
(1965) 05 GAU CK 0001
In the Gauhati High Court
Case No : Civil Rule No. 306 of 1964

Gauhati Municipal Board

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 21-05-1965

Acts Referred:

Assam Municipal (Accounts) Rules, 1961 — Rule 1, 10, 11, 13, 15
Assam Municipal Act, 1956 — Section 10, 293, 293(1), 293(2), 298
Central Provinces and Berar Municipalities Act, 1922 — Section 53A, 53A(1), 57, 57(1), 57(2)
Constitution of India, 1950 — Article 226

Citation : (1965) 05 GAU CK 0001

Hon'ble Judges : G. Mehrotra, C.J.; S.K. Dutta, J

Bench : Division Bench

Advocate : S.K. Ghose, S.M. Lahiri, J.C. Medhi, H. Goswami, B.M. Goswami and J.P. Bhattacharjee, for the Appellant; B.C. Barua, General and M.C. Pathak, Sr. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

G. Mehrotra, C.J.—This petition has been filed on behalf of the Gauhati Municipal Board challenging the validity of the notification dated the 9th December 1964 and the order dated 12th December 1964 issued and passed by the State Government and the Deputy Commissioner, Kamrup respectively. The Petitioner is the Municipal Board constituted u/s 10 of the Assam Municipal Act, 1956 (Assam Act XV of 1957) (hereinafter called "the Act"). On the 9th June 1964 the Secretary to the Government of Assam, Local Self-Government Department served a notice on the Board asking the Board to show cause as to why the Board should not be superseded u/s 298 of the Act on the grounds as stated in the notice. In the notice it is stated that the Government had come to the tentative decision that the Gauhati Municipal Board should be superseded u/s 298 of the Assam Municipal Act, 1956. It further states that the Petitioner's reply to the notice should be accompanied by an explanation in full against the items

(i) to (8) mentioned in the notice The Board convened the meeting and after considering the matter submitted an explanation for each of the charges mentioned in the notice and contended that none of the charges has been established. This explanation was submitted on the 10th August 1964. Thereafter on the 9th December 1964 a notification was issued in the name of the Government, declaring the said Board to be in default and not competent to perform the duties imposed on it by and under the Act and superseding the said Board for a period of one year with effect from the 14th December, 1964. The validity of this notification has been challenged by this petition.

2. The contention of the Petitioner firstly is that the order passed by the Government superseding the Board u/s 298 of the Act is a quasi-judicial order and is amenable to a writ of certiorari by this Court. As the principles of natural justice were (sic) in passing the aforesaid order in as much as no opportunity was given to the Board to support its explanation with reference to the evidence, the order should be quashed. By calling for a written explanation the requirement of Section 298 has not been complied with. In reply the Advocate General submits that the order passed by the State Government u/s 298 superseding the Municipal Board is an administrative order and as such it is not amenable to a writ of certiorari by this Court. The order not being without jurisdiction and further the order being in compliance with the provisions of Section 298 of the Act, it cannot be quashed by this Court under Article 226 of the Constitution. In the alternative it is also contended by him that even if it be accepted that the order is a quasi judicial order and that the Board was entitled to a reasonable opportunity to substantiate its explanation, such an opportunity has been afforded to the Board and in the circumstances of the case it cannot be said that there was any violation of the principles of natural justice in passing this order.

3. There was a minor objection also taken by the Advocate General to the maintainability of the petition. His contention is that the order has if at all, affected the rights of individual commissioners and no petition on behalf of the Board as such was maintainable.

4. Before coming to the merits of the points raised by the parties, I would like to dispose of the objection as to the maintainability of the petition. Section 10 of the A provides:

There shall be established for each Municipality a body of Commissioners designated as the Municipal Board having authority over the Municipality. Such a Board shall be a body corporate by the name of the Municipal Board of having perpetual succession and a common seal, and by that name shall sue and be sued.

Thus the Municipality has got a right to sue as such Section 299 of the Act enumerates the consequences of supersession. Clauses (b) and (c) of Sub-section (1) of Section 299 provide:

299.(1) when an order of supersession shall have been passed under the

preceding section, the following consequences shall ensue:

x x x x x

(b) all the powers and duties which under the Act may be exercised and performed by the Hoard, whether at a meeting or otherwise, shall, during the period of supersession, be exercised and performed by such person or persons as the State Government may direct;

(c) all property vested in such Board shall, during the period of supersession, vest in the State Government.

These two consequences clearly point out that it is the Board whose rights have been affected by the supersession and there is no substance in the contention that it is only the Commissioners whose rights have been affected and they alone have got a right to bring the present petition.

5. Coming to the merits of the case, it will be convenient to refer at this stage to some of the provisions of the Act. Section 298 of the Act reads as follows:

298. If in the opinion of the State Government, the Board is not competent to perform or persistently make default in the performance of, the duties imposed on them by or under this Act" or otherwise by law, or exceed or abuse their powers, the State Government after giving the Municipal Board an opportunity for submitting an explanation in regard to the matter may, by notification, stating the reasons for so doing, declare such Board to be incompetent, or in default, or to have exceeded or abused their powers, as the case may be, and supersede them for a period not exceeding one year at a time or dissolve the Board and order a fresh election as soon as possible.

Provided that when the Board" is dissolved, the State Government may appoint any person as Chairman to carry on routine matters on behalf of the Board unstill the Board is reconstituted and a new Chairman is elected.

Section 299 sets out the consequences of supersession. Section 298 requires that the State Government should form an opinion that the Board is not competent to perform or persistently make default in the performance of the duties imposed on them by or under this Act or otherwise by law, or has exceeded or abused its powers. Having tentatively formed such an opinion the State Government has to give the Board an opportunity of submitting an explanation in regard to the matter. After having given the Board an opportunity of submitting an explanation in regard to the matter the Government has to declare; by notification that the Board is incompetent or in default or has exceeded or abused its power. The notification has further to stale the reasons for coming to such a conclusion and thereafter on the findings with regard to the matters mentioned above, the Government can by the notification supersede the Board for a period not exceeding one year or dissolve the Board and order a fresh election as soon as possible.

6. The contention of the Advocate General is that the word "in the opinion of the State Government" in Section 298 gives the right to the Government to form a tentative opinion and the action to be taken by the Government depends upon the formation of the opinion by the Government and thus whether the Board is incompetent or is in default or has exceeded or abused its power has been entrusted under the Section to the subjective opinion of the State Government and thus the Government when acting u/s 298 has not to act judicially. No writ of certiorari will lie. At the initial stage before the notice is issued to the Board, calling upon the Board to show cause, the Government has to form an opinion about the matters set out in the Section. But after the explanation has been given and before the passing of the order, the Government on the materials before it and on the examination of all the documents, has to come to a definite decision as to whether the Board is not competent to perform or has persistently made default in the performance of the duties imposed on them by or under this Act or otherwise have exceeded or abused their powers.

Any decision on these matters will affect the right of the Board and relate to objective facts. The decision is to be arrived at after giving an opportunity to the Board to submit an explanation. In the order the reasons are to be recorded. All these requirements clearly show that the legislature has cast a duty on the Government to act judicially. Unless the evidence in possession of the Government and the evidence placed by the Board in support of its explanation is examined by the Government objectively, it is difficult for the Government to arrive at any conclusion with regard to the facts on which the action can be taken. The requirement of the Section that an opportunity should be given to the Board to submit an explanation, does not only mean that the Board should be asked to send a written explanation. It contemplates a fuller opportunity to be given to place materials in support of the explanation given by the Board. The Municipal Board is a statutory body and certain rights have been conferred under the Act on the Board. By the order of supersession those rights of the Board are taken away. The condition for the deprivation of those privileges and rights of the Board is the existence of certain objective facts.

Whether the Board is competent to perform its duties or not or whether the Board has persistently made default in the performance of its duties or has abused or exceeded its powers are matters which thus entirely depend upon the objective facts. The default should be in the performance of the duties imposed on it under the Act. This necessarily requires an examination of the provisions of the Act and before it can be said that the Board has failed to perform duties imposed on it under the Act, it will have to be ascertained what are the duties imposed under the Act and thus the very nature of the inquiry and the consequence of the order by themselves introduce an element of judicial approach. In the Section, however, apart from the nature of the right affected and the matters to be inquired into, the Section further requires an opportunity to be given to the Board to give its explanation and the setting out of the reasons in the order itself. These two requirements further show that there is a

duty cast upon the Government to decide the matter judicially when taking action u/s 298 and any decision given by the Government is amenable to a writ of certiorari.

7. It will be necessary at this stage to refer to some of the authorities of the Supreme Court on this point,

8. The earliest decision is the case of *Province of Bombay v. Khushaldas S. Advani* reported in AIR 1960 SC 222 This case dealt with the action taken under Sections 3, 4, 10 and 12 of the Bombay Land Requisition Ordinance, which came in force on the 4th December 1947, The case approved the following observation of Atkin L.J. in the case of *the King v. The Electricity Commrs.* reported in (1924) 1 KB 171:

Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to not judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the king's Bench Division exercised in these writs.

Kania C.J. who gave the leading judgment, has summarised the law at p. 226 of the report as follows:

It seems to me that the true position is that where the law under which the authority is making Its decision, itself requires a judicial approach, the decision will be quasi-judicial. Prescribed forms of procedure are not necessary to make an inquiry judicial, provided in coming to the decision the well-recognised principles of approach are required to be followed.

The majority in this judgment held that on the true interpretation of the provisions of the Ordinance there was no duty cast upon the Government to act judicially The court, however, accepted the observations of Atkin L.J. in the case referred to above which summaries the law on the subject clearly.

9. The matter again came up for consideration in the case of *Radeshym Khare and Another Vs. The State of Madhya Pradesh and Others*, In this case an order was passed u/s 58-A of the C.P. and Berar Municipalities Act 1922 and the question raised was whether the order passed under this section was an administrative order or a quasi-judicial one The majority held that the order was purely an administrative order. Section 57 of the C.P. and Berar Act was however in part material with the provisions of Section 298 of the Act. Section 57 had six sub-sections and Sub-section (1) of Section 57 was as follows:

57. (1) If a committee is not competent to perform, or persistently makes default in the performance of, the duties imposed on it or undertaken by it under this Act or any other enactment for the time being in force, or exceeds or abuses its powers to a grave extent, the State Government may, by an order stating the reasons therefore published in the Official Gazette, dissolve such committee and may order a fresh election to take place.

Sub-section (6) provided that no order under Sub-section (1) or Sub-section (2) shall be passed until reasonable opportunity has been given to the committee to furnish an explanation. It was held in this case that the order passed u/s 53-A(I) was an administrative one as it was in contrast with an order u/s 57(1)(2). But if the order had been u/s 57(1) it could have been a quasi-judicial order. The learned C.J. observed as follows at p. 113 of the report:

The effect of an order made u/s 57 is, therefore, extremely drastic and puts an end to the very existence of the committee itself and, in view of the grave nature of the consequences that, will ensue, the Legislature presumably thought that some protection should be given to the committee before such a drastic action was taken and accordingly it provided, by Sub-section (5) of that section, that no order should be passed until reasonable opportunity had been given to the committee to furnish an explanation -- a provision which clearly indicates that action u/s 57 can only be taken after hearing and considering all the explanations furnished by or on behalf of the committee.

The learned C.J. again observed at p. 118 as follows:

The simple fact that the incompetency of the committee goes to the root of the jurisdiction of the State Government to exercise its power u/s 58-A does not require that that fact must be determined judicially. The sole question is, does the statute require the State Government to act judicially. *****It will be sufficient if this duty may be implied from the provisions of the statute. The mere fact that a question of fact has to be determined as a preliminary condition before action can be taken under the statute by itself does not carry that implication. There must be some indication in the statute as to the manner or mode in which the preliminary fact is to be determined. I find nothing in Section 53-A which in terms imposes any duty on the State Government to act judicially. No form of procedure is laid down or even referred to from which such a duty could be inferred. On the contrary, one finds a significant omission of any provision like that embodied in Sub-section (5) of Section 57 which requires that no order under that section shall be passed until reasonable opportunity has been given to the committee to furnish an explanation.

It is, therefore, clear that the Supreme Court in that case has laid down that if the procedure for determining certain objective facts is laid down in the section itself and before taking a drastic action against the Board an opportunity is to be given to the Board to give its explanation, it necessarily implies that the Government is required to act judicially before passing an order under this section.

10. In the case of Board of Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others, the matter was again examined by their Lordships of the Supreme Court and the question which arose for decision was whether the Examinations Committee of the Board of High School and Intermediate Education, U.P. appointed u/s 13 of the U.P.

Intermediate Education Act, 1921 when it exercises its powers under the Act and Regulations in dealing with the cases of examinees using unfair means in examination halls is acting quasi-judicially. It was held that the committee was acting judicially and the order was amenable to a writ of certiorari by this Court. The following observation in this case lays down the law on the point:

Now it may be mentioned that the statute is not likely to provide in so many words that the authority passing the order is required to act judicially; that can only be inferred from the express provisions of the statute in the first Instance in each case and no one circumstance alone will be determinative of the question whether the authority set up by the statute has the duty to act judicially or not. The inference whether the authority acting under a statute where it is silent has the duty to act judicially will depend on the express provisions of the statute read along with the nature of the rights affected, the manner of the disposal provided, the objective criterion if any to be adopted, the effect of the decision on the person affected and other indicia afforded by the statute. A duty to act judicially may arise in widely different circumstances which it will be impossible and indeed inadvisable to attempt to define exhaustively vide observations of Parker, J., in *R. v. Manchester Legal. Aid Committee* 1952 2 QB 413.

11. In the case of *Shankarlal Aggarwal and Others Vs. Shankarlal Poddar and Others*, the matter which came up for decision, was whether the order passed under the Companies Act refusing to confirm the sale in a winding up proceeding was a judicial or an administrative order. It was observed as follows:

Still it does not follow that every order of the Court merely for the reason that it is passed in the course of the realisation of the assets of the company must always be treated as merely an administrative one. The question ultimately depends upon the nature of the order that is passed. An order according sanction to a sale undoubtedly involves a discretion and cannot be termed merely a ministerial order, for before confirming the sale the Court has to be satisfied, particularly where the confirmation is opposed, that the sale has been held in accordance with the conditions subject to which alone the liquidator has been permitted to effect it, and that even otherwise the sale has been fair and has not resulted in any loss to the parties who would ultimately have to share the realization

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It is perhaps not possible to formulate a definition which would satisfactorily distinguish, in this context, between an administrative and a judicial order. That the power is entrusted to or wielded by a person who functions as a Court is not decisive of the question whether the act or decision is administrative or judicial. But we conceive that an administrative order would be one which is directed to the regulation or supervision of matters as distinguished from an order which decides the rights of parties or confers or refuses to confer rights to property which are the subject of adjudication before the Court. One of the tests would be

whether a matter which involves the exercise of discretion is left for the decision of the authority, particularly if that authority were a Court, and if the discretion has to be exercised on objective, as distinguished from a, purely subjective consideration it would be a judicial decision. It has sometimes been said that the essence of a judicial proceeding or of a judicial order is that there should be, two parties and a lis between them which is the subject of adjudication, as a result of that order or a decision on an issue between a proposal and an opposition. (Sic) No doubt it would not be possible to describe an order passed deciding a lis before the authority, that, It is not a judicial order but it does not follow that absence of a lis necessarily negatives the order being judicial.

Even taking the narrow point of view that there should be a party proposing and another party opposing,, in the present case Government has to come tentatively to a certain conclusion and thereafter issue notice to the Board and the Government thus makes certain proposal which is opposed by the Board and the decision affects the right of the Board. Thus all the requirements of a judicial approach are to be found in the section itself.

12. It was contended by the Advocate General that the matters were not left to the objective determination of the Government but to the formation of the subjective opinion and the mere fact that the reasons had to be given in the order does not mean that the Government while passing an order has to act judicially. He has particularly referred to the case reported in *Radeshym Khare and Another Vs. The State of Madhya Pradesh and Others*, wherein it was held that although there is a provision in Section 53 A of the C.P. and Berar Municipalities Act, 1922 that the reasoning should be given by the Government while acting under the said section, still the order passed under the said section was an administrative order. Any one of the requirements of the section is not the only test from which it can be decided whether the act is an administrative or a quasi-judicial one. The decision whether the statute by implication casts a duty upon the Government to act judicially is a matter which will depend upon the consideration of the various tests. Several tests have been laid down for deciding whether the order is a quasi-judicial or an administrative one, namely (1) whether there is a lis inter parts (2) whether there is a claim (or proposition) and an opposition; (3) whether the decision is to be formed on the taking of evidence or on affidavits; (4) whether the decision is actuated in whole or in part by questions of policy or expediency, and if so, whether in arriving at the decision, the statutory body has to consider proposals and objections and evidence; and (5) whether in arriving at its decision, the statutory body has only to consider policy and expediency and at no stage has before; it any form of lis.

13. The observations of Atkin L.J. in the case of 1924 1 KB 171, which are the basis of the law have already been quoted in my judgment Lord Hewart C.J., in "*R. v. Legislative Committee of the Church Assembly*" reported in 1928 1 KB 411 in explaining this judgment has observed as follows:

The question, therefore, which we have to ask ourselves in this case is whether it

is true to say in this matter, either of the Church Assembly as a whole, or of the Legislative Committee of the Church Assembly, that it is a body of persons having legal authority to determine questions affecting the rights of subject and having the duty to act judicially. It is to be observed that in the last sentence which I have quoted from the judgment of Atkin L.J. the word is not "or" but "and". In order that a body may satisfy the required test it is not enough that it should have legal authority to determine question affecting the rights of subjects there must be superadded to that characteristic the further characteristic that the body has the duty to act judicially. The duty to act judicially is an ingredient which, if the test is to be satisfied, must be present. As these writs in the earlier days were issued only to bodies which without any harshness of construction could be called, and naturally would be called Courts, so also today these writs do not issue except to bodies which act or are under the duty to act in a judicial capacity.

This passage has been considered to lay down that the requirement that there is a duty to act judicially cannot be inferred from the fact that it has legal authority to determine questions affecting the rights of the subjects. But as laid down by the various decisions mentioned} above of the Supreme Court there are a number of tests for determining whether there is a duty cast to act judicially or not.

14. It will be, however, useful to refer to the decision of the House of Lords in the case of *Ridge v. Baldwin* reported in 1964 AC 40, wherein relying upon the earlier cases of the English Courts it has been held by Lord Reid that whenever the rights and privilege of an individual are affected by any decision, the principles of natural justice have got to be observed in arriving at a decision. Dealing with the observations of Hewart C.J. explaining the observations of Atkin L.J. in 1924 1 KB 171 Lord Reid observed as follows;

If Lord Hewart meant that it is never enough that a body simply has a duty to determine what the rights of an individual should be, but that there must always be something more to impose on it a duty to act judicially before it can be found to observe the principles of natural justice, then that appears to me impossible to reconcile with the earlier authorities.

Lord Reid has further quoted the following observations of Bankes L.J.:

On principle and on authority it is in my opinion open to this Court to hold, and I consider that it should hold that powers so far-reaching, affecting as they do individuals as well as properly, are powers to be exercised judicially, and not ministerially or merely, to use the language of Palles C.B. as proceedings towards legislation.

After quoting the above observations of Bankes L.J. Lord Reid observes as follows:

So he inferred the judicial element from the nature of the power And I think that

Atkin L.J. did the same.

The decision of the Privy Council in the case of *Nakkuda Ali v. Jayaratne* reported in 1951 AC 66 has also been considered in this case and this case goes to the extent of saying that the duty to act judicially can be inferred from the nature of the power exercised by the authority. However, for the purposes of this case and in view of the law laid down by their Lordships of the Supreme Court it is not necessary to hold that the duty is to be inferred from the nature of the power alone. Analysing the section as a whole it is clear to us that all the elements necessary for constituting an order to be a quasi-judicial order on the principles laid down in the various decisions of the Supreme Court are present here and the Government has to act judicially in passing an order under the section.

15. The views of Lord Reid and other concurring Law Lords in the above case may be summarised as follows:

(i) It is the nature of the power conferred upon the executive authority which determines whether there is a judicial element in it.

(ii) If the power of the executive authority involves determination of the property rights and privileges of an individual, he is under a duty to observe the principle *audi alteram partem*.

(iii) For this purpose it is not necessary that the duty to act judicially should be superadded by the relevant statute or regulation to the power itself.

(iv) In the absence of any positive provision in the statute requiring that the Individual should be heard, the Common Law will supply the omission of the Legislature,

(v) The absence of a lis or dispute between opposing parties is not a decisive factor.

(vi) An executive or administrative capacity is not the antithesis of a judicial capacity.

(vii) The plea that the case against an individual is so clear that nothing would be gained by granting him a hearing is a doubtful excuse for denying him an opportunity to be heard in self-defence.

16. The next point which arises for consideration is whether the principles of natural justice have been followed in this case. It will be in each case a question of fact to be determined by the Court which has to decide whether the principle of natural justice has or has not been observed. Further, the requirement of natural justice may vary according to the nature of the power. However, merely because the Petitioner was asked to submit an explanation which he did and the Government applied its mind to the explanation, it cannot be said that the principles of natural justice have been observed in the present case. It is a fundamental principle that a person whose rights are affected must be given an opportunity to be heard or, at any rate, to produce evidence to support his

explanation. Even the section itself does not only lay down that a written explanation should be given and as pointed out in the case of *Radeshym Khare and Another Vs. The State of Madhya Pradesh and Others*, referred to above, the requirement of submitting an explanation means that an action is to be taken only after hearing and considering all the explanation furnished by or on behalf of the committee.

17. It has been said many times that the exact requirements in any case of the so-called principles of natural justice cannot be precisely defined; that they depend in each case upon the circumstances of that case. According to Sir Frederick Pollock, the meaning of the phrase "natural justice" is "the ultimate principle of fitness with regard to the nature of man as a rational and social being and he went on to point out that the origin of the principles could be traced to Aristotle and the Roman jurists. (*"Jurisprudence and Legal Essays"* (1961). p. 124.)

18. As observed by Tucker L.J. in *Russell v. Duke of Norfolk* (1949) 1 All KB. 109: "There are...no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend in the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter under consideration and so forth." This however does not make natural justice so vague as to be inapplicable. The undisputed three features of natural justice are (1) the right to be heard by an unbiased tribunal; (2) the right to have notice of charges of misconduct; and (3) the rights to be heard in answer to those charges.

19. In the case of *Union of India (UOI) Vs. T.R. Varma*, dealing with the case of dismissal of an employee it was observed as follows:

The law requires that such tribunals should observe rules of natural justice in the conduct of the enquiry and if they do so. Their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that, which obtains in a Court of Law.

Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them.

If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed.

20. In the case of *Wood v. Woad* reported in (1874) 9 Ex. 190 Kelly C.B. in speaking of the rule expressed in the maxim *audi alteram partem* said: "This rule

is not confined to the conduct of strictly legal tribunals but is applicable to every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals."

21. In the case of *Cooper v. Wandsworth Board of Works* reported in (1803) 14 CBNS 180 Byles J. said;

A long course of decisions, beginning with *Dr. Bentley's case*, (1723) 1 Stra 557 and ending with some very recent cases, establish, that, although there are no positive words in a statute requiring that the party shall be heard; yet the justice of the common law will supply the omission of the Legislature.

22. There can thus be no doubt that one of the essential elements of the principles of natural justice is that the party should be heard and that the matter affecting the rights of the parties should be decided after giving a full hearing. It may be that in certain cases personal hearing may not be necessary to comply with the principles of natural justice. But hearing includes a right to produce evidence in support of the explanation and the application of the mind of the deciding authority to such an evidence, before deciding the matter. In the present case the Board besides being asked to submit an explanation was given no hearing and no opportunity was given to the Board to produce materials before the Government. In the counter-affidavit no fact was set out to show that at any stage any hearing was given to the Board and the Board was given any opportunity to place materials before the Government in support of their explanation. It is said in the counter affidavit that the present Board was constituted on the 6th July 1962 wherein Sri Satish Chandra Kakati was elected Chairman of the Board, He resigned from the chairmanship and his resignation was accepted by the Board at its special meeting held on 27th August 1963.

During the tenure of his office by a letter dated 5-1-1963 Sri. Kakati drew the attention of the Government to the diversion of the amount of the loan money. On this the Government wanted a detailed inquiry to be made into the allegation. The Commissioner of Division wrote to the Vice Chairman intimating him (that he wanted to inspect the Municipal Office on the 17th June 1964. The Vice-Chairman wrote back to him saying that his power to inspect the office could be confined under the provisions of Section 293 of the Act to the purposes enumerated in Sub-section (1) and if he wanted to call for the record acting under Sub-section (2) of Section 293, the records could be sent to him for his inspection. The counter-affidavit makes out a case that the Commissioner of Division was illegally prevented from inspecting the office and investigating into the matter. It is not necessary for the purpose of the present case to decide the powers of the Commissioner in the matter of inspection. We have referred to this allegation in the counter-affidavit in order to show that according to the case of the Government itself no opportunity was given to the Board to place materials before the Government in support of its explanation.

The letter of the Commissioner also cannot be said to be an attempt on his part

to investigate into the charges, as the notice, to show cause was given on the 9th June 1964 and there is no mention in the letter of the Commissioner that he wanted to inspect the office with a view to finding out the correctness or otherwise of the charges made against the Board in the aforesaid notice.

23. There is another aspect of the matter. Section 298 authorises the State Government before declaring the Board to be incompetent or in default or to have exceeded or abused their powers, to form an opinion about these matters and then give an opportunity to the Board to submit its explanation. After the explanation has been submitted and the Government has come to a final conclusion, it has to declare by notification that the Board is incompetent to perform its duty or has been in default or has exceeded or abused its powers. After the declaration has been made, there are two courses open to the Government either to supersede the Board for a period not exceeding one year or to dissolve the Board and order a fresh election as soon as possible.

In this case it will appear that the Government had before giving an opportunity and before going through the procedure for declaration provided for u/s 298 has not only come to a tentative conclusion that the Board was not competent to perform its duties or persistently made default in the performance of its duties, but has also come to the conclusion, that the Municipal Board should be superseded. It has not only come to a tentative opinion with regard to the facts of the case but has also, if I may use that expression, decided upon the punishment which was called for in the present case. The whole object of giving a right to the Government to choose either of the two actions was to enable the Government to make up its mind as to which of the actions it would like to take in view of the findings arrived at after the consideration of the materials. In these circumstances the Petitioner is right in contending that the Government in the circumstances was biased and the impugned notification thus violates one of the fundamental principles of natural justice that the hearing should be by an impartial tribunal.

24. The charges on which the Board was called upon to submit its explanation by the notice dated the 9th June 1964 are as follows:

(1) That the Board failed to convene a meeting for the election of Chairman thereby violating the instruction of the Hon'ble High Court contained in its judgment delivered on 2nd March 1964 on Civil Rule 174/63.

(2) That the Board failed to submit the Budget Estimates for the year 1964-65 to the Commissioner of Division. Gauhati and thereby the Board has violated the provisions of Rules 1 to 16 of the Assam Municipal (Accounts) Rules 1961.

(3) That the Board has made serious defaults in the matter of collection of taxes as it appears that an amount of Rs. 14,15,059.69-P. has accumulated as arrears for the period ending. 31st December, 1968.

(4) That Board failed to clear up the dues on electric charges amounting to Rs.

1,74,826.83 P.

(6) The Board has made serious defaults in the repayment of the principal and interest of various loans granted by Government to the Gauhati Municipal Board as it appears that out of the total loan of Rs. 23,77,300 (excluding the loan for water supply under the National Water Supply Scheme) granted by Government in the L. Section G. Department to the Gauhati Municipal Board, an amount of Rs. 2,97,696.99 P. only has been repaid

(6) That the Board has allowed or suffered the loan money amounting to Rs. 2,61,300 granted to the Gauhati Municipal Board for the construction of refugee market, to be misappropriated in violation of Rule 8(2) of the Municipal Accounts Rules.

(7) That it has brought the Municipal administration to disrepute by many illegal actions.

(8) That its continuation in office is detrimental to public interest.

25. The notification dated the 9th December 1964 superseding the Board, incorporates the following reasons for taking such action as required u/s 298:

(1) That the said Board has made defaults in the matter of collection of taxes.

(2) That the said Board has made serious defaults in the repayment of the principal and interest of the various loans granted by the Government

(3) That the said Board has failed to clear up the electric charges to the State Electricity Board.

(4) That the said Board failed to pass and submit in time the budget estimates for the year 1964-65 to the Commissioner of Divisions for sanction and thereby violated the provisions of Rules 11 to 16 of the Assam Municipal (Accounts) Rules. 1961.

(5) That the said Board allowed to suffer the loan money granted to the said Board for the construction of a "refugee market" to be diverted to oilier purposes;

(6) That the said Board failed to elect its Chairman notwithstanding that the post of Chairman fell vacant on the 28th August, 1963 and the observations made by the Hon"ble High Court in Civil Rule 174/63.

These reasons are in the nature of findings arrived at by the Government. If these findings are compared with the charges made in the notice, it will appear that regarding some of the charges there is no finding that they have been proved some of the findings are in respect of the matters which were not subject mailers of the charge. This also shows that no hearing was given to the Board and that the approach of the Government in taking action was not at all judicial.

26. It was also argued by the counsel for the Petitioner that on the facts alleged in the explanation, it cannot be said that the Board abused its powers or that it

committed persistent defaults in carrying out the provisions of the Act. It is also contended that what the Government has to show is the acts of the Board which would justify the action of the Government in superseding the Board u/s 298 of the Act and not the acts of the earlier Board. If the earlier Board failed to collect the taxes or if the earlier Board diverted the loan to some other purpose or committed other abuses of power or can be said to be persistently in default in carrying out the provisions of the Act, that cannot be a ground for superseding the present Municipal Board. In the view which we have taken it is not necessary for us to examine the merits of the charges. In the result, therefore, we would allow this petition and quash the Government notification dated the 9th December, 1964 superseding the Gauhati Municipal Board. We make no order as to costs.