

**(1981) 04 RAJ CK 0018**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 1374 of 1980**

Bajrang Lal

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

**Date of Decision :** 15-04-1981

**Acts Referred:**

Constitution of India, 1950 — Article 14, 226  
Evidence Act, 1872 — Section 106  
Rajasthan Panchayat Act, 1953 — Section 17, 17(4), 17(4A)  
Rajasthan Panchayat and Nyaya Panchayat (General) Rules, 1961 — Rule 20, 21

**Citation :** AIR 1981 Raj 298 : (1981) RLW 355 : (1981) WLN 32

**Hon'ble Judges :** Mahendra Bhushan, J; M.L. Shrimal, J

**Bench :** Division Bench

**Advocate :** U.N. Bhandari and M.C. Surana, for the Appellant; S.K. Tiwari, General, for the Respondent

**Final Decision :** Allowed

## Judgement

Shrimal, J.—Shri Bajranglal was elected as Sarpanch of Gram Panchayat, Begas, which falls within the jurisdiction of Police Station Jhotwara, District Jaipur. On a complaint filed against the Sarpanch by Ram Prakash and others regarding misconduct and neglect of duties committed by him, an enquiry was initiated. A report along with a forwarding letter, dated March 14, 1980, was sent to the Government. After considering the report, a statement of charges (Annexure 3) was served on the petitioner. A notice dated May 19, 1980 (Annexure 2), calling upon the Sarpanch to show cause in writing why the charges should not be inquired into, was issued and May 28, 1980, was fixed for the purpose. After having received the reply (Annexure 4) and considering the same on merits, the Government decided to have the enquiry into the charges, mentioned in Annexure 3, conducted. The Sub-Divisional Officer, Jaipur, was appointed as Enquiry Officer; vide order, dated June 9, 1980 (Annexure 5). The Sarpanch was placed under suspension u/s 17 (4A) of the Rajasthan Panchayat Act, 1953 (to be hereinafter referred to as "the Act") and was debarred from taking part in any

act or proceedings of the Panchayat so long as he remained under suspension, The suspension order was also published in Navjyoti Daily, dated July 31, 1980.

2. The petitioner, feeling aggrieved against the order of suspension filed the present writ petition before a Single Bench of this Court, claiming the following reliefs:--

(a) the notice dated May 7, 1980 (Annexure 1), notice dated May 19, 1980, along with charge-sheet (Annexures 2 & 3) and notice dated June 9, 1980 (Annexure 5), being without jurisdiction be declared illegal and the same may be quashed and set aside;

(b) the suspension order, issued by the State Government against the petitioner under Sub-section (4A) of Section 17 of the Act, be declared illegal and being without jurisdiction be ordered to be quashed and set aside;

(c) a direction may be issued to the State Government and the Enquiry Officer not to proceed with the proposed enquiry against the petitioner;

(d) the respondents be restrained from proceeding with the enquiry, which is in contravention of the procedure laid down in Rule 20 of the Rajasthan Panchayat and Nyaya Panchayat (General) Rules, 1961.

3. The writ petition is based on the grounds that there is no evidence to establish prima facie the charge of making over-writing in the muster-rolls or making ante-dated entries or misappropriating the amount received in the cattle-pound or misusing the money of the Panchayat. The muster-rolls were kept by other persons and not by the Sarpanch. Similarly, the amount of the cattle-pound, for keeping the animals, was received by the concerned peon and it was his function to deposit the same with the proper authority. Besides, all the expenses incurred by the petitioner had been duly approved by the Panchayat through its resolutions. No preliminary enquiry as required by Rule 20 of the Rajasthan Panchayat and Nyaya Panchayat (General) Rules, 1961 (to be hereinafter referred to as "the Rules of 1961") had been made. The Deputy Development Commissioner (Enquiries) and Vikas Adhikari, Panchayat Samiti, had had no authority to make enquiry under Rule 20 of the Rules of 1961 and the enquiry so made is ex facie bad and is without jurisdiction. No report of any preliminary enquiry had ever been submitted to the Collector, Jaipur, for his decision under Sub-rule (4) of Rule 20 and the Collector had not submitted any report along with his recommendation to the Government or to any officer or authority invested with the powers to deal under Sub-section (4) of Section 17 of the Act. In the absence of a proper enquiry, no charge-sheet could have been served and no suspension order could have been passed. The order of suspension is bad on account of the mala fides of respondents Nos. 6 and 7. It was further pleaded that Section 17 (4A) of the Act was ultra vires and unconstitutional, inasmuch as it gives an unbridled and unguided power to the State Government to place any Panch or Sarpanch or Up-Sarpanch under suspension. It is also contrary to the directive principles of the State policy enshrined in Article 40 of the Constitution

of India. Lastly, it was urged that the order of suspension was also bad on the ground that it violated the rule of audi alteram partem (to hear the other side).

4. The State Government in response to the show cause notice, issued by a Single Bench of this Court, on September 11, 1980, appeared and opposed the admission of the writ petition. The learned single Judge, after hearing the parties at considerable length, dismissed the writ petition against respondents Nos. 6 and 7 Shri Hanuman Prasad Prabhakar, Minister for Panchayat and Smt. Shakuntala Srivastava respectively. He, however, admitted the writ petition against the rest of the respondents. On December 18, 1980, the learned single Judge observed that the question "whether before a suspension of a Panch or Sarpanch, a right of hearing could be claimed u/s 17 (4A) of the Act" was a question of public importance. It would not only cover the cases of Panch or Sarpanch u/s 17 (4A) of the Act, but would also have far reaching repercussions, affecting the rights of the elected members even of Municipalities under the Rajasthan Municipalities Act and other elected bodies, like Panchayat Samities and Zila Parishads and as such an authoritative decision would be in the interest of all concerned. With a view to avoid multiplicity of proceedings the learned Judge referred this case to a Division Bench of this Court. Thereafter the case was placed before Hon"ble the Chief Justice and he has sent this case for decision to this Court. That is how this matter has come up before this Court.

5. A return controverting the allegations made in the writ petition had been filed by the State Government, and others on September 29, 1980, before the learned single Judge and a rejoinder had also been filed by the petitioner, on October 8, 1980.

6. After the receipt of the record by this Court the petitioner Bajrang Lal filed an affidavit on February 24, 1981, along with the order of suspension. The State Government, with an application dated March 3, 1981, filed documents, viz., the photostat copies of the complaints made by the public, the order of the Collector, dated August 27, 1979 and letter No. 9259, dated March 14, 1980, purported to have been addressed by the Collector to the Superintendent of Police, Jaipur. The petitioner filed an application, dated March 11, 1981, by way of reply to the application submitted by the learned Advocate General on March 3, 1981. As certain facts mentioned in the application, dated March 3, 1981, filed by the State Government were challenged by the petitioner, an affidavit of Shri G.K. Goswami was filed by the State Government on March 13, 1981. Thereafter the petitioner submitted an affidavit along with a petition, mentioning therein that Shri G.K. Goswami, Additional District Development Officer, Jaipur, himself had not conducted the preliminary enquiry. He on the other hand directed Shri Ram Kalyan, Panchayat Extension Officer, to hold an enquiry against the petitioner: vide his letter, dated August 29, 1979, and in pursuance thereof statements were recorded by Shri Ram Kalyan.

7. From the petition, return, rejoinders and counter petitions and reply to those petitions, the following points emerge for our decision:--

(a) Whether Section 17 (4A) of the Act is ultra vires of the provisions of the Act as well as the Constitution of India, as it provides unbridled and un-guided powers to the State of Rajasthan to place any Panch or Sarpanch under suspension?

(b) Whether the rule of audi alteram partem is applicable to the order of suspension passed by respondent No. 1 against the petitioner and due to its violation and order is bad in law?

(c) Whether the proceedings regarding enquiry u/s 17 of the Act against the petitioner were not initiated and conducted in accordance with the provisions of Rules 20 and 21 of the Rules of 1961? If so, what is its effect?

8. In order to appreciate the points involved in this writ petition it will be profitable to extract below Section 17 (4) and (4A) of the Act and Rules 20 and 21 of the Rules of 1961:--

"17. Vacation of seats by and removal of Panchas:-- (1) to (3)..... (4) The State Government may, by order in writing and after giving him an opportunity of being heard, and making such inquiry as may be deemed necessary, remove any Panch, Sarpanch or Upsarpanch who:--

(a) refuses to act or becomes incapable of acting as such, or

(b) in the opinion of the State Government, has been guilty of misconduct or neglect in the discharge of his duties or of any disgraceful conduct:

Provided that any such inquiry as is referred to in this sub-section may be initiated even after the expiry of the term of a Panchayat or, if already initiated before such expiry, may be continued thereafter and in any such case, charges levelled against a Panch, Sarpanch or Up-sarpanch of the Panchayat during its term of office.

(4A) The State Government may suspend any Panch, Sarpanch or Up-sarpanch against whom an enquiry has been started under Sub-section (4) or the proviso thereto, or against whom any criminal proceeding in regard to an offence involving moral turpitude is pending trial in a court of law, and debar him from taking part in any act or proceeding of the Panchayat while under such suspension.

(4B) and (5)....."

"Rule 20. Preliminary inquiry for removal-- The Collector may, on his own motion or upon the requisition of the State Government initiate a preliminary inquiry under Sub-section (4) of Section 17 against any Panch, Sarpanch or Upsarpanch of a Panchayat or against any member or Chairman of a Nyaya Panchayat.

(2) For the purpose of Sub-rule (1) any officer subordinate to him may be deputed by the Collector to hold such preliminary inquiry and to make a report to him.

(3) Any preliminary inquiry against the Chairman or a member of a Nyaya Panchayat may also be initiated as aforesaid by the Munsif, or where there is no Munsif by the Civil Judge, or the Magistrate of the first class, having jurisdiction over the Nyaya Circle.

(4) If, as a result of such preliminary inquiry, the Collector or the Munsif or the Civil Judge or the Magistrate of the first class initiating the inquiry is satisfied that any charge of the nature specified in Sub-section (4) of Section 17 are prima facie made out against such Panch, Sarpanch or Up-sarpanch or against such Chairman or Member, as the case may be, a report thereof along with the recommendations of such officer the matter shall be made accordingly to the State Government or to any officer or authority to whom the powers of the State Government under Sub-section (4) of Section 17 may be delegated by a notification u/s 70.

(5) The provisions of the Rajasthan Disciplinary Proceedings (Summoning of Witnesses and Production of Documents) Act, 1959 (Rajasthan Act No. 28 of 1959) and the rules made thereunder, shall also apply mutatis mutandis, to the enquiries against Panch, Sarpanch or Up-sarpanch of the Panchayat or against any member or Chairman of a Nyaya Panchayat as the case may be, being conducted under the provision of the Act, and the rules made thereunder."

"Rule 21. Final inquiry-- (1) The State Government or the officer or authority referred to in Sub-rule (4) of Rule 20 shall consider the report of the preliminary inquiry and may either drop the proceedings or get drawn up a statement of charge prima facie made out against the person against whom the preliminary inquiry has been made, specifying such details as may be deemed sufficient for him to understand the nature thereof.

(2) A copy of such statement shall be sent to the person charged, along with a notice calling upon him and to show cause in writing why they should not be inquired into.

(3) Upon reading the representation, if any, of the person charged, in response to the notice under Sub-rule (2) the State Government or the officer or authority referred to in Sub-rule (4) of Rule 20 may either drop the proceedings or may appoint an officer or authority to inquire into the charges, hereinafter referred to as the inquiring officer, to whom the record of the preliminary inquiry, the statement of charges, the explanation of the person charged and all other relevant papers shall be forwarded.

(4) The inquiry officer shall--

(a) issue a notice to the person charged to appear before him to a date and at the time and place specified in the notice.

(b) read out the person charged, when he so appears, the charge or charges levelled against him,

(c) hear the explanation, if any,

(d) take and consider such evidence, oral or documentary, as may be produced in support or in rebuttal of the charge Or charges, and

(e) record his finding on each of them.

(5) The record of the inquiry, together with his findings shall be forwarded by the inquiring officer to the State Government or the officer or authority referred to in Sub-rule (4) of Rule 20."

9. No doubt, the office of a Sarpanch is an elective office and he cannot be equated easily with a Government servant in relation to the matter of suspension. Sub-section (4A) of Section 17 of the Act authorises the State Government to suspend a Panch, Sarpanch or Up-Sarpanch against whom an enquiry has started under Sub-section (4) or the proviso thereto and the legislature has provided that the State Government can suspend the holder of the above noted electoral office at a certain stage of enquiry. A preliminary enquiry under Rule 20 of the Rules of 1961 is held for the satisfaction of the Collector and after the holding of such enquiry if the Collector feels satisfied that the charges of the nature specified in Sub-section (4) of Section 17 of the Act are prima facie made out against such a holder of the elective office, a report thereof along with the recommendations is required to be made to the State Government or to the officer or authority to whom the powers of the State Government have been delegated under Sub-section (4) of Section 17. Under Rule 21, the State Government is to consider the report of the preliminary enquiry and decide either to drop the proceedings and to draw a statement of the charges prima facie made out against the Panch, Sarpanch or Up-Sarpanch, specifying such details as may be deemed sufficient to understand the nature of the charges.

10. In the case on hand the State Government did not drop the proceedings. It, however, decided to draw up a statement of charges against the Sarpanch and sent such statement of charges to him along with a notice calling upon him to show cause why they should not be inquired into. Thereafter an enquiry officer was also appointed: vide Annexure 5. The petitioner had also submitted an explanation before he was suspended. Keeping in view that the office of Panch and Sarpanch is an elective office, no suspension order against such a man should be passed without prima facie basis. In a case where a material has come before the Government on the basis of which certain charges can be framed, the State Government, can issue a notice to the Sarpanch to show cause in writing why charges should not be inquired into. Section 17 has been framed for the purpose of exercising control over the Panchas and Sarpanchas. We are undoubtedly zealous to see that a Panch or Sarpanch should not be lightly suspended or removed, we cannot as a matter of law, interpret Sub-section (4A) of Section 17 of the Act in the matter that the State Government has no power to suspend a Sarpanch even though after holding a preliminary enquiry and perusing the record the Collector is satisfied that the charges of the nature

specified in Sub-section (4) of Section 17 of the Act are prima facie made out and he makes report to the same effect recommending an inquiry against the Sarpanch and thereafter the State Government or the officer authorised considers the report. On doing so further holds that the inquiry is not worth dropping and draws up a statement of the charges made out against the Sarpanch specifying the details sufficient for the delinquent elected office-holder to understand the nature of accusation. Further, after the service of the charges, statement and a show cause notice to explain why the inquiry be not made and after considering the reply it holds that the matter needs a regular enquiry and appoints an Enquiry Officer. This will amount to imposing restriction on the supervisory powers of the State Government, It should not be forgotten that institution of Panchayats in Rajasthan requires careful and thorough supervision. The suspension of a Sarpanch under particular circumstances of a case may be considered necessary or desirable to save the Panchayat or its funds from being ruined or misappropriated. The elaborate procedure noted above is safeguard against the whimsical, capricious or irrelevant exercise of powers of suspension by the State. After a preliminary report has been submitted and a prima facie case has been made out against the delinquent elected officer, the State Government, after considering the merits of the case, is required to decide whether a chargesheet is to be served on the holder of the elective office or not and if it finds that a prima facie case has been established and further considers that his continuance in office would not be in the public interest or in the interest of the Panchayat fund or the working of the Panchayat, the Government should be left free to exercise its control and if the case warrants a temporary removal of such an incumbent, then, after careful scrutiny of the preliminary report submitted before it, to suspend him. The State Govt. is, no doubt, not expected to act mala fide in passing the order of suspension and in a given case if it is found that it acted with mala fide intention, the action can well be struck down. There is sufficient guideline provided in the section itself. The State Government is required to keep in view the nature of the accusation as well as the prima facie case made out and the purpose for which the suspension order is to be passed. Thus, Section 17 (4A) of the Act does not confer unregulated, unbridled and unchannelised power on the State Government and is consequently not unconstitutional. Reference in this connection may be made to *State of Rajasthan v. Pukhraj*, 1970 Raj LW 125. There is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been clear transgression of constitutional principles. *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, and *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, .

11. The second contention of the learned counsel for the petitioner is that the order of suspension was passed in complete violation of the principles of natural justice and total disregard of fair play. It was pointed out that no notice to show cause against the suspension was ever issued to the petitioner. There was not the slightest hint until the order was made that there was any proposal to

suspend the petitioner from the office of Sarpanch, never had any opportunity, either before or after the order of suspension was passed, been given to the petitioner to offer his explanation. There were, the counsel added, no compelling reasons before the Government to pass an order of suspension without giving an opportunity of hearing to the petitioner and as such the order of suspension was bad in law. In support of the above contention the counsel for the petitioner placed reliance on A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , Halsbury's Laws of England, IVth Edition, Volume 1 page 90 para 74, Mazharul Islam Hashmi Vs. State of U.P. and Another, , S.L. Kapoor Vs. Jagmohan and Others, , Kashmiri Lal v. The Deputy Commissioner, Sonapat AIR 1980 P& H 200 and Namdeo Ragho Arote Vs. State of Maharashtra and Others, .

12. Learned Advocate General, appearing on behalf of the State, urged that the law must not be taken to be well settled that even in an administrative proceeding involving civil consequences, the doctrine of natural justice must be held to be applicable. He further argued that the Legislature by necessary implications overruled a pre-decisional hearing prior to the passing of the suspension order, because if prior hearing was to be given in every case, the very purpose of Section 17 of the Act would be frustrated and the concerned Sarpanch would go on avoiding service and in the meantime would be able to misappropriate or create a mess in the entire affairs of the Panchayat. The second limb of the same argument is that in the case on hand, on a complaint, a preliminary enquiry had been held. The result of the preliminary enquiry was duly considered by the Collector and on his behalf a report along with the recommendation was submitted to the Government under the signatures of the Additional District Development Officer as per directions of the Collector. The State Government thereafter considered the report of the preliminary enquiry with a view to decide whether the proceedings should be dropped or a statement of charge should be drawn-up against the Sarpanch and served on him. It reached the conclusion that a prima facie case had been clearly made out. Statement of the charges so drawn was sent to the petitioner along with a notice calling upon him to show cause in writing why an inquiry should not be conducted. The petitioner submitted a reply and thereafter the State Government (vide its order, dated June 9, 1980, Annexure 5) appointed Sub-Divisional Officer to inquire into the alleged charges against the petitioner. In this manner the explanation, given by the petitioner, was also considered by the State Government and keeping in view the gravity of the charges levelled the Government decided to suspend the petitioner from the office of the Sarpanch and through order, dated July 22, 1980, he was suspended. Thus, the petitioner had had an ample and reasonable opportunity of making submissions and it is not necessary that personal hearing should invariably be given in every case. The audi alteram partem rule is flexible. It is required to adjust and harmonise the need for speed and obligations to act fairly. It can be modified and the measure of its application can be cut short to meet any reasonable proportion of the



exigencies of the situation. Learned Advocate General further urged that as the representation made by the petitioner had already been considered, no useful purpose would have been served by giving further opportunity of oral hearing. In support of the above contention he placed reliance on the following cases:-- Suresh Koshy George Vs. University of Kerala and Others, , State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, .

13. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law of the land. The concept of natural justice has undergone a great deal of change in recent years. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far-reaching effect than a decision in quasi-judicial enquiry. As held by their Lordships of the Supreme Court in Suresh Koshy George Vs. University of Kerala and Others, the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of the case in point, on the constitution of the Tribunal and the rules under which it functions. Whenever a complaint is made before a Court that some principle of natural justice had been contravened, the Court has to decide whether the observance of such a rule was necessary for a just decision on the facts of a particular case. The old distinction between judicial act and administrative act has almost withered away by the decision of the Supreme Court in State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, . Even administrative orders which involve civil consequences have to be passed consistently with the rules of natural justice. The holder of an elective office cannot be equated with that of an employee of the State Government. The employer when exonerated of the charges, is normally entitled to remuneration for the period of his interim suspension with all consequential benefits. But there is no contract of employment between a Sarpanch and the State Government. The State Government does not have any hand in the election of a person as Sarpanch. It is only the votes of the electorate which saddle him in the office. But that does not mean that a Sarpanch can go on misappropriating things or make the functioning of a Panchayat a mess and the State Government be compelled to watch it helplessly. That is why the Legislature, in its wisdom, has made adequate provision in Sub-section (4A) of Section 17 of the Act. As already mentioned above, Sub-section (4A) of Section 17 of the Act comes into play only after a preliminary enquiry has been held against the Sarpanch as provided under Rule 20 of the Rules of 1961 and the report of the Enquiry Officer, along with the recommendation of the Collector, has been submitted to the State Government and the State Government after considering the report of the preliminary enquiry reaches the conclusion that a statement of the charge should be served, specifying therein the details as may be deemed sufficient for the delinquent Sarpanch to understand the nature of the allegations. A copy of such

a statement is also required to be sent to the person charged along with a notice calling upon him to show cause in writing why they should not be inquired into. After considering the representation of the person charged in response to the notice under Sub-rule (2) of Rule 21 of the Rules of 1961 the State Government is required to further consider whether the charges should be dropped or an officer should be appointed to inquire into the charges and if the State Government comes to the conclusion that it is a fit case in which charges should be inquired into, an Enquiry Officer is appointed to whom the statement of the charges, the explanation of the person charged and all other relevant papers are forwarded. After completing all these formalities if the State Government further thinks that the gravity of the charges is such that allowing the Sarpanch to remain on the elective office would be prejudicial to the interest of the Panchayat, then an order of suspension is passed. A perusal of the judgment of Punjab and Haryana High Court in *Kashmiri Lal Vs. The Dy. Commissioner, Sonapat and Others*, in no way supports the contention of the petitioner. In that case the learned Judge of the High Court of Punjab and Haryana have drawn a distinction between an order of suspension passed under Sub-section (1) of Section 102 of the Punjab Gram Panchayat Act, 1952, as amended by the Haryana State Legislature and an order passed under Sub-section (1A) of Section 102 of the aforesaid Act. The learned Judges affirmed the earlier judgment of the Court, wherein it was held that the suspension during an enquiry did not require giving notice to the Panch before passing an order of suspension. In the case on hand, we are only concerned with the order of suspension, which is similar to one passed under Sub-section (1A) of Section 102 of the Punjab Gram Panchayat Act, 1952, regarding which the Court held that an order passed under Sub-section (1A) of Section 102 of the aforesaid Act would be an executive order and also held that the petitioner could not claim that he should have been given an opportunity to show cause before an order suspending him from the office of Sarpanch could have been passed.

14. In *Namdeo Ragho Arote Vs. State of Maharashtra and Others*, two complaints were lodged against the Sarpanch of the Village Panchayat of Agashahinde, Taluka Sinnar, District Nasik. In the first complaint the allegation was that the Sarpanch abused the complainant. In the second complaint it was alleged that a Gram Sewak was abused by the Sarpanch during the meeting held on October 4, 1977. The chargesheets were sent to the Court on March 9, 1978, and May 6, 1978, respectively under the Defence of India Act. On receipt of the said report the Collector passed the impugned order purporting to exercise the powers u/s 41 (1) of the Bombay Village Panchayat Act, 1958, suspending the Sarpanch in that case till the final decision of the case launched against him. In that case it was contended that the Collector acted with material irregularity and in flagrant violation of the principles of natural justice without applying his mind and without giving an opportunity of hearing to the petitioner. On the facts of that case the Court found that there was clear non-application of mind by the Collector as well as disregard of the principles of natural justice and, therefore, the order could

not be sustained. That case is totally distinguishable on facts. In the case on hand, the explanation of the petitioner had been obtained and the State Government had applied its mind twice, firstly, prior to the drawing up of the statement of charges on the basis of preliminary enquiry and secondly, prior to the appointment of the Enquiry Officer for conducting enquiry into the charges. We are of the opinion that the principles of *audi alteram partem* have been complied with. There cannot be any fixed or rigorous yardstick regarding principles of natural justice. The concept of natural justice cannot be put up into a strait-jacket. It would be futile, therefore, to look for standard definition of natural justice from various decisions and then try to apply them to the facts of any given case. The only essential point that has to be kept in mind in such cases is that the person concerned should get a reasonable opportunity of presenting his case and that the administrative authority concerned should act fairly, impartially and reasonably. The application of the concept of fair play requires real flexibility. Everything depends on the actual facts and circumstances of a particular case as Tucker Lord J. observed in *Russell v. Duke of Norfolk* (1949) 1 All ER 109:--"The requirement of natural justice must depend on the circumstances of the cases, the nature of the enquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with, and so forth."

15. The law which emerges from *Mrs. Maneka Gandhi Vs. Union of India* (UOI) and *Another, Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, and other cases is that the general principles, as distinguished from an absolute rule of uniform application, seems to be that where a situation does not in term exclude the rule of prior hearing, but contemplates a post-decisional hearing amounting to full review of original order on merits, then such a statute would be construed as excluding the *audi alteram partem* rule at the pre-decisional stage. Conversely if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences and no full review or appeal on merits against that decision is provided, Courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimum hearing shorn of all its formal trappings and dilatory practice at the pre-decisional stage. No doubt the pre-decisional hearing can be avoided in exceptional circumstances where compulsive necessity so demands or where it is likely to paralyse the administrative progress or frustrate the very need of prompt action. A pre-decisional hearing forms part of the fair play, but it does not necessarily mean an oral hearing. Giving notice, mentioning the details of the charges specifying the facts which may be sufficient for the delinquent elected representative to understand the nature thereof and obtaining a written explanation regarding the truth and falsity of the charges, calling upon the party to explain the circumstances and thereafter considering the *prima facie* evidence in the light of the representation made and coming to a further conclusion that a case worth enquiry has been made out, can be termed to be a sufficient notice to the party

affected. In that context the petitioner had had a reasonable opportunity of presenting his case by way of giving a reply to the show cause notice under Rule 21 of the Rules of 1961. After considering the reply the State Government (vide its order dated July 22, 1980) held that the petitioner was prima facie found guilty of making interpolation in the muster rolls, not making payment to the labourers and making erasures in the official record. As the charges were of serious nature, the Government considered it necessary, in the interest of the Panchayat, to suspend the Sarpanch.

16. The decision in *S.L. Kapoor Vs. Jagmohan and Others*, is distinguishable on facts. It cannot be said that in the cases u/s 17 (4) or Section 17 (4A) of the Act the information required to be enumerated in the show cause notice under Rule 21 of the Rules of 1961 and to be furnished to the delinquent elected Sarpanch, can be done in a casual way. The law does not envisage that there should be a dual opportunity to a delinquent Sarpanch i.e., an opportunity of providing the statement of allegations and then giving another opportunity in respect of the proposed penalty. The following observations in *S.L. Kapoor's* case (*supra*) appearing at para 16 of the report support the case of the respondents:--

"We do not suggest that the opportunity need be a "double opportunity" i.e., one opportunity on the factual allegations and another on the proposed penalty. Both may be rolled into one. But the person proceeded against must know that he is being required to meet the allegations which might lead to a certain action being taken against him. If that is made known the requirements are met."

17. The other limb of the same contention is that the order, dated July 22, 1980, suspending the petitioner is not a reasoned order and is a non-speaking one. It is, no doubt, desirable that a tribunal exercising quasi-judicial functions should give reasons in support of its order, but the mere fact that the tribunal has not chosen to give reasons would not invalidate its order in the absence of any specific provision of law in that behalf. Reference in this connection may be made to *Tara Chand Khatri Vs. Municipal Corporation of Delhi and Others*, . In *Som Datt Datta Vs. Union of India (UOI) and Others*, the petitioner applied to the Supreme Court for a writ of certiorari to quash the proceedings before a Court Martial and one of the contentions raised on behalf of the petitioner was that the order of the Chief of the Army Staff confirming the proceedings of the Court Martial and of the Central Government dismissing the appeal of the petitioner were non-speaking orders and deserved to be quashed on that ground alone. Dealing with that contention the Supreme Court observed as follows (at p. 422):--

"Apart from any requirement imposed by the statute or statutory rule, expressly or by necessary implications we are unable to accept the contention of Mr. Dutt that there is any general principle or any rule of natural justice that a statutory tribunal should always and in every case give reasons in support of its decision."

18. This decision was given by a Constitutional Bench of the Supreme Court

presided by five Judges. It is thus clear that even a non-speaking order passed by an authority required to act in a judicial manner is not liable to be struck down merely on the ground that it is not a speaking order, whereas in the impugned order of suspension the main considerations which weighed with the State Government have been enumerated summarily, though not in detail and as such the impugned order cannot be said to be non-speaking or can be declared invalid.

19. Last but not the least important contention raised by the learned counsel for the petitioner is that the Collector did not initiate a preliminary enquiry under Sub-section (4) of Section 17 of the Act against the Sarpanch and in the course of preliminary enquiry statements were recorded by Shri Ram Kalyan and not by Shri G.K. Goswami. The petitioner has placed on record the statements of the preliminary enquiry and has made averment of this fact in the rejoinder, dated March 16, 1981, which stand supported by an affidavit of the petitioner Bajranglal, sworn on March 16, 1981. In his application, dated March 11, 1981, it has also been mentioned that the photostat copy of the letter which is alleged to be the report of the Collector purported to have been sent under Sub-rule (4) of Rule 20 of the Rules of 1961 does not bear the signature of the Collector and it is signed by Shri G.K. Goswami. In the return filed on behalf of the State Government on April 29, 1980, it is mentioned that the preliminary enquiry was conducted against the petitioner Sarpanch by the Additional District Development Officer, Jaipur and the enquiry report was submitted to the Government on behalf of the Collector, which is the basis of issuing the charge-sheet, whereas in the application, dated March 10, 1981, filed by the State Government under the seal and signature of the Advocate General it is mentioned that the photostat copy of the covering letter, dated March 14, 1980, whereby preliminary enquiry report was sent by the Collector to the Government is submitted. The photostat copy annexed with the application does not bear any seal of the Collector and the signatures are illegible. In para 5 of the original writ petition it has been mentioned that the Collector did not depute any person subordinate to him for the purpose of preliminary enquiry and the Collector was never satisfied that the charges had been prima facie made out from the said preliminary enquiry and there was no report or recommendation of the Collector to the Government or to any of its delegated authority and in the absence of the valid preliminary enquiry, held by a duly appointed competent officer and due to non-application of the mind by the Collector and in absence of his recommendation to the State Government, no statement of charges could have been framed by the State Government as required under Rule 21 of the Rules of 1961 and consequently the suspension order is bad in law,

20. In para 15 of the reply of the State dated 29-9-1980 it has been mentioned that the preliminary enquiry was conducted by the Additional District Development Officer, Jaipur in pursuance to the orders of the Collector, Jaipur, dated August 27, 1979 and his report was submitted to the Collector who in turn recommended to the Government to take action against the Sarpanch petitioner

u/s 17 (4) of the Act, whereas in para 3 of the same reply it has been mentioned that the report was submitted to the Government on behalf of the Collector. The petitioner has given an affidavit that report does not bear the signature of Collector as mentioned in application filed by the State Government on March 3, 1981. On the contrary it is signed by Shri G.K. Goswamy. Thus specific allegations have been made by the petitioner in the writ petition as well as in the rejoinder and further applications made from time to time that the Collector did not depute officer subordinate to make an enquiry under Sub-rule (2) of Rule 20 of the Rules of 1961, and did not make his recommendations to the State Government as required by Sub-rule (4) of Rule 20 of the Rules of 1961, yet the State Government has not chosen to file the affidavit of the Collector or order dated October 27, 1979 on record. The State Government was in a position to place material before this Court to show that the statements were in fact not recorded by Ram Kalyan and were recorded by the Additional District Development Officer and the Collector applied his own mind on the facts and made recommendation, to the State Government. Section 106 of the Evidence Act casts a burden on the party to prove those facts which are in his special knowledge. Non-filing of the affidavit of the concerned Collector and non-production of the order deputing Shri G.K. Goswami are important infirmities which go to the root of the case. In the affidavit dated March 13, 1981 filed by Shri G.K. Goswami on behalf of the State it has been admitted that Shri Shiv Kumar Sharma conducted inquiry as desired by the Development Commissioner. The petitioner's case is that the Deputy District Development Commissioner (Enquiries) jointly with Additional District Development Officer made inquiry on May 9, 1980, which is against the provisions of Rules 20 and 21 of the Rules of 1961. There is nothing on record to hold that the result of the enquiry made in pursuance to Annexure 1 was kept out of consideration by the State Government for drawing up the statement of charges served upon the petitioner along with the notice.

21. There can be no dispute on the point that the joint inquiry held by Deputy Development Commissioner (Enquiries) and Additional District Development Officer is neither envisaged by Section 17 of the Act or under Rule 20 or 21 of the Rules of 1961, In the affidavit dated March 13, 1981 filed by Shri G.K. Goswami it has been mentioned that charge-sheet was prepared on May 17, 1980. Nowhere he cared to state that the statements recorded by the Deputy District Development Officer were not taken into consideration. An affidavit by the Officer drawing up the charge-sheet or of the concerned Secretary or Minister could have been filed that inquiry made in pursuance to Annexure 1 was not taken into consideration either for drawing up the charges or passing the impugned order of suspension.

22. The net result of the above discussion is that we hold that the charges and suspension order stand vitiated because they have not been proved to be based on the result of preliminary enquiry held by authorised persons.

23. The writ petition is allowed. The suspension order dated July 22, 1980, notice dated May 7, 1980, statement of charges Annexure 3, notice Annexure 2 dated May 19. 1980 and notice dated June 9, 1980 are quashed. It is, however, made clear that it will be open to the competent authorities to take fresh proceeding according to law, if the case so warrants.

24. The parties are ordered to bear their own costs.