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the failure of the party concerned to raise objections on the point of jurisdiction before an inferior Tribunal would not debar him from getting relief on that score in a writ petition.

(11) In the result, the petition succeeds, orders annexures 'B' and 'C' are quashed as being without jurisdiction and the Divisional Canal Officer is directed to restore watercourse AD in compliance with the provisions of sub-section (3) of section 30-FF of the Act. It will, of course, be open to the Divisional Canal Officer to prepare and sanction a scheme for the alteration or realignment, etc., of the existing watercourse either on its own motion or on the application of respondent No. 2 after following the procedure laid down in sections 30-A and 30-B of the Act. In the circumstances of the case, I would leave the parties to bear their own costs.

N. K. S.

CIVIL MISCELLANEOUS

Before A. D. Koshal, J.

MARKET COMMITTEE, JALALABAD,—Petitioner

versus

PUNJAB STATE AND OTHERS,—Respondents.

Civil Writ No. 668 of 1970

May 29, 1970

Punjab Agricultural Produce Markets Act (XXIII of 1961)—Sections 3, 20 and 33—General power of superintendence of Agricultural Marketing Board under section 3(9)—Whether circumscribed by section 33—Marketing Committee suspending its employee—Marketing Board—Whether has power to direct reinstatement of such employee.

Held, that although sub-section (9) of Section 3 of Punjab Agricultural Produce Markets Act, 1961, while giving power of superintendence and control to the Agricultural Marketing Board uses only the words "over the committees" and not "over the committees and their officers", yet the other provisions of the Act and the Rules made thereunder leave no room for doubt that the Board, subject to the control of the State Government, is constituted as the supreme authority controlling the affairs of the committee in all spheres of action. The general power of superintendence and control conferred on the Board by section 3(9) is not whittled down or circumscribed by the provisions of section 33 except in matters specifically

covered by the latter. A specific provision does not oust the applicability of a general provision to cases to which the specific provision is itself not attracted. Section 33 of the Act does not take away the general power of superintendence and control vested in the Board under section 3(9), although it deals with specific instances of the exercise of that power which would be regulated by its provisions whenever a case falls within the four corners of any of those instances. If the Board exercises its powers under section 3(9) in cases not covered by the said instances, such exercise is not illegal merely because of the presence in the statute of section 33. Hence section 33 does not limit the power conferred on the Board by section 3(9) of the Act. (Paras 9, 12 and 17).

Held, that in so far as disciplinary action against the employees of a Marketing Committee is concerned, the Agricultural Marketing Board cannot take action against them directly but that it must ask the Committee to take such action. This is clear not only from the language of the second proviso to section 20(2) but also from the absence of the words "and their officers" from sub-section (9) of section 3. The words "superintendence" and "control", as used in that sub-section, are of very wide amplitude and there is no reason to restrict their meaning so as to oust from their purview such actions of the Committee as relate to disciplinary action against its officers. Hence where a marketing Committee suspends one of its employees, the Marketing Board has the power to direct his reinstatement under section 3(9) of the Act. (Para 9)

Petition under Articles 226/227 of the Constitution of India, praying that an appropriate writ direction or order be issued to the respondents quashing the notice, dated 20th January, 1970, served on the Market Committee to reinstate Shri Payare Lal forthwith otherwise action would be taken under section 35 of the Punjab Agricultural Produce Marketing Act, 1961, for the supersession of the Market Committee.

K. L. SACHDEVA, ADVOCATE, for the Petitioner.

K. S. KEER, ADVOCATE, FOR ADVOCATE-GENERAL, (PUNJAB), SHRI U. S. SAHNI, ADVOCATE, for Respondent No. 2 and 4.

ANAND SARUP, ADVOCATE WITH R. S. MITTAL, ADVOCATE, for Respondent No. 4.

JUDGMENT.

A. D. KOSHAL, J.—By this judgment I shall dispose of two petitions under Articles 226 and 227 of the Constitution of India. They are Civil Writ No. 668 of 1970 (hereinafter referred to as petition I) instituted by the Market Committee, Jalalabad (hereinafter called the Committee) in which the prayer is that a notice, dated the 20th of January, 1970, issued by the *Secretary, Punjab State Agricultural Marketing*

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Board, Chandigarh (hereinafter referred to as the Board Secretary) to Shri Khushal Chand, the Chairman of the Committee, requiring him to reinstate Shri Pyare Lal, Mandi Supervisor of the committee (who had been earlier suspended from service) on pain of action for supersession of the Committee under section 35 of the Punjab Agricultural Produce Markets Act, 1961 (hereinafter referred to as the Act), be quashed, and Civil Writ No. 805 of 1970 (hereinafter referred to as petition II) in which the petitioner is Shri Khushal Chand above mentioned (hereinafter referred to as the Committee Chairman), who prays that a notification dated the 10th of March, 1970, issued under the signatures of the Secretary to the Punjab Government and removing the Committee Chairman from the membership of the Committee be struck down. In both the petitions respondents Nos. 1 to 3 are the Punjab State, Agricultural Marketing Board (hereinafter referred to as the Board) and Shri Balwant Singh Butter, District Agricultural Officer, Ferozepore, respectively, while in petition I also figures as respondent No. 4 the said Pyare Lal (hereinafter referred to as respondent No. 4).

(2) I may also here state that the documents referred to by me in this judgment are, unless otherwise stated, those forming part of the file of the case relating to petition I.

(3) The facts giving rise to the two petitions are almost identical and are these. One Shri Madan Lal was the Chairman of the Market Committee, Jalalabad, in the early part of the year 1968. The term of that Market Committee expired on the 18th of June, 1968, on which date respondent No. 4 was holding the office of Mandi Supervisor under that Committee. On the 1st of August, 1968, one Ram Niwas was transferred to Jalalabad as Secretary for the Committee and on the same date respondent No. 3 was appointed as Administrator of the Committee which itself, however, was elected on the 17th of November, 1968, and took over charge as such on the 13th of February, 1969.

(4) During the period after the 1st of August, 1968, and before the new Committee came into power, certain developments took place which resulted in respondent No. 3 issuing an order dated the 7th of February, 1969 (annexure 'G' in petition II) suspending respondent No. 4 from service. During the next four days respondent No. 3 held an enquiry into certain charges against respondent No. 4 and on the 11th of February, 1969, submitted a

report (annexure R-4/1) to the Board Secretary exonerating respondent No. 4 thereof and recommending that he (respondent No. 4) be allowed to be reinstated with immediate effect. Before the Board could take any action in the matter, the new Committee came into power and on the 18th of February, 1969, the Board Secretary addressed a letter (annexure R-9) to the Committee Chairman saying that respondent No. 4 "should be reinstated at once as suggested by the Administrator, Market Committee, Jalalabad" and adding that the enquiry into the whole case had been entrusted to the Senior Marketing Inspector, Jullundur, who was directed to conduct the necessary enquiry. Respondent No. 4, however, was not reinstated. On the other hand, the Committee passed a resolution (annexure H/I) on the 28th of March, 1969, that the Committee Chairman, either alone or along with some other members of the Committee, should meet the Board Secretary and the Chairman of the Board and that the matter be reconsidered thereafter. On the 30th of May, 1969, another letter (annexure R-II) was addressed by the Board Secretary to the Committee Chairman stating that the latter was causing considerable inconvenience to respondent No. 4 by not reinstating him despite repeated and clear instructions from the Board and adding that if respondent No. 4 was not reinstated within four days of the receipt of the letter steps would be taken to have the Committee Chairman removed from membership of the Committee by the *Government under section 15 of the Act*. The direction contained in this letter was also not complied with. On the other hand, the Committee passed a resolution on the 7th of June, 1969, (annexure I/I) to the effect that the suspension of respondent No. 4 would continue as the charges of corruption against him were of a serious nature. A sub-committee, to enquire into the said charges was also constituted. On the 23rd of August, 1969, respondent No. 4 made a representation (annexure R-10) complaining that he was being unnecessarily and illegally harassed by the Committee Chairman, who was flouting the directions issued by the Board for the reinstatement of respondent No. 4. On being called upon by the Chairman of the Board to explain his position in this behalf, the Committee Chairman wrote back (annexure R-12) on the 23rd of September, 1969, that it was the Committee who was seized of the matter and had decided to hold an enquiry against respondent No. 4, that the Chairman of the Board should not insist on the reinstatement in question till the enquiry was over and that "if deemed proper in the public interest to reinstate

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him, fresh instructions may kindly be given so that the Committee should take action accordingly." The matter was then referred by the Chairman of the Board to the Government who took a decision that respondent No. 4 be reinstated at once. This decision was communicated by the Under Secretary, Punjab Government, Development Department, to the Board Secretary on the 15th of January, 1970 (annexure R-14) and on the basis thereof the Board Secretary finally issued a letter dated the 20th of January, 1970 (annexure M/I) regretting that respondent No. 4 had not been reinstated in spite of repeated directions issued by the Board in that behalf, asking the Committee Chairman to reinstate respondent No. 4 at once and intimating that if the reinstatement was not effected the Board would take proceedings *under section 35 of the Act for supersession of the Committee*. On the same date a letter (annexure O/1 in petition II) was issued by shri S. K. Dewari, Under Secretary, Punjab Government, Agriculture, Department, to the Committee Chairman asking him to show cause as to why he should not be removed from the membership of the Committee for neglect of duties under section 15 of the Act in as much as he had repeatedly disobeyed the orders of the Board requiring him to reinstate respondent No. 4. To this letter the Committee Chairman sent a reply dated the 3rd of February, 1970 (annexure 'P' in petition II) stating, *inter alia*, that he was in no way guilty of misconduct or neglect of duties, nor liable to removal under section 15 of the Act in as much as it was for the Committee to decide the matter one way or the other. This position was reiterated by the Committee Chairman in a supplementary communication dated the 4th of February, 1970 (annexure 'Q' in petition II). By a notification dated the 10th of March, 1970 (annexure 'R' in petition II), however, the Committee Chairman was found guilty of misconduct and removed from the membership of the Committee under section 15 of the Act by the Governor of Punjab.

(5) It is the letter dated the 20th of January, 1970, issued by Board Secretary to the Committee Chairman (annexure M/I) which is impugned by the Committee in petition I, the grounds of attack being :

- (a) The Board has no powers to take disciplinary action against the employees of the Committee, such powers being vested under the Act exclusively in the Committee.

The Board, therefore had no authority to direct reinstatement of respondent No. 4 which was a matter within the Committee's exclusive jurisdiction. This clearly follows from the provisions of sections 3, 20 and 33 of the Act and of Rules 4 and 10 of the Punjab Agricultural Produce Markets (General) Rules, 1962 (hereinafter referred to as the Rules).

- (b) The charges against respondent No. 4 are very serious for which *prima facie* evidence is available and the stand taken by the Committee is in public interest.
- (c) After its election, the Committee is fully competent to review the orders of respondent No. 3.
- (d) The action proposed in the impugned letter is undemocratic and against the scheme of the Act.

(6) In petition II the attack is directed against the notification dated the 10th of March, 1970 (annexure 'R' in petition II) and the reasons of attack are listed thus :

- (i) The acts on the basis of which the notification was issued were attributed to the Committee who alone, and not the Committee Chairman, could be held answerable for the same.
- (ii) The notification does not give the outline of the process of reasoning by which the State Government (respondent No. 1) concluded that the Committee Chairman merited removal from the membership of the Committee and was, therefore, bad in law.
- (iii) The notification gave proved "misconduct" on the part of the Committee Chairman as the reason for his removal but no misconduct was alleged to have been indulged in by the Committee Chairman in the show-cause notice, dated the 20th of January, 1970 (annexure O/I in petition II), which charged the Committee Chairman only with "neglect of duties". Therefore, also the notification was bad in law.
- (iv) The notification was *mala fide* inasmuch as the said show-cause notice was issued to the Committee Chairman simultaneously with the letter dated the 20th of January, 1970

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annexure M/1), impugned in petition I, that is, even before the Committee had any chance of showing cause against its supersession.

- (v) The impugned notification is based solely on the supposed power of the Board to direct the Committee to reinstate respondent No. 4—a power which the Board does not in law have for the reasons stated in grounds of attack (a), (b), (c) and (d) against the letter impugned in petition I.

(7) In order to appreciate ground (a) in petition I, it is necessary to set down here the relevant provisions of the Act and the Rules.

Section 3

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(8) The State Government shall exercise superintendence and control over the Board and its officers and may call for such information as it may deem necessary and, in the event of its being satisfied that the Board is not functioning properly or is abusing its powers or is guilty of corruption or mismanagement, it may suspend the Board and, till such time as a new Board is constituted, make such arrangements for the exercise of the functions of the Board as it may think fit:

Provided that the Board shall be constituted within six months from the date of its suspension.

(9) The Board shall exercise superintendence and control over the Committees.

(10) The State Government or the Chairman or the Secretary of the Board or any other officer of the Board authorised in this behalf by the Board may call for any information or return relating to agricultural produce from a Committee or a dealer or a godown keeper or other functionaries and shall have the power to inspect the records and accounts of a Committee and accounts of any dealer, godown-keeper or other functionaries for that purpose.

(11) The Director may transfer the Secretary or any employee dealing with the accounts of one Committee to another Committee

within the same region and exercise such other power and discharge such other duties as may be prescribed:

Provided that any increase or decrease of emoluments of a transferred employee shall be referred to the State Government whose decision on such reference shall be final.

(12) Subject to the provisions of this Act and the rules and the bye-laws made thereunder, the Board may employ such persons for the performance of the functions of the Board under this Act, and may give them such remuneration, as it may think fit, and may suspend, remove dismiss or otherwise punish any person so employed.

* * * * *

Section 20

“(1) Every Committee shall have a person as its Secretary appointed by the Board as its servant, and lent to the Committee subject to such terms and conditions as the Board may prescribe.

(2) A Committee may, with the previous approval of the Secretary of the Board, employ such other officers and servants as may be necessary for the management of the market and may pay such officers and servants salaries as fixed by the Board for different cadres and shall have power to control and punish them :

Provided that where the basic pay of an employee is less than eighty rupees the previous approval of the Secretary of the Board for the appointment will not be necessary:

Provided further that if after examining the records obtained from the Committee or otherwise the Board is satisfied that any officer or servant of the Committee is negligent in the discharge of his duties, the Committee shall on the requirement of the Board suspend or otherwise punish him, and if the Board is satisfied that he is unfit for employment the Committee shall dismiss him or terminate his services.

* * * * *

Section 33

- “(1) When the affairs of a Committee are examined by the Chairman or Secretary of the Board or any other officer to whom the powers have been delegated under sub-section (17) of section 3, all officers, servants and members of such Committee shall furnish such information in their possession in regard to the affairs or proceedings of the Committee as the Chairman or Secretary of the Board or such Officer may require.
- (2) The Chairman or Secretary of the Board or any officer authorised by him by general or special order shall have power to inspect or cause to be inspected the accounts of a Committee or to institute an enquiry into the affairs of the Committee and to require the Committee to do a thing or to desist from doing a thing which he considers necessary in the interest of the Committee and to make a written reply to him within a reasonable time stating its reasons for not desisting from doing it or for not doing such a thing.
- (3) An Officer investigating the affairs of a Committee or examining the proceedings of such a Committee under sub-section (1) shall have the power to summon and enforce the attendance of officers or members of the Committee and to compel them to give evidence and to produce documents by the same means and as far as possible in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908.
- (4) (i) The Board may, by order in writing, annul any proceedings of a Committee or sub-committee or Joint-Committee or *ad hoc* Committee which it considers not to be in conformity with law or with the rules or bye-laws made thereunder and may do all things necessary to secure such conformity, or may suspend any resolution which it considers likely to cause injury or annoyance to the public or is likely to affect adversely the interests of the Committee or of producers or dealers or any class of functionaries working in the notified market area concerned.

- (ii) The Board may, by order in writing, suspend the execution of any resolution or order of a Committee or sub-committee or joint committee or *ad hoc* committee, or prohibit the doing of any act which is being done or is about to be done in pursuance of or under cover of this Act or any rule or bye-laws, made thereunder, if in its opinion, the resolution, order or Act is in excess of the powers conferred by law, or is likely to cause injury or annoyance to the public or is likely to affect adversely the interest of the committee or of producers or of dealers or of any class of functionaries working in the notified market area concerned.
- (iii) When the Board makes an order under this sub-section, he (it?) shall forthwith forward a copy thereof, with a statement of reasons for making it and the explanation, if any, of the Committee concerned, to the State Government, who may thereupon rescind the order or direct that it shall continue in force with or without modification, permanently, or for such period as it thinks fit.

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Rule 4

“(1) The Chairman of the Board shall—

- (a) be responsible for the administration of the Punjab Agricultural Produce Market Act, 1961, and shall subject to any other provision contained in these rules exercise general control over the employees of the Board and those of Committees;

* * * * *

Rule 10

“(1) The Chairman of the Committee shall be its chief executive officer and all officers and servants of the Committee shall, subject to these rules and bye-laws, if any, made in this respect by the Committee, or by the Chairman of the Board, under section 44, be subject to his

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control. The Chairman shall make annual assessment of the work of the employees of the Committee:

Provided that * * * * *

From the above provisions Mr. Sachdeva, learned counsel for the petitioner, deduces the following propositions:—

- (A) Under sub-section (2) of section 20 and Rule 10, the control over the Committee's employees is vested in the Committee itself as also in the Committee Chairman as the Committee's representative and it is the Committee alone who is given the power to punish such employees although in certain specified circumstances the Board may direct the Committee to punish or suspend such employees.
- (B) The Board is given the power of superintendence and control over the Committee under sub-section (9) of section 3 and also that of general control over the employees of the Committees under Rule 4 but then such superintendence and control cannot, in the absence of a clear provision in that behalf, embrace disciplinary action against such employees, or the reversal of such action. In this connection the absence of the words "and its officers" after the word "Committees" in sub-section (9) aforesaid is significant when it is borne in mind that those words occur in sub-section (8) with reference to the control of the State over the Board and its employees. Besides, whenever a specific power to take disciplinary action is meant to be conferred, the legislature has vested the same by means of a specific provision, e.g., section 3(12), section 20(2) and proviso second to section 20(2).
- (C) Section 33 limits the power conferred on the Board by sub-section (9) of section 3 and it is exhaustive of the cases in which the Board can exercise its powers of superintendence and control over the committees.
- (D) Even if section 33 be held not to be exhaustive as aforesaid, the present case could be dealt with under it and it alone.

(8) Proposition (A) is unexceptionable and it is conceded on behalf of the respondents that the Committee and its Chairman have the powers respectively conferred on them by the provisions of section 20(2) and Rule 10. It is further not disputed that under proviso second to section 20(2) the Board is authorised to require the Committee to suspend and punish its officer only in certain specified contingencies. That does not mean, however, that the Board has no other power in relation to action which can be taken by the Committee against its employees and the question whether such powers are or are not vested in the Board will have to be determined with reference to proposition (B), (C) and (D) set out above.

(9) In so far as proposition (B) is concerned, it is no doubt true that while sub-section (8) of section 3 gives the State Government powers of superintendence and control over the Board *and its officers*, sub-section (9) of that section while giving such powers to the Board uses only the words "over the committee" and not "over the committees and their officers". But the various provisions of the Act and the Rules leave no room for doubt that the Board, subject to the control of the State Government, was constituted as the supreme authority controlling the affairs of the Committee in all spheres of action and in this behalf the provisions of section 33 are an unmistakable pointer. It appears, however, that in so far as disciplinary action against the employees of the Committee is concerned the Board cannot take action against them directly but that it must ask the Committee to take such action. This is clear not only from the language of the second proviso to section 20(2) but also from the absence of the word "and their officers" from sub-section (9) of section 3. The words "superintendence" and "control", as used in that sub-section, are of very wide amplitude and there is no reason to restrict their meaning so as to oust from their purview such actions of the Committee as relate to disciplinary action against its officers. Reference in this connection may be made to *The State of U.P. and others v. Ram Naresh Lal* (1). In that case the Agricultural Engineering Department was abolished and merged in the Irrigation Department. On the 29th of June, 1954, Ram Naresh Lal, who was an employee in the former department as an Assistant Accountant, was transferred on deputation in that capacity to the office of the Development Commissioner (Planning Department). On the 21st of May, 1958, the State Government wrote to the Development Commissioner stating that the entire staff with him from the Irrigation Department should

(1) C.A. No. 463 of 1969 decided by Supreme Court on 13 March, 1970.

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be treated to have been transferred to his "control", which word was interpreted by their Lordships thus:

"The word 'control' is a wide word and includes disciplinary jurisdiction. In the context there is no doubt that it was the intention to give disciplinary jurisdiction over the entire staff on deputation to the Development Commissioner."

(10) In the context in which the word "control" occurs in section 3(9), there is no doubt, as already pointed out by me, that it does not embrace direct disciplinary action by the Board over the Committee's employees but then there is also no getting out of the situation that its meaning cannot be limited, in the absence of provisions to that effect, as argued by Mr. Sachdeva.

(11) This takes us to proposition (C) according to which section 33 must be construed as laying down provisions limiting the scope of the exercise of the superintendence and control mentioned in section 3(9) to cases detailed therein (in section 33). In this connection Mr. Sachdeva has relied on *S. Bhopinder Singh Dhillon v Master Gurbanta Singh and others* (2), in which Narula, J., gave a restricted meaning to the words "control" and "superintendence" occurring in section 3(8) with the following observations:

"The meaning and scope of the words "control" and "superintendence" are well known and it is unnecessary to dwell on that subject at any length in this case. However wide may be the scope of those expressions, the authority conferred by use of these words must be related to the specific matters covered by the provision of law where the words occur. In the view I have taken about the interpretation and scope of sub-section (8) of section 3 of the Act, it appears to me that the operation of that section is substantially restricted. This is also clear from a reference to sections 15, 17, 35 and 36 of the Act which would have been unnecessary, if the scope of sub-section (8) of section 3 was as wide and unlimited as canvassed by Mr. Suri."

(12) This authority is distinguishable on the ground that therein Narula, J., was interpreting a provision which itself enumerated specific instances relating to the exercise of superintendence and

control by the State Government over the Board, while in the case of section 3(9) that is not the case. Besides, the above quoted observations of Narula, J., are clearly obiter as the case was decided by him mainly on a different point. To me it appears that the general power of superintendence and control conferred on the Board by section 3(9) is not whittled down or circumscribed by the provisions of section 33 except in matters specifically covered by the latter so that the exercise of that power in any of those matters must conform to the provisions of section 33. This follows from the well-settled rule of construction that in so far as a specific provision exists in addition to a general one in relation to a particular matter, the former shall prevail to the exclusion of the latter and that if the law requires that a particular thing is to be done in a particular way, it must be done in that way or not at all. That does not mean, however, that if a matter is not covered by section 33, section 3(9) will have no application. On the other hand, section 3(9) will continue to cover cases which are not specifically dealt with by section 33. In this connection, I may usefully refer to *Mulji Tribhovan Sevak v. Dakor Municipality* (3), in which Fawcett, J., acted upon the rule of construction thus stated by Ramilly, M.R., in *Pretty v. Solly*, 53 E.R. 1032:

“Wherever there is a particular enactment and a general enactment in the same statute and the latter, taken in its most comprehensive sense; would overrule the former, the particular enactment must be operative and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply.”

(13) This Bombay authority was followed by a Division Bench of this Court in *Harnam Singh Modi v. The State* (4), with the following observations of Bhandari, C.J., who delivered the judgment of the Division Bench:—

“It is an old and familiar principle that when two provisions of a statute are in conflict with each other, an effort should be made to reconcile them. If the conflict is irreconcilable and latter provision over-rides the earlier and the special provision wherever it occurs overrides the general. Thus, where there is in the same statute a specific provision and also a general one which in its most comprehensive sense

(3) A.I.R. 1922 Bom. 247 (F.B.).

(4) 1958 P.L.R. 394.

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would include matters embraced in the former the particular provision must be operative and the general provision must be taken to affect only such cases within its general language as are not within the provisions of the particular provision."

(14) The rule laid down by Ramilly, M. R., was quoted with approval by their Lordships of the Supreme Court in *J. K. Cotton Spinning and Weaving Mills Co., Ltd. v. State of Uttar Pradesh and others* (5), and on the basis thereof it was observed in relation to the interpretation of clauses 5(a) and 23 of a Government Order issued under the U.P. Industrial Disputes Act:

"Applying this rule of construction that in cases of conflict between a specific provision and a general provision the specific provision prevails over the general provision and the general provision applies only to such cases which are not covered by the special provision, we must hold that clause 5(a) has no application in a case where the specific provisions of clause 23 are applicable.

(15) These authorities have no room for doubt that a specific provision does not oust the applicability of a general provision to cases to which the specific provision is itself not attracted.

(16) Were it otherwise, section 3(9) would become redundant and this is a result which goes against the basic canon of interpretation of statutes that it must be presumed that every word used in a legislative enactment has been inserted with a purpose, that some meaning must be assigned to it and that the intention of having uselessly added surplus words or phrases should never be attributed to the legislature [vide *J. K. Cotton Spinning and Weaving Mills Company, Ltd. v. State of Uttar Pradesh and others* (5) (*supra*) and *Khan Chand v. State of Punjab and others* (6)].

(17) In view of the legal position thus emerging, it must be held that section 33 does not take away the general power of superintendence and control vested in the Board under section 3(9), although it deals with specific instances of the exercise of that power which

(5) A.I.R. 1961 S.C. 1170.

(6) I.L.R. (1966) II Pb. 447 (F.B.)

would be regulated by its provisions whenever a case falls within the four corners of any of those instances and that if the Board exercises its powers under section 3(9) in cases not covered by the said instances such exercise cannot be held to be illegal merely because of the presence in the statute of section 33.

(18) In arguing that section 33 was exhaustive of the cases in which action could be taken by the Board under section 3(9), Mr. Sachdeva submitted that section 33 was so comprehensive as to embrace all situations in which the Board could possibly be called upon to exercise its powers of superintendence and control and that, therefore in asking the Committee to reinstate respondent No. 4 the Board was bound to act under the relevant part of section 33. According to him the Board had the power to require the Committee to do a thing or desist from doing it, to annul any proceedings of a committee and to prohibit it from doing any act and also to suspend any resolution passed by the Committee and it was therefore, incumbent on the Board to proceed either under the provisions of sub-section (2) or sub-section (4) of section 33. A careful perusal of these provisions, however, leaves no room for doubt that the order of the Board requiring the Committee to reinstate respondent No. 4 is not covered by either of them. Sub-section (4) in terms applies only to cases in which the proceedings, resolution or act objected to by the Board is not in conformity with law or is likely to cause injury or annoyance to the public, etc. In the present case no such considerations were involved. On the other hand, the Board appears to have considered the continued suspension of respondent No. 4 to be improper in the circumstances of the case and calculated to cause unnecessary harassment to him—situation not envisaged by sub-section (4). Again under sub-section (2) the Board can require the Committee to do a thing or to desist from doing one only during the course of or in relation to the inspection of the accounts of the Committee or to an enquiry into its affairs. Clearly the action taken by the Board in the present case does not fall within the ambit of sub-section (2) and must, therefore, be held to be covered by the general provision contained in section 3(9). This aspect of the matter clearly leads to the conclusion that section 33 is *not* exhaustive of the instances in which the Board could exercise its powers of superintendence and control. The case, in fact, does not furnish the only instance in which the power conferred on the Board by section 3(9) may be exercised without reference to the provisions of section 33 which would not come

into play at all if the provisions of sub-sections (2) and (4) thereof do not apply to a particular case, so that all cases in which the Board exercises its powers otherwise than in any enquiry relating to accounts, etc., or for considerations not detailed in sub-section (4) (illegality, injury or annoyance to the public, etc.), will fall outside the purview of section 33.

(19) For all these reasons I must record my complete disagreement with proposition (C).

(20) On the basis of proposition (D) Mr. Sachdeva argued that the purpose of the Board could well have been achieved by suspension of the resolution passed by the Committee on the 7th of June, 1969 (Annexure 'I') by means of which the Committee continued the suspension of respondent No. 4 and that, therefore, the Board was bound to proceed, in order to achieve that object, under the provisions of sub-section (4) of section 33. This argument fails to take notice of the limited nature of the action taken by the Board. That action did not envisage reinstatement with retrospective effect or the avoidance of the suspension already suffered by respondent No. 4 which would have automatically resulted from the suspension of the resolution just above mentioned. All that the Board wanted was that respondent No. 4 be reinstated prospectively and that was a limited purpose which could not be fulfilled by resorting to the provisions of section 33. Proposition (D), therefore, is also unacceptable to me.

(21) It is not disputed that grounds (b), (c) and (d) are only supplementary to ground (a) and that they would have no value independently thereof. In view of my finding on ground (a), therefore, grounds (b), (c) and (d) need not be discussed at length. It is sufficient to say that the Board having been held to be legally within its rights in requiring the Committee to reinstate respondent No. 4, the seriousness of the charges levelled against him, the competency of the Committee to review any orders of respondent No. 3 and the alleged undemocratic nature of the action taken by the Board have no legal significance so that grounds (b), (c) and (d) are also found to be without any substance.

(22) The letter impugned in petition I was also made the subject-matter of attack by Mr. Sachdeva on two other grounds which, however, were not taken in the petition. He urged that no reinstatement could legally be ordered in any case of an official suspended

from service unless he had been fully and finally exonerated of the charges levelled against him. He also challenged the vires of section 3(9) for the reason that no guidelines had been provided in the statute for the exercise of the power conferred by it. Not having been taken in petition, neither of these grounds is liable to be considered, but I am also of the opinion that there is no force in either of them. In support of the first of these grounds Mr. Sachdeva relies on certain provisions of the Punjab Civil Service Rules according to which a Government servant is liable to be reinstated as soon as he earns exoneration of the charges leading to his suspension. I do not, however, see how those provisions render any assistance to him. It is practically axiomatic that if a person is declared free from any blame after an enquiry following his suspension, he automatically earns his reinstatement, but the converse proposition that a person facing charges, the proof of which would make him liable to disciplinary action, *must* remain suspended till the enquiry ends in his favour does not follow, nor has Mr. Sachdeva been able to quote any principles of law or rules of natural justice from which such a proposition would result. On the other hand, I do not see any legal impediment in the way of a superior authority directing the enquiry against a subordinate and at the same time allowing him to continue to perform his official duties or to revoke his previously ordered suspension during the pendency of the enquiry. In fact, it is not unusual for the former course to be adopted in cases involving not very serious charges and the latter course in those where tentative conclusions favourable to the concerned official are reached before the enquiry comes to an end.

(23) With regard to the vires of section 3(9), Mr. Sachdeva has placed reliance on *Shiromani Gurdwaras Parbandhak Committee, Amritsar and another v. Lachhman Singh Gill and others* (7), in which the power given to the State Government under clause (iv) of section 79 of the Punjab Sikh Gurdwaras Act to remove from office any member of the Judicial Committee who had held office for more than two years was struck down as violative of Article 14 of the Constitution for the reason that it was arbitrary and unguided and without any principle or policy being made available for its exercise. That case, however, appears to be of no assistance to Mr. Sachdeva. Section 3(9) is not concerned with the removal from service of a particular individual or even the supersession of the Committee,

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which matters are covered by other sections of the Act. The provisions of Article 14, therefore, which ensures equality before the law and the equal protection of the laws to all persons, have nothing to do with section 3(9).

(24) I shall now take up consideration of the grounds put forward in attacking the order impugned in petition II. According to ground (i) the Committee Chairman was being penalised not for any acts of his own but for those of the Committee which, however, is a position taken against facts. It is the case of the petitioners themselves that the Committee Chairman exercises control over the Committee's employees under Rule 10, a proposition fully borne out by the provisions of that Rule. There is no reason, therefore, why he could not be called upon by the Board to reinstate respondent No. 4 by exercising his power of control over the Committee's employees under the Rule. It is true that his powers of control must be deemed to be subject to those of the Committee under section 20 but that does not mean that the Committee Chairman cannot use his own powers under Rule 10 without previous reference to and specific orders from the Committee. In fact, both he and the Committee were bound by the orders of the Board requiring respondent No. 4's reinstatement and it was the clear duty of the Committee Chairman to effect such reinstatement as soon as he received orders from the Board in that behalf. If he had complied with those orders and the Committee had thereafter suspended respondent No. 4 over again no blame could attach to his (Committee Chairman's) conduct but then his refusal to obey the Board's orders immediately on their receipt and the adoption by him of the course of seeking the Committee's mandate in relation to those orders was clearly a move in defiance of authority. It cannot, under the circumstances, be said that the action of the State Government in removing him from the membership of the Committee was a punishment visited on him for the sins of others. Ground (i) has, therefore, no substance in it.

(25) Ground (ii) complains of the impugned notification not being a "speaking" order. It is admitted on all hands that in ordering the removal of the Committee Chairman from the membership of the Committee the State Government was performing *quasi-judicial* functions and that it was incumbent on it, in conformity with the principles enunciated in *Bhagat Raja v. Union of India and others* (8), to indicate the process of reasoning by which it had arrived at

(8) A.I.R. 1967 S.C. 1606.

conclusions making the Committee Chairman liable to penal action. The impugned notification reads thus:

"Whereas the Governor of Punjab after giving an opportunity to Shri Khushal Chand, Chairman, Market Committee, Jalalabad, district Ferozepore, for tendering an explanation, is satisfied that he has been found guilty of misconduct.

- (2) Now, therefore, in exercise of powers conferred by section 15 of the Punjab Agricultural Produce Market Act, 1961, the Governor of Punjab is pleased to remove the said Khushal Chand from the membership of the said Market Committee, Jalalabad, district Ferozepore, with immediate effect.

"PRITMOHINDER SINGH,
Secretary to Government, Punjab,
Agriculture Department."

(26) If the notification alone were to be looked at for the determination of the question involved in ground (ii), the contention of Mr. Sachdeva that it was not a "speaking" order would be unexceptionable. However, the notification is shown to have been based on an order dated the 10th of March, 1970, of the Minister for Agriculture, which is in the following terms:—

"I have read the whole file. According to it Shri Khushal Chand, Chairman Market Committee, Jalalabad, repeatedly disobeyed the directions of the Board in the matter of Shri Pyare Lal, Mandi Supervisor, and also misguided the Market Committee. This attitude on his part is misconduct and he is removed from the membership (of the Committee) forthwith. Orders to issue at once."

(27) According to Mr. Sachdeva even this order is not a "speaking" order but I cannot agree with him. The charge against the Committee Chairman was a very simple one, that is, that he repeatedly failed to implement the Board's orders to reinstate respondent No. 4 and that he was thus guilty of neglect of duty. That he had not complied with the orders of the Board requiring him to reinstate respondent No. 4 over and over again has never been in dispute and all that the Government was really to decide was whether the Committee Chairman was thereby guilty of neglect of duty. What more was the

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Minister's order expected to say than what it actually did, in the circumstances, is hard to understand, especially when it is borne in mind that executive orders, even when they must be speaking orders, are not expected to be as detailed as judgments of judicial authorities. In this connection *The State of Punjab v. Bhagat Ram Patanga* (9), is very much in point. In that case Shri Om Parkash Agnihotri a member of the Punjab Legislative Assembly, was removed from the membership of the Municipal Committee, Phagwara, in the following circumstances. He was alleged to have been guilty of having become unruly, and to have torn his clothes, beaten his chest and created a row in a meeting of the Municipal Committee held on the 20th of June, 1960, in the Phagwara Town Hall, to elect its President. Another member of the Municipal Committee named Shri Bhagat Ram Patanga was alleged to have managed to bring some outsiders into the town Hall, to have caused disturbance at the meeting, not to have maintained decorum and to have disobeyed the chair. The Deputy Commissioner and the Commissioner concerned recommended to the Government removal of Sarvshri Agnihotri and Patanga from membership of the Municipal Committee. A writ petition was filed in the High Court by Sarvshri Agnihotri and Patanga but was dismissed. The Home Minister asked for the judgment of the High Court and also wanted to know what would be the effect of an order accepting the recommendations of the Deputy Commissioner and the Commissioner on Mr. Agnihotri's status as a member of the Punjab Legislative Assembly. The judgment of the High Court was shown to him and the office put up to him a note saying that Mr. Agnihotri's status as a member of the Legislative Assembly would not be affected by the proposed action, a view which was confirmed by the Assistant Legal Remembrancer. Thereupon the office put up a note narrating in detail the incident of the 20th of June 1960 and stating that Sarvshri Agnihotri and Patanga had denied it. Reference was also made to the opinion of the Assistant Legal Remembrancer and the judgment of the High Court. The last paragraph of the note read.

"This case is, therefore, submitted to officers for obtaining orders of the Home Minister whether Sarvshri Om Parkash Agnihotri and Patanga * * * * may be removed from the membership of the Municipal Committee, Phagwara, * * * *"

On this note the Home Minister wrote:

“C. M. may like to see and guide. It affects an M.L.A.”

The Chief Minister then made the following note:—

“Action should be taken as recommended by the D. C. and the Commissioner, An M.L.A. who is a chosen representative of the people is expected to behave in a better way.”

(28) The Home Minister then approved the office suggestion that Sarvshri Agnihotri and Patanga be removed from the membership of the Municipal Committee.

(29) It was held by the Full Bench on these facts that both the Home Minister, who was the Minister-in-charge, and the Chief Minister, had applied their minds to the case and the contention that their orders were not “speaking” orders was repelled with the following observations:—

“The Home Minister first looked into the judgment of this Court, then sought the advice of the Legal Remembrancer, and thereafter the guidance of the Chief Minister. The Chief Minister could not have made the note that he actually made unless he had waded through the file and given careful attention to it. So the fact of the matter is that both the Ministers applied their minds to the case against the two respondents. The argument on the side of the respondents that the State Government did not apply its mind while making the orders against the respondents but merely proceeded on the recommendations of the Deputy Commissioner is thus not true in substance. The office-note of June 19, 1962, which was accepted in the end by the Home Minister, clearly shows that the version of the incident given by Sub-Divisional Officer (Civil) of Phagwara was accepted as true and not the denial entered by the respondents or a different version of the incident given by the respondents, in other words, their version was not believed. In these matters the executive files do not contain judgments in such cases in the manner in which the same are prepared and written in

Courts of law, but the executive file in the present cases leaves not the least doubt, as in the words of their Lordships in *Bhagat Raja's case* (8), (supra), that an outline of the process of reasoning by which the Home Minister reached his decisions with regard to the respondents is to be found in this executive file. Here is a case in which the incident is not denied by anybody, but two versions of it were before the Home Minister. One was the version as coming from a responsible officer, the Sub-Divisional Officer (Civil), Phagwara, who presided over the meeting of the Phagwara Municipal Committee of June 20, 1960, and the other was the version of the incident rendered by the respondents in their explanations to the show-cause notices served on them pursuant to the proviso to section 16(1) of the Act. It was only a question of believing or disbelieving one or the other version and no more. There appears the broad outline of the manner in which the State Government in the cases of the respondents reached its decisions. So here is a case in which in fact the reasoning on the part of the appellant, the State Government, in these cases appears in the executive file according to the dictum of their Lordships in *Bhagat Raja's case* (8), when the appellant took decisions with regard to the two respondents for their removal as also for imposing disqualification on them."

(30) The present case is even simpler on facts of which there are no two versions and the correctness of which is not disputed in any quarter and it is further obvious that the Agriculture Minister passed his order dated the 10th of March, 1970, after fully going through the file and applying his mind to the facts of the case. Had this not been so, it is difficult to see how he could have come to the conclusion that the Committee Chairman had been guilty of repeated disobedience of the Board's orders in the matter of reinstatement of respondent No. 4. His further conclusion that by reason of the said disobedience the attitude of the Committee Chairman amounted to misconduct follows as a matter of course and needs no intermediate process of reasoning inasmuch as disobedience of the orders of the superior authorities would be misconduct *per se*. In this view of the matter which mainly proceeds on the circumstance that the

factual part of the charges levelled against the Committee Chairman is admitted on all hands, the order of the Agriculture Minister is not open to the criticism that it is not a "speaking" order.

(31) Coming to ground (iii) I would at once say that it is founded on needless hair-splitting. It is true that section 15 of the Act provides for removal of a member of the Committee on the ground of "misconduct" or "neglect of duty" which means that misconduct may not be equated with neglect of duty within the meaning of these expressions as used in the section, but then neglect of duty may in certain cases amount to misconduct. Such cases would be those in which the neglect of duty is intentional and not based merely on negligence, and therein the words "misconduct" and "neglect of duty" may with reason be used inter-changeably. As it is, the Committee Chairman is not entitled to take advantage of a mere technicality in support of his prayer that the impugned notification be struck down unless he can show that the failure of the Government to meticulously adhere in the impugned notification to the phraseology employed in the show-cause notice has resulted in any prejudice to him. As it is, in the very nature of things, there is no question of the Committee Chairman having suffered any such prejudice in view of the clearly admitted fact that the repeated disobedience of the Board's orders on his part was intentional so that the distinction sought to be drawn between "misconduct" and "neglect of duty" is, so far as the present case is concerned, without a difference.

(32) Ground (iv) is also futile. It is difficult to see how *mala fides* on the part of the Government can be spelt out from the mere fact that the letter impugned in petition I and the show-cause notice received by the Committee Chairman were issued on the same date, that is, the 20th of January, 1970. By that date the Committee as well as its Chairman had taken the definite position that they were not prepared to implement the orders of the Board and had thus rendered themselves liable to disciplinary action. Both were, therefore, rightly proceeded against simultaneously and it cannot be said that because action was contemplated against the Committee by the Board on the 20th of January, 1970, the State Government had no material before it such as would justify removal of the Committee Chairman from the membership of the Committee.

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(33) Ground (v) must be negated in view of my findings on grounds (a), (b), (c) and (d) on which the letter impugned in petition I was attacked and I need not repeat my reasons here. I may add, however, that the question of the powers of the Board vis-a-vis the Committee does not directly arise in petition II which concerns really the exercise of the powers of the State Government under section 15 of the Act.

(34) At the hearing Mr. Sachdeva took an additional ground of attack against the notification impugned in petition II and that is that the Committee Chairman was not given any real opportunity to defend himself inasmuch as the entire material used against him was not supplied to him before his removal from the membership of the Committee was ordered. In this connection he has drawn my attention to the fact that three documents, namely, a letter dated the 16th of August, 1969, from the Board Secretary to the Under Secretary, Government Punjab (annexure R2/5 in petition II), a letter dated the 29th of September, 1969 (between the same parties and having the same general purport as annexure R2/5 but not produced on the record) and the comments of the Board Secretary called for by the Under-Secretary to Government Punjab, in his letter dated the 20th of January, 1970, (annexure 0/1 in petition II) were not furnished to the Committee Chairman at any stage, an assertion the correctness of which is admitted on behalf of the respondents, but which in my opinion is of no avail to the Committee Chairman for two reasons. Firstly, this is not one of the grounds of attack taken in the petition against the impugned notification. Secondly, the content of the documents in question is in no way different from the material which was clearly available to the Committee Chairman all through. That content consisted merely of the allegations that the Committee Chairman had repeatedly disobeyed the orders of the Board for the reinstatement of respondent No. 4 and that he had thereby made himself liable to action under section 15 of the Act. The non-supply of the said documents, therefore, cannot be said to have caused the least prejudice to the Committee Chairman in the matter of his defence and it must be held that he was not penalised for his misconduct before a full opportunity of defence was afforded to him.

(35) For the reasons stated, I dismiss both the petitions with costs as being without merit. Counsel's fee Rs. 200 in each case.

B.S.G.