be said that he had 'flagrantly abused his position', the suggestion being that the expression 'flagrantly' indicates that the abuse of position must have occurred over a long period of time and in connection with repeated acts. I do not think the words 'flagrantly abused his position as a member of the Committee' carry any such implication. What the clause means is that if a member of a Committee, in disregard of his duty, does any act or acts, which shock a reasonable mind, then he can be removed by the State Government, and again it is the State Government that has to form that opinion." This observation was considered by Mahajan, J., who was also a party to the Full Bench decision, in subsequent case in *Norata Ram* v. *The State of Punjab* (18) and the learned Judge observed—"It is significant that Dulat, J., who delivered the judgment of the Full Bench clearly laid down that what is flagrant abuse is an act which shocks a reasonable mind. Therefore, unless the facts establish that the acts alleged shock a reasonable mind, there can be no "flagrant abuse", and along with this consideration the learned Judge also took into consideration the fact that action in the shape of removal cannot be taken without an opportunity to the member to explain his position with regard to the allegation against him and he then comes to the conclusion that "no manner of doubt is left in my mind that the determination as to whether there has been a flagrant abuse of his position by a member of a Committee has to be objectively determined and not subjectively". This is how the learned Judge, who was himself a party to the Full Bench decision, reads that decision. In *Satya Dev* vs. *State of Punjab* (19) Harbans Singh J., followed *Joginder Singh's case* while sitting with Dua J., and in *State of Punjab* v. *Sugna Ram* (20) a Division Bench consisting of Dulat and Harbans Singh, JJ., after referring to the already cited two cases, held that "In view of the above decision, it can be said that it is now the firm opinion of this Court that the orders passed

(18) 1964 P.L.R. 226.

(19) 1964 P.L.R. 381.

(20) 1964 P. L. R. 828.

by the State Government under clause (e) of sub-section (1) of section 16 of the Municipal Act are subject to scrutiny by this Court with a view to check two matters: First, whether the grounds of removal are extraneous to the conduct of the member as such, and, secondly, if the grounds are not extraneous, to see that the act or acts done by the member in disregard to his duty are such as can shock a reasonable mind.". If one of the grounds of interference by this Court in such a decision, as is the opinion of the learned Judges, is to scrutinise whether the act or acts done by the member of the municipal committee in disregard of his duty are such as can shock a reasonable mind, such scrutiny can only be possible if there is material which this Court can consider in that respect. This Court can only consider such material if it was the basis of the decision of the State Government in reaching the same conclusion. If the State Government is required to reach this conclusion on definite material, then it is expected to act objectively as is the opinion of Mahajan, J., in *Norata Ram's case*. In *Satya Dev's case*, Dua, J., while agreeing with Harbans Singh, J., cites copiously the observations of their Lordships in *Board of High School and Intermediate Education, U. P., Allahabad* v. *Ghanshyam Das Gupta* (21), to support the manner, in which this Court interferes in orders of removal of municipal commissioner by the State Government under section 16(1)(e) of Punjab Act 3 of 1911. No doubt the learned Judge does not in so many words say that such an order is a judicial or a quasi-judicial order, but when the learned Judge proceeds on the basis that such an order is within the scope of the dicta of their Lordships in *Ghanshyam Das Gupta's case*, it means as much, and his inclination is obvious. So at least Mahajan J. in *Norata Ram's case* is clear that such an order is a quasi-judicial order, and Dua J. in *Satya Dev's case* tends to that opinion following *Ghanshyam Dass Gupta's case*. The only observation that may be said to be to the contrary is the one cited first from the judgment of Dulat J. in *Joginder Singh's case*, but in the subsequent *case of Sugna Ram*, the learned Judge agrees with Harbans Singh J. that this Court will interfere in an order under section 16(1)(e) of Punjab Act 3 of 1911 to see that the act or acts done by the member concerned in disregard to his duty are such as can shock a reasonable mind. The opinion of Mahajan J. in *Norata Ram's case* and of Dua J. in *Satya Dev's case* lends support to the conclusion that I have reached above as to the nature of the proceedings under section 15 of the Act and the consequent order following on such proceedings.

(21) A.I.R. 1962 S.C. 1110.

That is then *Ghanshyam Das Gupta's case* whose examination result of the year, 1954, had been cancelled and who had been barred from appearing at the next examination of 1955 on the ground of having used unfair means in the examination. The rule which their Lordships were considering is reproduced in paragraph 10 of the judgment and reads in this manner—

> "It shall be the duty of the Examinations' Committee, subject to sanction and control of the Board—
>
> (1) to consider cases where examinees have concealed any fact or made a false statement in their application forms or a breach of rules and regulations to secure undue admission to an examination or used unfair means or committed fraud (including impersonation) at the examination or are guilty of a moral offence or indiscipline and to award penalty which may be one or more of the following—
>
> (i) withdrawal of certificate of having passed the examination;
>
> (ii) cancellation of the examination;
>
> (iii) exclusion from the examination."

There was no provision of the manner in which the Examinations' Committee was to carry out its duty under that rule. There was no express provision that the Committee was to act judicially while exercising its powers under the rules, and there was obviously no provision with regard to an opportunity of hearing being given to the examinee concerned. The examinee in that case had not been heard before the Examinations' Committee imposed the penalty already referred to. After pointing out the various facts which the Examinations Committee is required to decide under the rules, their Lordships observed—"Until one or other of these five facts is established before the Committee, it cannot proceed to take action under Rule 1(1). In order to come to the conclusion that one or other of these facts is established, the Committee will have to depend upon materials placed before it, for in the very nature of things, it has no personal knowledge in the matter. Therefore, though the Act or the Regulations do not make it obligatory on the Committee to call for an explanation and hear the examinee, it is implicit in the provisions of Rule 1(1) that the Committee must satisfy itself on materials placed before it that one or other of the facts is established to enable it to take action in the matter. It will not be possible for the Committee to proceed at all unless

materials are placed before it to determine whether the examinee concerned has committed some misconduct or the other which is the basis of the action to be taken under Rule 1(1). It is clear therefore that consideration of materials placed before it is necessary before the Committee can come to any decision in the exercise of its powers under Rule 1(1) and this case be the only manner in which the Committee can carry out the duties imposed on it.

We thus see that the Committee can only carry out its duties under Rule 1(1) by judging the materials, placed before it. It is true that there is no lis in the present case, in the sense that there are not two contesting parties before the Committee and the matter rests between the Committee and the examinee; at the same time considering that materials will have to be placed before the Committee to enable it to decide whether action should be taken under Rule 1(1), it seems to us only fair that the examinee against whom the Committee is proceeding should also be heard. The effect of the decision of the Committee may in an extreme case blast the career of a young student for life in any case will put a serious stigma on the examinee concerned which may damage him in later life. The nature of misconduct which the Committee has to find under Rule 1(1) in some cases is of a serious nature, for example, impersonation, commission of fraud, and perjury; and the Committee's decision in matters of such seriousness may even lead in some cases to the prosecution of the examinee in courts. Considering, therefore the serious effects following the decision of the Committee and the serious nature of the misconduct which may be found in some cases under Rule 1(1), it seems to us that the Committee must be held to act judicially in circumstances as these. Though, therefore, there is nothing express one way or the other in the Act or the Regulations casting a duty on the Committee to act judicially, the manner of the disposal, based as it must be on materials placed before it, and the serious effects of the decision of the Committee on the examinee concerned, must lead to the conclusion that a duty is cast on the Committee to act judicially in this matter particularly as it has to decide objectively certain facts which may seriously affect the rights and careers of examinees, before it can take any action in the exercise of its power under Rule 1(1). We are, therefore, of opinion that the Committee when it exercises its power under Rule 1(1) is acting quasi-judicially and the principles of natural justice which require that the other party, (namely, the examinee in this case) must be heard, will apply to the proceedings before the Committee." When the dicta of their Lordships in this case is applied to

the present case in that the State Government has to form an opinion under section 15 of the Act as to the guilt or otherwise of the member concerned in regard to his having committed misconduct and/or neglect of duty and the consequence flowing that the member is totally debarred in future from seeking the membership of the Market Committee, the present case is a very close parallel to *Ghanshyam Das Gupta's case*. It is on a similar consideration of this very case that Dua, J., sought support of it in *Satya Dev's case*, which, as stated, was a case under section 16(1) of Punjab Act 3 of 1911. In my opinion, *Ghanshyam Das Gupta's* case supports the view that I have taken above with regard to the nature of the proceedings under section 15 of the Act and the consequent order thereon, just as Mahajan, J., has taken a similar view with regard to the proceedings and the consequent order under section 16(1) (e) of Punjab Act 3 of 1911, and Dua, J., has tended to the same view in the case already referred to.

In the view, that I have taken above, I would answer the question before the Full Bench in this manner that as the proceedings under section 15 of the Act for removal of a member of a Market Committee and the consequent order of his removal are quasi-judicial in nature, the order of the State Government does not become illegal because of inclusion of matters which do not relate to the conduct of the member as a member of the Market Committee when there are matters included in it which relate to the conduct of the member as such member and upon which the action taken or order made by the State Government can be sustained. In other words, after ignoring the irrelevant grounds, on the grounds remaining if the action could have been taken by the State Government, then its action cannot be interfered with by this Court in view of the decision of their Lordships in *Bidyabhushan Mahapatra's case*. It is in this manner that I would answer the reference to this Bench.

A. N. GROVER, J.—I agree.

HARBANS SINGH, J.—I agree.

B.R.T.

FULL BENCH

Before Mehar Singh, C.J., Inder Dev Dua and Daya Krishan Mahajan, JJ.

K. R. ERRY,—*Petitioner*

versus

THE STATE OF PUNJAB,—*Respondent*

Civil Writ No. 504 of 1964.

October 25, 1966.

Punjab Civil Services Rules, Volume II—Rules 2.2 and 6.4—Cut in pension—Whether can be imposed without affording an opportunity to the pensioner to show