

(1982) 09 DEL CK 0030

In the Delhi High Court

Case No : Civil Writ Petition No. 1410 of 1979

Amritsar Sugar Mills Co. Ltd. and another

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 03-09-1982

Acts Referred:

Constitution of India, 1950 — Article 226
Industries (Development and Regulation) Act, 1951 — Section 15, 16, 18A, 18A(2), 18AA

Citation : AIR 1983 Delhi 337

Hon'ble Judges : Prakash Narain, C.J;B.N. Kirpal, J

Bench : Division Bench

Advocate : A.B. Saharya with M/s. Anil Bhatnagar, D.N. Sawhney and Shyam Babu, for the Appellant; T.S. Krishnamurthy Iyer with C.L. Chaudhary, for the Respondent

Judgement

B.N. Kirpal, J.—The validity of the orders issued u/s 18-A (2) read with Section 18-AA (2) of the Industries (Development and Regulation) Act, 1951 (hereinafter referred to as "the said Act"), whereby the taking over of the management of Amritsar Oil Works, a unit of the petitioner-company, has been extended from time to time up to 12th Sept., 1982, has been challenged in this petition filed under Art. 226 of the Constitution of India.

2. The petitioner-company was incorporated in the year 1924. It set-up a plant for the manufacture of sugar by the Gur refining process at Amritsar. In 1933 the petitioner-company set-up a sugar factory at Rohana Kalan, Muzaffar Nagar to manufacture sugar by the vacuum pan process, and thereafter the sugar factory at Amritsar was closed down some time in the year 1938.

2A. The petitioner-company then set-up a factory for the manufacture of vanaspati at Amritsar in order to utilise the land and building of the original sugar factory which had been lying idle since 1938. Plant for the manufacture of vanaspati was installed in the year 1954-55. Originally the capacity of the plant

was 25 tonnes which was subsequently increased to 50 tonnes in 1958 and was further increased to 100 tonnes in 1971. The business of the manufacture of vanaspati was carried on in the name and style of Amritsar Oil Works (hereinafter referred to as the vanaspati unit).

3. According to the petitioners, the vanaspati unit made substantial profits up to the year 1970. The years 1970-74 were stated to be bad for the vanaspati industry. For the purposes of this petition it is not necessary, to enquire as to the reasons as to why the said years were regarded as bad for the said industry. It may, however, be noted that, according to the petitioners, most of the vanaspati units in the country suffered losses during this period. The Indo-Pakistan war in the year 1970-71 is stated to have added to the petitioners' troubles, because it resulted in dislocation of the transport system which, in turn, adversely affected the production programme of the vanaspati unit. The result of this was that, for the year ending 31st Oct., 1973, the petitioners' vanaspati unit suffered a loss of Rs. 38.81 lakhs and for the year ending 31st October, 1974 the loss was Rs. 20.40 lakhs. This led to the suspension of the manufacturing operations of the vanaspati unit.

4. On 12th March, 1974 the Government of Punjab issued a notification under the Defence of India Rules for taking over the management of the vanaspati unit. This notification was, however, withdrawn by the State Government and the management was handed back to the petitioners sometime in the last week of May, 1974.

5. The petitioner-company was also not very successful in satisfactorily running the sugar unit at Muzaffar Nagar. By order dated 10th Jan., 1974 the State of Uttar Pradesh took over the said unit. The management was entrusted to U. P. Sugar Corporation Ltd., a Government Company. This order of taking over was extended, from time to time, up to 22nd July, 1977. It appears that during this period further losses were incurred, with the result that as on 31st Aug., 1977 an amount of Rupees 33,31,769.65 became due on account of arrears of cane prices, commission and interest. In order to recover the said amount, the Cane Commissioner sent a recovery certificate to the Collector, Muzaffar Nagar for the recovery of the said amount as arrears of land revenue under the provisions of Ss. 279 (1) (g) and 286 (A) of the U. P. Zamindari Abolition and Land Reforms Act, 1961. By order dated 22nd Sept., 1977 the Collector, Muzaffar Nagar appointed one Shri S. S. Negi, Assistant Sugar Commissioner as Receiver of the sugar unit for a period of one year. It is an admitted case that the said order of appointment of receiver has been extended from time to time and receiver is still in the control of the said sugar unit. According to the petitioners, further losses have been suffered by the sugar unit during this period.

6. To continue the narration of facts with regard to the vanaspati unit, with which we are concerned in this petition, it appears that after the State Government had handed back the vanaspati unit to the petitioner-company in May, 1974 the unit was not re-started. According to the petitioner-company it was unable to

recommence the manufacturing operations at the vanaspati unit because of the unstable conditions in the vanaspati unit which further deteriorated by labour problem, shortage of material, price structure etc.

7. The vanaspati unit having remained closed for a period of more than three months, the Government of India issued a notification dated 13th Sept., 1974, in exercise of its powers conferred by S. 18AA (1) of the said Act. For the reasons stated in the said notification the management of the vanaspati unit was taken over for a period of five years with effect from 13th Sept., 1974. The two reasons for taking over of the unit, as set out in the said notification were as follows:

(i) that Amritsar Oil Works, Amritsar, a factory of the Industrial undertaking known as Amritsar Sugar Mills Company Limited, Amritsar, which had been engaged in the manufacture of vanaspati has been closed for a period of not less than three months, and(ii) that such closure is prejudicial to a scheduled industry, namely the vanaspati industry, and that the financial condition of the company owning the said industrial undertaking and the condition of the plant and machinery of the said factory are such that it is possible to restart the factory and such restarting is necessary in the interest of the general public.

8. After the taking over of the vanaspati unit, it appears that the said unit turned the corner. The manufacturing activity at the vanaspati unit was restarted, and after wiping off the losses, suffered during the period 1970-74. the said unit was able to make substantial profit by the year 1977. Whereas up to 31st Oct., 1976 the cumulative losses for the year 1975-76 were Rs. 97.60 lakhs, in the year 1976-77 and unit made a profit of Rs. 121 lakhs, resulting in cumulative profit of Rs. 23.40 lakhs. In the subsequent year the unit made a profit of Rs. 120 lakhs. It seems that the vanaspati unit has been making handsome profits in the subsequent years also. On 1st June, 1978 the petitioner sent a memorandum to the then Union Minister of Commerce, Civil Supplies and Co-operation, Government of India. After giving detailed facts and circumstances which are alleged to have led to the closure of the vanaspati unit, it requested for an opportunity of discussing the possibility of the return of the same to it. By that time, it seems, the vanaspati unit had made sufficient profits not only to wipe off its previous losses but also to more than offset any legitimate claims which might be there against the sugar unit. No reply having been received to the said letter, the petitioners wrote again on 20th and 23rd June, 1978 to the Secretary and the Minister of Commerce respectively. Their attention was drawn to the petitioners' letter dated 1st June, 1978 and it was requested that necessary action be taken for the return of the vanaspati unit to the petitioners. Another letter dated 12th June, 1978 was also written to the Union Minister for Industry to the same effect, namely asking for the return of the vanaspati unit.

9. A reply dated 1st Aug., 1978 to the petitioners' letter dated 12th June, 1978 was received by the Company from the Ministry of Industry. It was, inter alia, stated in the said letter that "according to the present policy on sick industries, an undertaking the management of which has been taken over under the

Industries (Development and Regulation) Act cannot be returned to its owners". The petitioners immediately lodged a protest to the Central Government vide their letter dated 29th Aug., 1978 addressed to the Cabinet Secretary, Government of India. It was, inter alia, pointed out that it had not been stated in the Act that the management of the industries, which have been taken over, could not be returned to its owners. It appears that the Directors of the company met the Government officials and personally requested that the management of the company should be returned. This was followed by letter dated 26th May, 1979 written by the company to the Secretary, Ministry of Commerce. It was, inter alia, stated that the period of five years as prescribed in the order dated 13th Sept., 1974 would come to an end on 13th Sept., 1979 and it was requested that the unit be returned before that date. A similar request was repeated in the petitioners' letter dated 27th Aug., 1979 written again to the Secretary, Ministry of Commerce, in which reference was also made to an interview which had been granted to a Director of the Company on 24th Aug., 1979.

10. On 11th Sept., 1979, in exercise of its powers conferred by sub-sec. (2) of S. 18AA of the said Act, the Central Government ordered that the management of the company would continue with it for a further period of two years. This order was purported to have been passed on the ground that it was "expedient in the public interest" to do so.

11. The petitioners thereupon filed the present writ petition challenging the said order dated 11th Sept., 1979 and the earlier decision contained in the letter dated 1st Aug., 1978. The writ petition having been admitted, the respondents filed their return. By order dated 14th Jan., 1980 this Court observed that the petitioners may make a representation to the Government about their proposal that the management may be restored to the petitioners with Government Directors being appointed so as to ensure better control of the affairs of the company and to safeguard the public interest. By letter dated 2nd Feb., 1980 a detailed representation was made to the Central Government. It was submitted that the management of the unit should be restored to the company. In order to safeguard the interest of the Government, and also to enable it to supervise the management, the company proposed that they were prepared to have on its board two directors nominated by the Government. No reply having been received to this representation, reminders dated 11th April, 1980, 22nd May, 1980 and 18th July 1980 were sent. Despite these reminders the representation of the petitioners remained unanswered.

12. This petition came up for hearing, and was argued on 28th and 29th Oct., 1980. By order dated 29th Oct., 1980 the respondents were permitted to file an additional affidavit. By the same order, the petitioners were allowed inspection of the relevant records of the respondents, subject to the respondents claiming privilege. An affidavit claiming such privilege was filed on 8-12-1980. By order dated 13th Feb., 1981 the claim of privilege was disallowed and the respondents

were directed to give inspection to the petitioners, who were also permitted to file an additional affidavit after carrying out the said inspection. Thereupon the petitioners inspected the record and filed a rejoinder-affidavit, in reply to the additional counter-affidavit which had been filed. In the said rejoinder-affidavit the petitioners briefly referred to the facts as revealed from the Government's records.

13. Before the writ petition could be heard, the respondents, once again, by order dated 11th Sept., 1981 issued under S. 18AA (2), extended the period of take over by six months i. e. up to 12th March, 1982. In the notification it was stated that the order was being passed as "the Central Government is of opinion that it is expedient in the public interest" to do so. The passing of the aforesaid order necessitated the petition being allowed to be amended, In order to challenge the said order.

Though the pleadings were completed, the petition could not be taken up for hearing prior to 12th March, 1982. On 11th March, 1982 another similar order of extension was issued. As a result of this order, the period of take over of the management has been extended up to 12th Sept., 1982. Once again an application for amendment was allowed, and the writ petition has been suitably amended, and the fresh order of extension has also been challenged.

14. The foremost contention urged on behalf of the petitioner before us was that the impugned orders of extension dated 1st Aug., 1978, 11th Sept, 1979, 11th Sept. 1981 and 11th March, 1982 are void as they have been passed without complying with the principles of natural justice. The submission was that prior to the passing of the aforesaid orders the petitioners were not afforded an opportunity of being heard and nor were the representations, which had been made by the petitioners, appear to have been considered. While relying upon the case of *Swadeshi Cotton Mills Vs. Union of India (UOI)*, , it was contended by Shri Saharya that the compliance of the principle of *audi alteram partem* was implicit in S. 18AA (2) read with S. 18-A (2), and at the said principle had not been followed the principles of natural justice had been violated and the orders of extension which had been issued were void.

15. On behalf of the respondents, however, it was submitted that it was not necessary to observe the principles of natural justice before passing an order under the proviso to sub-sec. (2) of S. 18A read with S. 18AA. It was contended that the petitioners had an effective remedy of filing an application u/s 18F and under the said section they could challenge the original order as well as the subsequent orders of extension. In other words, S. 18F, it was alleged excluded the application of the principles of natural justice, it was also submitted, that even if it be assumed that principles of natural justice were attracted and that the said principles have been violated, the result of that would be that the impugned orders would be voidable and not void. It was also contended that before the order dated 11th Sept., 1979 was passed the petitioners had written letters in June, 1978 to the Cabinet Secretary and a Director of the petitioners

had a meeting with him with the result that the principles of natural justice had been satisfied. It was lastly urged that the Government was always prepared and willing to give a complete hearing to the petitioners to examine the question whether it was expedient in the public interest to continue with the order of take over which had been passed in 1974.

16. In order to appreciate the rival contentions, it is necessary to refer to the relevant provisions of the Act. Power to assume management or control of an industrial undertaking in certain cases has been conferred on the Central Government by S. 18A. The power under sub-section (i) of S. 18A is to be exercised only in cases where direction had been given to the industrial undertaking under S. 16, which it had failed to comply, or in cases of industrial undertakings in respect of which an investigation under S. 15 had been made. Sub-s. (2) of S. 18A, however, is relevant to the present case. The said provision reads as follows:

18-A (2). Any notified order under sub-sec. (1) shall have effect for such period not exceeding five years as may be specified in the order:

Provided that if the Central Government is of opinion that it is expedient in the public interest that any such notified order should continue to have effect after the expiry of the period of five years aforesaid, it may from time to time issue direction for such continuance for such period, not exceeding two years at a time, as may be specified in the direction, so however that the total period of such continuance (after the expiry of the said period of five years) does not exceed twelve years; and where any such direction is issued, a copy thereof shall be laid, as soon as may be, before both Houses of Parliament.

In the instant case the power of taking over the management has been exercised under S. 18AA. Sub-sections (1) and (2) of" the said section read as under:

18-AA Power to take over industrial undertakings without investigation under certain circumstances.- (1) Without prejudice to any other provision of this Act, if, from the documentary or other evidence - in its possession, the Central Government is satisfied, in relation to an industrial undertaking, that -

(a) the persons in charge of such industrial undertaking have, by reckless investments or creation of incumbrances on the assets of the industrial undertaking, or by diversion of funds, brought about a situation which is likely to affect the production of articles manufactured or produced in the industrial undertaking, and that immediate action is necessary to prevent such a situation; or

(b) it has been closed for a period of not less than three months (whether by reason of the voluntary winding up of the company owning the industrial undertaking or for any other reason) and such closure is prejudicial to the concerned scheduled industry and that the financial condition of the company owning the industrial undertaking and the condition of the plant and machinery

of such undertaking are such that it is possible to re-start the undertaking and such re-starting is necessary in the interests of the general public, it may, by a notified order, authorise any person or body of persons (hereinafter referred to as the "authorised person") to take over the management of the whole or any part of the industrial undertaking or to exercise in respect of the whole or any part of the undertaking such functions of control as may be specified in the order.

(2) The provisions of sub-sec. (2) of S. 18-A shall, as far as may be, apply to a notified order made under sub-sec. (1) as they apply to a notified order made under sub-sec. (1) of S. 18-A.

Section 18-FD (3), inter alia, provides that the powers exercisable by the Central Government u/s 18-F shall also be exercisable in respect of an undertaking taken over under S. 18-AA. S. 18-F, which has thus been made applicable to companies taken over under S. 18-AA, is as follows.

18-F. Power of Central Government to cancel notified order under S. 18-A.-If at any time it appears to the Central Government on the application of the owner of the industrial undertaking or otherwise that the purpose of the order made under S. 18-A has been fulfilled or that for any other reason it is not necessary that the order should remain in force, the Central Government may, by notified order, cancel such order and on the cancellation of any such order the management or the control, as the case may be, of the industrial undertaking shall vest in the owner of the undertaking.

17. The power can be exercised u/s 18-AA for taking over the management of a company if the conditions set out in sub-sec. (1) (a) or (1) (b) exist. Under sub-sec. (1) (a), Central Government can take over management if due to certain actions on the part of the management a situation has arisen which is likely to affect the production of articles manufactured or produced in the industrial undertaking, and it becomes necessary that immediate action be taken to prevent such a situation. In the present case the order in 1974 was not passed under sub-sec. (1) (a). As already noted, order dated 13th Sept., 1974 was passed under S. 18-AA (1) (b) on the ground that the vanaspati unit had been closed for a period of not less than three months and such closure was prejudicial to vanaspati industry. It was, however, stated in the said order that financial condition of the petitioner-company, and the condition of the plant and machinery of the factory, was such that it was possible to re-start the factory and that such re-starting was necessary in the interest of general public.

18. There is no dispute in the present case that the vanaspati unit of the company had been lying closed for more than three months prior to the issuance of the notification dated 13th Sept., 1974. Such closure gave a right to the Government to take over the management under S. 18-AA (1) (b), and this fact was not disputed. The petitioners therefore did not, and indeed could not, challenge, on merits, the order dated 13th Sept., 1974.

19. After the management of the vanaspati unit was taken over, the factory was

re-started. The factory not only went on increasing its production but it also started making profits. The reason which existed for the passing of the order dated 13th Sept., 1974, namely the closure of the vanaspati unit, disappeared. In other words, the purpose for which the order u/s. 18-AA had been made, appears to have been fulfilled. If no order of extension of the taking over of the management had been passed then the vanaspati unit should Have reverted to the company after the expiry of the initial period of five years with effect from 13th Sept., 1974.

20. The aforesaid right of the petitioners, to get back the management of the vanaspati unit of the expiry of five years, was interfered with by the passing of an order of extension. The reasons for extending the period of taking over of the management, as stated in the impugned orders, was that it was expedient in the public interest to do so. The result of the passing of this order was that the company was kept out of the management for a further period of two years with effect from 13th Sept., 1979, which period has been extended from time to time up to 12th Sept., 1982. The company's right to get back the management has been affected adversely. It is not in dispute that, prior to the passing of the orders extending the period of taking over of the management the principle of audi alteram partem was not followed. According to the respondents, it was not necessary to give the petitioners an opportunity of being heard before an order of extension is passed.

21. In our opinion the principle of audi alteram partem was clearly applicable to the facts of the present case and, as the petitioners had not been given an opportunity of being heard, the impugned orders have been passed contrary to law. It is now well settled that the principles of natural justice have to be complied with if the action taken results in adversely affecting a civil right The rule of audi alteram partem is one of the facets of the principles of natural justice. This rule requires that a person who may be adversely affected by a decision, should be given a reasonable opportunity of being heard. This opportunity which is to be granted is not meant to be an empty formality or a mere ritual. Such an opportunity has to be effective. The person must be told as to the case which he has to meet. It is not necessary that in every case, even where the rule of audi alteram partem applies, a personal hearing has to be afforded but the least which has to be done is to give an opportunity to a person to represent his case in writing or otherwise. (The fact that this doctrine applies in cases where civil consequences ensue is now established by a series of decisions of the Supreme Court, and it is not necessary to refer to all of them, except to mention that in the case of *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, and in the case of *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, the said principles have been reiterated and elaborated.

22. The reading of the cases of *Maneka Gandhi* and *Mohinder Singh Gill* also shows that the Supreme Court has reiterated that the rule of audi alteram

partem is applicable even when a statute does not contain an express provision of giving an opportunity of being heard. Where any decision or any action under a statute, results in civil rights being affected then implicit in the statute is the requirement of following the principles of natural justice and of giving the affected party an opportunity of being heard. What is a "civil consequence", the possible infraction of which requires the principles of natural justice to be followed, has been considered by the Supreme Court in Mohinder Singh Gill's case. At page 440 (of SCC): (at p. 876 of AIR) of the report it was observed as follows:

"Civil consequences" undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence.

Passing reference may also be made to the fact that, in both these cases, it has been reiterated that the principles of natural justice not only apply to judicial or quasi-judicial actions or decisions but the said principles would also be applicable to administrative decisions which adversely affect civil rights of people. Action taken under S. 18-AA adversely affects the right of the company and of the persons incharge of the management. It is for this reason, that applying the principles already laid down by the Supreme Court in various decisions, and elaborated in Maneka Gandhi's and Mohinder Singh Gill's cases the Supreme Court in the case of Swadeshi Cotton Mills (supra) came to the conclusion that the rule of audi alteram partem was applicable before a decision to take over the management of an industrial unit was taken under S. 18-AA.

23. Applying the same principles as laid down in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, and Mohinder Singh Gill's (AIR 1978 SC 851) cases, it appears to us that the principles of natural justice would apply with even greater force to the decision which is taken under S. 18-AA (2) read with S. 18-A (2), to continue with the taking over of the management of the company. Ordinarily, if the period envisaged in the order passed under S. 18 A A (I) comes to an end, and no steps are taken to wind up and reconstruct the company, then the industrial unit has to be returned to the owners thereof. This right of the owners, to get back the unit, is taken away by an order being passed under sub-section (2) of S. 18-A. The passing of this order clearly affects the civil rights of the owners, like the petitioners. Moreover such an order can be passed only if the Central Government is of the opinion that it is expedient in the public interest to do so. This opinion of the Central Government has necessarily to be formed on the basis of some material on record. It is imperative that the said material, on the basis of which such an opinion is sought to be formed, is communicated to the owner and a reasonable opportunity is afforded to at least make a representation against the same, which should be considered before any final decision is taken by the Central Government. Depriving an owner of the right to manage his undertaking is a serious invasion on his civil right. An order passed

under sub-sec. (2) of S 18-A, therefore, clearly results in civil consequences. If the order is passed without applying the rule of audi alteram partem then, in our opinion, the order would be bad as principles of natural justice, which are inherent and enshrined in sub-sec. (2) of S. 18-A, would have been violated.

24. There is no merit in the contention of the respondents that, by necessary implication, the application of the principles of natural justice have been excluded from S. 18-A (2). It is well settled that the said principles will always apply whenever any decision is taken which adversely affects civil rights. It cannot be disputed that a decision taken under sub-sec. (2) of S. 18-A would cause such a result. Principles of natural justice can be excluded from applying only if a statute expressly excludes it or, by necessary implication, the said rule has to be excluded. In *Swadeshi Cotton Mills Vs. Union of India (UOI)*, it was sought to be contended on behalf of the Government that the principles of natural justice had to be excluded because of the use of the phrase "that immediate action is necessary" which occurred in S. 18-AA (1) (a). The Supreme Court did not accept this argument, and came to the conclusion that even when an order had to be passed under S. 18-AA (1) (a) then, notwithstanding the use of the phrase "immediate action is necessary" the principles of natural justice had to be applied. The rule of audi alteram partem was held not to have been excluded by any implication. In the present case even the phrase "immediate action is necessary" does not occur in sub-sec. (2) of S. 18-A. It is known in advance as to when such an order under sub-sec. (2) of S. 18-A has to be passed. We take it that the Government would also have material on the basis of which it can possibly form an opinion that such an order would be in public interest. If that be so, there is no reason as to why the principles of natural justice should be excluded from applying. No hurry or emergency exists when such an order under S. 18-A (2) has to be passed which may have existed if an order had to be passed under S. 18-AA (1) (a) of the Act. The Central Government had ample of time and opportunity of giving the affected party like the petitioners, a reasonable opportunity of representing its case and showing cause as to why such an order should not be passed.

25. It was then submitted on behalf of the respondents that the petitioners had an effective remedy under S. 18-F of the Act and, even if it be assumed that the principles of natural justice have been violated, the defect could be cured by giving a post-decisional hearing. We are unable to agree with this submission. S. 18-F pre-supposes the existence of a valid order having been passed and, during the pendency of that order, circumstances changing which would enable an owner to apply for the cancellation of the order. Under S. 18-F the Central Government has no power to cancel an order under S. 18-A (2) with retrospective effect. The cancellation can only be prospective, and the order can be cancelled by holding that the purpose for which it was passed had been fulfilled or that for any other reason it was not necessary that the order should remain in force. This post-decisional hearing, which may be available to the petitioners, cannot be a substitute for the hearing which is required to have been

given prior to the passing of the order under S. 18-A (2). In *Swadeshi Cotton Mills*" case it was held by the Supreme Court with reference to S. 18-F, that "the so-called right of a post-decisional hearing available to the aggrieved owner of the undertaking under S. 18-F is illusory as in its operation and effect the power of review, if any, conferred there under, is prospective, and not retroactive, being strictly restricted to and dependent upon the post-takeover circumstances." This is a complete answer to the respondents' contention.

26. It was then submitted by Shri Krishnamurthy that reference ought not to be made to the Supreme Court decision in *Swadeshi Cotton Mills Vs. Union of India (UOI)*, in view of the fact that the correctness of the said decision has been doubted in the case of *Tea Trading Corporation of India Ltd. Ors. Vs. Pashok Tea Co. Ltd. and Others*, . There is no merit in this contention. In arriving at the conclusion that the principles of natural justice are applicable to an order which is passed u/s 18-A (2) we have mainly relied upon the principles enunciated by the Supreme Court in various decisions which have been elaborately discussed in *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another*, and *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, . Reference has been made to *Swadeshi Cotton Mills*" case mainly to notice that even in a case under S. 18-AA (1) (a) the Supreme Court has held that the rule of *audi alteram partem* was applicable. Strictly speaking, *Swadeshi Cotton Mills*" case is not an authority for the question as to whether the said principle applies to an order which is passed under S. 18-A (2). In any case, till the decision of *Swadeshi Cotton Mills*" case is overruled the same is binding on us and it is not open to the respondents to contend that we should not follow it.

27. It was faintly suggested by the learned counsel for the respondents, that a Director of the petitioner-company had been afforded a hearing. This contention is not borne out from the record of the case. A Director of the company did happen to meet the Cabinet Secretary, but that was with a view to impress upon him the need to return the management of the unit to the company. No hearing, as postulated by the rule of *audi alteram partem*, was ever given. At no stage were the petitioners ever informed about the reasons on the basis of which the Government had thought fit or were contemplating to pass an order under S. 18-A (2). In the return to the writ petition also there is no categorical averment that any such hearing was given to the petitioners. In fact the contention of the respondents in the return was that it was not necessary for an opportunity of hearing to be given to the petitioners.

28. It was lastly contended by the respondents that if it is held that principles of natural justice have been violated then in that case, the impugned orders of extension can only be regarded as voidable .This submission is without any merit. As far back as in the case of *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, the Supreme Court had an occasion to consider an order which had been passed in violation of the principles of natural justice. After observing that an order to the prejudice of a person in derogation of his vested rights, could be

passed only in accordance with the rules of justice and fair-play, it was observed as follows (para 9):

If the essentials of justice be ignored and an order to the prejudice of a person is made the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.

This position of law still holds good. The orders being invalid, the necessary result of that would be that they have to be struck down. Another decision to which reference may usefully be made is the case of S.L. Kapoor Vs. Jagmohan and Others, . In. this case the New Delhi Municipal Committee had been ordered to be superseded by the Lt. Governor. The challenge to the same having failed before the High Court, an appeal was filed to the Supreme Court. The Supreme Court held that the principle of audi alteram partem had not been observed with the result that the impugned order of supersession stood vitiated. As the normal term of the Committee was due to expire only a few days after the delivery of the judgment, the Supreme Court did not quash the said order but made the following observations (para 26):

If now the order is quashed and the Committee is directed to be re-instated with liberty to the Lt. Governor to proceed according to law - this should be our order ordinarily - it may lead to confusion and even chaos in the affairs of the Municipality.

(Emphasis added).

The aforesaid observations leave no manner of doubt that any order which has been passed in violation of the "principles of natural justice has ordinarily to be quashed. We see no reason why we should refrain from doing so in the present case. The petitioners have been representing to the respondents against that continuance of the take over for a long time. The respondents do not appear to have considered those representations on merits while passing the impugned orders u/s 18-A (2). The respondents had ample opportunity of complying with the rule of audi alteram partem, but they refused to do so. Under these circumstances, and in view of the fact that the impugned orders passed in violation of the principles of natural justice are void and a nullity, the only proper course which can be adopted in the present case is to quash the impugned orders.

29. As the impugned orders are liable to be quashed on the ground that they have been passed in violation of the principles of natural justice it is not necessary to consider and decide the other contentions raised in the writ petition.

30. For the aforesaid reasons, the writ petition is allowed. A writ of certiorari is issued quashing the orders of extension dated 1st Aug., 1978, 11th Sept., 1979, 11th Sept., 1981 and 11th March, 1982 and, by a writ of mandamus the respondents are further directed to hand back the management of the vanaspati

unit to the petitioner-company by 15th Oct., 1982. Petitioners shall also be entitled to costs. Counsel's fees Rs. 550/-.