

(1989) 09 CAL CK 0020
In the Calcutta High Court

In Re: Sankar Das Paul and Others

Date of Decision : 22-09-1989

Acts Referred:

Bengal Municipal Act, 1932 — Section 553
Constitution of India, 1950 — Article 14

Citation : (1989) 2 CALLT 379 : 94 CWN 233

Hon'ble Judges : Monoranjan Mallick, J

Bench : Single Bench

Advocate : Naranarayan Guptoo, General, S.C. Ukil, Indarjit Sen, J. Haldar and Tarun Roy, Saktinath Mukherjee, Tarun Chatterjee and Batindra Narayan Roy, for the Appellant; Somnath Chatterjee, A.K. Mitra and Pranab Kumar Chatterjee, for the Respondent

Judgement

Monoranjan Mallick, J.—The petitioners are the Commissioners of Berhampore Municipality in the district of Murshidabad and they are 19 in number belonging to Congress (I). The total number of seats of Commissioners of Berhampore Municipality is 30 out of which the petitioners are holding 19 seats and the 11 seats belonged to Left Front. The petitioner No. 1 is the Chairman and the petitioner No. 2 is the Vice-Chairman of the office of Board of Commissioners of the Berhampore Municipality (hereinafter referred to as the said Municipality). In the Municipal election held in the year 1986, the petitioners along with the Respondent Nos. 9 to 19 who belonged to Left Front were elected as Commissioners of the said Municipality and they took over the charge of the said Municipality on 17th July 1986. Since then, the petitioners along with the Respondent Nos. 9 to 19 have been continuing as Commissioners of the said Municipality. After taking over the said Municipality the petitioners have undertake several developmental works as mentioned in paragraph 4 of the said writ petition. Apart from the aforesaid departmental works, the present Board of Commissioners of the said Municipality have been making payments of the salaries of the staff regularly on the first date of each succeeding month and there has been any single valid in making such payment, although bonus and retirement benefits are also being paid to the staff of the said Municipality

regularly and in time.

2. On 5th August 1989 the petitioners duly performed their duties as the Commissioners of the said Municipality. In the evening of 5th August, 1989, after the office hours of the said Municipality, the petitioners learnt that the State Government had issued an order whereby the Commissioners of the said Municipality have been sought to be superseded.

3. From the orders being No. 307/C-10/IR-30/87 dated 4th August 1989, it appears that the Commissioners of the Berhampore Municipality have been sought to be superseded for the period of one year from the date of taking over of the charge of the said Municipality under Clause (bb) of Sub-section (1) of Section 554 of the Bengal Municipal Act 1932. It also appeared from the order No. 308/C-10/IR-30/87 dated 4th August 1989, that the Sub-Divisional Officer (Sadar) Berhampore Municipality has been requested to take over of the charge of the said Municipality in addition to his own duties on and with effect from the date of taking over charge of the said Municipality until further orders.

3A. Xerox copies of the said orders are annexed as annexure "A" to the writ petition collectively.

4. The petitioners state that the aforesaid orders superseding the Commissioners of Berhampore Municipality are neither bona fide nor lawful, that the allegations contained in the said order dated 4th August 1989 are vague, indefinite and devoid of material particulars and as such the order is invalid and improper in the eye of law.

5. It is further contended that if the allegations as contained in the aforesaid order relates, to the facts as the petitions take them to be, then they are factually incorrect which will be evident as set out in Clauses (a), (b) and (c) of paragraph 11 of the writ petition. They therefore contend that the aforesaid orders superseding the Commissioners of the Berhampore Municipality are illegal, invalid and not sustainable in law, that the impugned orders seeking to supersede the Commissioners of Berhampore Municipality in the purported exercise of powers u/s 553 of the "Bengal Municipal Act, 1932 without giving any opportunity to the Commissioners to show cause against the allegations levelled against them are in gross violation of principles of natural justice and as such the impugned orders are void. The petitioners further state that the supersession of the Commissioners of Berhampore Municipality entails civil consequences of the most serious nature to the Municipality itself and at once attracts the rules of Audi Alteram Partem, and hence the impugned orders seeking to supersede the Commissioners of Berhampore Municipality without giving the petitioners an opportunity of being heard, is void and without jurisdiction, that from the impugned orders, it does not appear that there was any urgency to justify the action actually sought to be taken by the respondents against the Commissioners of the said Municipality and that there can be nothing on record to provide any justification for such action and that there can be no justification for deprivation

of being heard to the petitioners.

6. The petitioners further state that the Respondents have no power and/or authority to supersede the Commissioners of the Berhampore Municipality without publishing the orders with reasons for making it in the Official Gazette and to the best of their knowledge of the petitioners, the impugned orders have not been published in the Official Gazette as yet and as such the impugned orders are illegal and ineffective. The petitioners also challenged the impugned orders made by the respondents are mala fide and in paragraph 18 of the writ petition have detailed the facts from which it would be clear that the action of the respondents in superseding the Commissioners of Berhampore Municipality have been taken with a view to make political gain in the ensuing parliamentary election. The petitioners, therefore pray for a writ of Mandamus commanding the respondents to rescind, to recall and/or to otherwise set aside the impugned order dated August 4, 1989 being annexure "A" to this writ petition forthwith and further directing them to proceed in accordance with law. They also pray for an injunction restraining the respondents from giving any effect and/or further effect to the impugned order dated August 4, 1989 and from preventing the petitioners from carrying out or performing their duties as Commissioners of the said Municipality.

7. At the time of admitting the writ petition for hearing on 11-8-1989, an interim order of injunction has been issued directing the Sub-Divisional Officer (Sadar), Berhampore, inter alia, to carry on the day to day administration of the Municipality but not to take any decision in the policy matters which Commissioners can do as per the provisions of the Bengal Municipal Act.

8. A supplementary affidavit has also been filed by the writ petitioners on 11th August 1989 stating further facts regarding the non-publication of the impugned orders in the Calcutta Gazette by bringing to the notice of this Court that on 10th August, 1989 when the writ petition was first moved, the learned Advocate-General could not produce the Gazette copy of the impugned orders, that the order publication of the Gazette was for by Sri K. K. Naskar, I.A.S. Special Secretary, Commerce & Industries Department, Government of West Bengal only on 9th August, 1989 to Sri K.P. Bandopadhyaya, Controller of Printing and Stationery, West Bengal Government Press as also to the Superintendent of West Bengal Government Press and that it is therefore clear that the impugned orders were neither printed or published in the Calcutta Gazette even on 9th August, 1989 nor could such copy was available to any member of the public for sale even on 10th August, 1989.

9. The writ petition has been contested by the Respondent Nos.-1, 3, 4, 5 and 6 by filing an Affidavit-in-opposition sworn by Sri Arun Kumar Bhaduri, the Respondent No. 6 who is the Director of Local Bodies, Government of West Bengal and Ex-Officio Joint Secretary to the Government of West Bengal in the Local Government and Urban Development Department. The Respondents state as follows :

The petitioner Nos. 1 and 2 in connivance with their political workers and taking advantages of the majority of the Congress (I) Commissioners in the Berhampore Municipality after assumption of office in 1986 have passed various resolutions for the purported development works and for which huge sums had been spent unauthorisedly and huge amounts had been misappropriated by the petitioners individually and/or collectively which are now under in depth scrutiny and enquiry on the basis of the various written complaints received by the answering respondents from the inhabitants of the said Municipality and finalisation of such scrutiny and enquiry have been stalled by the petitioners and their political workers by their illegal strikes, bandhs and vandalism by keeping the said municipality under seize and preventing the answering respondents from taking physical possession of the incriminating papers and documents which had been lying in the office of the said municipality prior to the order of supersession of the said municipality made on 4th August, 1989. The Respondents have also denied the allegations made in various sub-paragraphs of paragraph 11 of the writ petition and contend that the petitioners are not entitled in law to be informed about the report of enquiry which is still going on and in depth scrutiny which is going on into the malpractices and mis-appropriations and persistent default on the part of the petitioners are still to be completed and on the basis of the materials already in possession of the answering respondents, prima facie subjective satisfaction of the State Government as to the Commissioners of illegalities by the petitioners themselves had been arrived at and on that basis the two impugned orders both dated August 4, 1989 had been made by the State Government.

10. The Respondents further state that the petitioners were not also entitled in law to any opportunity of hearing before the order of supersession dated August 4, 1989 was made by the State Government, that the petitioners are not entitled in law to have any opportunity to show cause against the allegations levelled against them, that the provision of Section 553 of the Bengal Municipal Act by necessary implication excluded the application all the principles of natural justice and that the impugned orders seeking to supersede the Commissioners of the Berhampore Municipality without giving the petitioners the opportunity of being heard are neither void nor without jurisdiction. They also deny that there was any urgency to justify the action sought to be taken by the Respondents against the Commissioners of the said Municipality or that they have no power or authority to supersede the Commissioners of Municipality without publishing the orders with reasons for making it in the Official Gazette. They also contend that the entire scheme of the Bengal Municipal Act particularly, the provision of Sections 552, 553 and 554 thereof demanded immediate action against the petitioners in the interest of inhabitants within the said municipality and the State Government was justified in invoking the powers Under Sections 553 and 554 of the said Act. In the instant case although the State Government would have been well justified to invoke the powers u/s 553 of the said Act and in spite of doing so, the State Government was liberal and generous in not invoking the

more drastic powers u/s 552 of the said Act to give the petitioners an opportunity to correct themselves but the petitioners without accepting the said measure in good grace have resorted to extra-legal and extra-constitutional activities of strikes, bandhs and vandalism. The respondents also deny that the impugned action of the respondents has been taken with any political motive.

11. The Respondent Nos. 9 to 15 and 17 to 19 have also filed an affidavit-in-opposition in which the various incidents have been stated which according to them justify the action of the respondent, the State Government in superseding the Commissioners of the Berhampore Municipality. They contend that the petitioners have made persistent default in performance of duties imposed upon the petitioners and mis-management of the affairs of the Municipality by them and in several paragraphs, several instances of such persistent defaults in the performance of duties imposed on the petitioners and mis-management of the affairs of the Municipality have been stated. They also deny that rules of natural justice have got any application in this case. They, however, contend that the Municipality was put on notice of all material facts and had all opportunity to explain all facts and circumstances, that the petitioners knew all the charges of mismanagement of the affairs of the Municipality would justify the making of an order of supersession of the Commissioners and accordingly had all opportunity of presenting its own case. They also deny that there was no urgency to justify the action of the Government and contend that the mis-management had reached the limit of endurance and have become the subject matter of serious public agitation. They also deny that the supersession in the instant case have been made with a view to make any political gain in the Parliamentary election as alleged or that impugned order of supersession is mala fide.

12. Mr. Saktinath Mukherjee, learned Counsel appearing for the writ petitioners has challenged the order of supersession of the Commissioners of the Berhampore Municipality on the following main grounds, namely ; (i) The order of supersession has been passed without providing an opportunity of hearing to the Commissioners though it has serious civil consequences. Accordingly the order dated 4th August 1989 u/s 553 of the Bengal Municipal Act and the consequential order of the same date for appointment of Administrator are illegal and void.

(ii) The allegations in the order u/s 553 of the Act are vague and indefinite. The requirement of giving reasons is the mandatory requirement to safeguard against arbitrary action. But such vague and indefinite allegations which neither can be verified nor efficiently dealt with cannot be treated as reasons at all. The allegations that "there has been persistent default in the performance of the duties imposed upon the Commissioners," cannot be made a ground for action as in the order there is no charge of mis-appropriation of fund and when one of the grounds fails, the order should fail as a whole.

(iii) The impugned order is an abuse of the statutory power as it is an order patently mala fide both in law and in facts.

(iv) The impugned order was allegedly given effect to before it was really made because the order u/s 553 becomes a valid order only when it is published in the Official Gazette. But admittedly the Administrator assumed charge on 5th August, 1989 before the order was published in the Official Gazette and it was published not before 10th August 1989 and even not before this writ petition challenging the order as inchoate for not having published in the Official Gazette has already been moved in Court with notice to the State Respondents. The learned Advocate-General, appearing for the State Respondents has challenged each and every contention of the learned Advocate for the petitioners. He submits that the order u/s 553 is an administrative order and not quasi-judicial order ; that any order u/s 553 contemplated immediate action and thus it excludes the principles of Audi Alterem Partem; that the State Government had materials before it to pass the order ; that reasons given in the order are valid grounds for supersession of the Municipality on the ground of the mismanagement of the Commissioners in conducting the affairs of the Municipality, that the action was taken in the interest of public and on valid grounds ; that the order of supersession u/s 553 of the Bengal Municipal Act is for a limited period and temporary in nature and Commissioners have been kept under animated suspension and such order is less onerous than that of an order u/s 552 of the Act, that there was no question of any mala fide intention of the Respondents or political motive and that the order u/s 553 becomes effective as soon as it is made and there is nothing to indicate in Section 553 of the Act that it would take effect only on being published in the Calcutta Gazette.

13. Mr. Somnath Chatterjee, learned Counsel appearing for most of the Left Front Commissioners of the Berhampore Municipality, has adopted the submissions of Mr. Naranarayan Guptoo, learned Advocate-General and further submitted that even though the action taken for superseding the Municipality on valid reasons required no reasonable opportunity to be given to the Commissioners before the action taken regard beins had to decision of the Supreme Court specially in Maneka Gandhi's case the petitioners can very well make representation before the State Government against the action taken and if this Court directs the State Government to consider such representations as post decisional hearing which is part of principles of natural justice to be followed in administrative action of the State Government, then the State Government is ready and willing to give such opportunity to the petitioners for post decisional hearing.

14. First I would take up the question as to whether the order of super-session of the Commissioner of Berhampore Municipality is vitiated by the violation of the principle of natural justice as admittedly the State Government did not give the petitioners any opportunity to show cause against such action before such action was taken and admittedly passed the order dated 4th August, 1989 without giving any opportunity to the petitioners to have their say before the action is taken.

15. Mr. Saktinath Mukherjee has urged that when in the affidavit-in-opposition, it

has been admitted that no such opportunity has been given then according to him, the order is bad on the face of it and is illegal and liable to be quashed. Section 553 of the Bengal Municipal Act, as amended by the Bengal Municipal (Amendment) Act of 1980 reads as follows :

"Notwithstanding anything contained in Section 552, if, in the opinion of the State Government there has been misappropriation of municipal fund on account of the incompetency of the Commissioners to perform, or their persistent default in the performance of the duties imposed on them by or under this Act or by any other law, or where more than two-thirds of the total number of Commissioners holding office for the time being have, for any reason, resigned, or "where, in the opinion of the State Government, there is mismanagement in the affairs of the municipality, the State Government may, by an order published with reasons for making it, in the Official Gazette, supersede the Commissioners for a period to be specified in the order :

Provided that such supersession shall not at the first instance be made for a period of more than one year, and such period may subsequently be extended for reasons to be recorded in writing by a period not exceeding six months."

16. On 4th August 1989 the State Government has passed the order signed by Sri A. Deb, Secretary to the Government of West Bengal, Department of Local Government and Urban Development superseding the Commissioners of the Berhampore Municipality in purported exercise of the power u/s 553 of the Bengal Municipal Act, 1932 which is reproduced below :

No. 307/C-10/IR-30/87-4th August 1989-Whereas there has been a diversion of allotted Government fund for I.D.S.M..T. programme by the Commissioners of the Municipality;

And whereas there has been irregular purchases by the Commissioners of different parts of tube-wells, pipes, etc., and sub-standard tubes and other electrical equipments;

And whereas in. the opinion of the Governor there has been persistent default in the performance of the duties imposed on the Commissioners and mismanagement in the affairs of the said Municipality;

Now, therefore, in exercise of the power conferred by Section 553 of the Bengal Municipal Act, 1932 (Ben. Act XV of 1932), the Governor is pleased hereby to supersede the Commissioners of the Berhampore Municipality for a period of one year from the date of taking over charge of the said Municipality by the person to be appointed under Clause (bb) of Sub-section (1) of Section 554 of the said Act."

17. On the same date the said Secretary has passed the consequential order by which the State Government has directed the Sub-Divisional Officer (Sadar) Berhampore to exercise all powers and duties of the Commissioners of the said Municipality which reads thus :

"No. 308/C-10/IR-30/87-4th August 1989-Whereas an order of supersession has, been passed u/s 553 of the Bengal Municipal Act, 1932 (Ben. Act XV of 1932) in respect of the Commissioners of the Berhampore Municipality under this department Order No. 307/C-10/IR-30/87, dated the 4th August, 1989.

Now, therefore, in exercise of the power conferred by Clause (bb) of Sub-section (1) of Section 554 of the Bengal Municipal" Act, 1932 (Ben. Act XV of 1932), the Governor is pleased hereby to direct that all the powers and duties which may, under the provisions of the said Act or any other Act or any Ordinance or any Regulation or any Rule, by-Law, Order, notification or subsidiary legislation made under the provision of the said Act or such Regulation be exercised and performed by the Chairman and the Commissioners whether at a meeting or otherwise, of the Berhampore Municipality shall be exercised and performed, subject to such directions as the State Government may issue from time to time, by the Sub-divisional Officer, Sadar, Berhampore, in addition to his own duties, with effect from the date of taking over charge of the said Municipality until further orders."

18. In support of his submission that the order or supersession is illegal as it has been passed without providing any opportunity to explain their position against the proposed action to be taken though such an order has serious civil consequences, Mr. Mukherjee submits that the interpretation of the Respondents that Section 553 excludes the natural justice and the petitioners are not entitled to have an opportunity to show cause is not acceptable and has referred to me several decisions to urge that the stand taken by the Respondent is contrary to what may be taken to be settled principles of law.

19. He has referred to me the decision of Anil Kumar Sen, J., in Ramdas Ramanju Das and Others Vs. State of West Bengal and Others, decided on 11th April, 1974 in which the learned Judge has quashed an order of supersession of Chandrakona Municipality by the State Government on the ground that by while passing such an order the principle of natural justice has not been followed. He has also referred to me the Supreme Court decision of S.L. Kapoor Vs. Jagmohan and Others, , The State of Maharashtra and Another Vs. B.K. Takkamore and Others, and The Municipal Council, Malkapur and Another Vs. The State of Maharashtra and Another, Vidarbha Nagarpalika Parishad and Others etc. Vs. State of Maharashtra and Others etc., and an unreported judgment of FMA 567 of 1984 of Division Bench of this Court disposed of on 10-5-1984.

20. In Ramdas Ramanju Das and Others Vs. State of West Bengal and Others, Anil Kumar Sen, J., had to consider the validity of an order of supersession dated 28-4-1972 in the case of Chandrakona Municipality u/s 553 of the Bengal Municipal Act as it stood prior to its amendment in 1980. The learned Judge has clearly held that an Order u/s 553 calls application of the principle of natural justice which would make it obligatory to the State Government to give an opportunity to the Commissioners to show cause against the proposed action. Before the learned Judge on behalf of the State similar point was raised, namely,

the order of super-session being an administrative order based on an opinion formed by the State Government, unlike Section 550, Section 553 does not provide for an opportunity to show cause. The learned Judge at para 11 of his judgment refuting the contention of the learned Advocate appearing for the State Government has observed as follows :

"Though the decisions relied on by Mr. Guha support in a way the contention put forward by Mr. Guha, I am unable to accept his contention in its entirety because of subsequent development of the law on the point. I consider it unnecessary to embark on any investigation on the wider issue as to whether powers exercised u/s 553 are administrative or quasi-judicial. Even if it be assumed that powers so exercised are administrative, yet it would call for application of the principles of natural justice. An action taken u/s 553 leads to serious prejudicial consequences. As is evident in the present case by the impugned order not only have the Commissioners lost their office they have further been declared to be incompetent and guilty of serious defaults. The order attaches stigma which the petitioners have to carry for all times. It is now a settled principle that even as (an) administrative action which leads to such consequence requires adherence to the principles of natural justice."

21. So according to the learned Judge the order attaches a stigma which the petitioners carry for all times and even an administrative action which leads to such consequences requires adherence to the principles of natural justice. In another portion of the judgment referring to Supreme Court decisions of *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, , *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, and *Union of India (UOI) Vs. K.P. Joseph and Others*, the learned Judge has also observed as follows :

"It is no longer correct to think that principles of natural justice are restricted in their application only to judicial and quasi-judicial field and that where the duty cast is administrative there can never arise an implied necessity of observing the principles of natural justice. The learned Judge has also considered the principle laid down by Privy Council in the case of *Durriyappah v. Fernando* (1967) 2 All E.R. (PC) 152. There the question arose as to whether the order of Minister to make an order of supersession of Jaffna Municipality required following the rule of *Audi Alterem Partem* rule of natural justice. The Privy Council held that such rule was applicable to make an order of super-session of Municipality u/s 277 Municipal Ordinance, on the ground of incompetence of the Council. According to Privy Council the rule was applicable also for the reason that a consequence of the order was to deprive the Council of its property."

22. Mr. Mukherjee strongly relies on this judgment of Anil Kumar Sen, J., and submits that even though it was a decision u/s 553 the State Legislature even being aware of this decision of High Court while substituting the present Section 553 did not specifically exclude the opportunity to show cause against the proposed action of supersession-by showing clear Legislature intent to exclude the rule of *Audi Alterem Partem*. He pointed out that in the substituted Section

553 the Legislature has substantially retained the same provisions and the Legislature not having expressly excluded the application of the rule of Audi Alterem Partem the principle laid down in Ramdas Ramanju Das and Others Vs. State of West Bengal and Others, would also apply in interpreting the present Section 553 of the Bengal Municipal Act.

23. Mr. Mukherjee has also placed before me an unreported judgment in F.M.A. 567 of 1984 (Rishikesh Pandit v. State of West Bengal and Ors.). The whole record along with the record of the learned trial judge have been produced before me. In that case (C.R. 12079 (W) of 1983) a writ petition was moved against the order of supersession of Budge Budge Municipality dated 30th July 1983. The order was passed on the ground of mis-management of the affairs of the Municipality. It was challenged mainly on the ground that no opportunity to show cause was given to the Commissioners before superseding the Municipality. Mrs. Pratibha Bonnerjea, J., by her order set aside the impugned order and issued a writ of Mandamus commanding the respondents not to give effect to the order and directed the respondents to hand over the charge of the Municipality within two weeks from date. The learned Judge has, however, appointed the Administrator as Special Officer and has directed that the petitioner to function under him. The learned Judge has issued further direction regarding the disposal of the representatives to the charges against the Municipality within a specified period with a speaking order.

24. Being aggrieved the petitioner has moved in appeal. In F.M.A. 567 of 1984, Mr. M. M. Dutt, J. as his Lordship then was sitting with C. K. Banerjee, J., while disposing of the temporary injunction made disposed of the whole appeal.

25. The Division Bench having found that the learned trial Judge having set aside the order of supersession being impressed with the case of the appellant that no opportunity was given to the Chairman and Commissioners of the Municipality of being heard and there was violation of the principles of natural justice should not have appointed the Administrator as Special Officer. The Division Bench set aside the order of the learned trial Judge appointing the Special Officer on the ground that after setting aside the order of supersession the trial court had no jurisdiction to appoint a Special Officer. The Division Bench, therefore, by the order dated 10-5-1984 set aside such order and directed that the Municipal administrations would be run by the Chairman and other Commissioner in accordance with the Bengal Municipal Act. The Division Bench, has, however, given liberty to the respondents to issue show cause notice, to the Chairman and Commissioners of the Municipality in accordance with law, if they are so advised.

25A. Mr. Mukherjee submits that this Division Bench Judgment in the matter of supersession of the Municipality u/s 553 of the Act as substituted by the Amendment Act of 1980 on the ground of mis-management also approved the judgment of the learned trial Judge setting aside the order of supersession on the ground that no reasonable opportunity to show cause has been given to the Chairman and the Commissioners but set aside the appointment of the Special

Officer, restored the Chairman and Commissioners to its previous status and position giving liberty to the State Respondents to issue show cause on them, if they are so advised.

26. Mr. Mukherjee also refers to me the Supreme Court decision *S.L. Kapoor Vs. Jagmohan and Others*, and has urged that Supreme Court in that decision which is a case of supersession of a Municipality u/s 238(1) of the Punjab Municipal Act has also clearly ruled that the principle of natural justice has to be followed. There before the Three Bench division of Supreme Court the learned Attorney-General also submitted that Section 238 of the Punjab Municipal Act did not contemplate and did not require that any opportunity should be given to the Commissioner before an order of supersession has been passed. Even though in Section 238 of the Punjab Municipal Act there was no specific provision for affording any opportunity to show cause before any order of supersession of Municipality is passed, Chinnappa Reddi, J. has rejected in page 141 the contention of the learned Attorney-General that as a matter of interpretation of Section 238 natural justice has been excluded. In paragraph 10 of the Judgment it has been clearly held that the natural justice is not excluded even if the Section is silent on the point. The reason for such interpretation is that the order has civil consequences.

27. At paragraph 11 of the said judgment the learned Judge has also negated the contention that in case of emergency, there is no obligation to follow the principles of natural justice. In such case even the minimal natural Justice has to be followed. That portion of the judgment of the Chinnappa Reddi, J. at para 11 at page 142 is reproduced hereinbelow :

"Another submission of the learned Attorney-General was that Section 238(1) also contemplated emergent situations where swift action might be necessary to avert disaster and that in such situations if the demands of natural justice were to be met, the very object of the provision would be frustrated. It is difficult to visualise the sudden and calamitous situations gloomily foreboded by the learned Attorney-General where there would not be enough breathing time to observe natural justice, at least in a rudimentary way. A Municipal Committee under the Punjab Municipal Act is a public body consisting of both officials and non-officials and one cannot imagine anything momentous being done in a matter of minutes and seconds. And, natural justice may always be tailored to the situation. Minimal natural justice, the barest notice and the "littlest" opportunity, in the shortest time, may serve. The authority acting u/s 238(1) is the matter of its own procedure. There need be no oral hearing. It is not necessary to put every detail of the case to the Committee : broad grounds sufficient to indicate the substance of the allegations may be given. We do not think that even minimal natural justice is excluded when alleged grave situations arise u/s 238. If indeed such grave situations arise, the public interest can be sufficiently protected by appropriate prohibitory and mandatory action under the other relevant provisions of the statute in Sections 232 to 235 of the Act. We guard ourselves against

being understood as laying down any proposition of universal application. Other statutes providing for speedy action to meet emergent situations may well be construed as excluding the principle audi alteram partem. All that we say is that Section 238(1) of the Punjab Municipal Act does not."

28. Mr. Mukherjee has also referred to me the decision of State of Maharashtra v. B. K. Takatmore. It was a case of supersession of Municipality u/s 408 of the City of Nagpur Corporation Act. That section itself contemplates the issuance of show cause notice and in para 4 of the judgment the Supreme Court has held that the order of supersession is liable to be set aside if no show cause notice is issued.

29. Mr. Mukherjee has also cited the Division Bench judgment of Bombay High Court in The Municipal Council, Malkapur and Another Vs. The State of Maharashtra and Another, of the said judgment the Division Bench of Bombay High Court in conferring Section 313 Maharashtra Municipalities Act in which there was also no express provision for issuing show cause notice before taking the action of supersession of Municipality has observed at para 5 page 254 as follows :

"Therefore having regard to the scheme of Section 313 and the consequences of the action which are drastic, in our opinion, even if there is no express provision in Section 313 of the Act that an opportunity should be given to the Municipal Council to show cause against the proposed action, the principles of natural justice require that a reasonable opportunity should be given to the council to explain the charges and to put forward its case before an action is taken against it u/s 313 of the Act. It is not necessary for us to go into the question as to whether the power given u/s 313 is a quasi-judicial power or an administrative power."

30. The other decision cited by Mr. Mukherjee on the point is the Full Bench decision of Vidarbha Nagarpalika Parishad and Others etc. Vs. State of Maharashtra and Others etc., . In that Full Bench Decision the Bombay High Court was considering the question as to whether when the Municipal Board is super-seded even during the extended term it being deprivation of the statutory right of the Municipal Board the principle of audi alteram partem is to be followed. The reason of this decision is that exercise of the power of the State u/s 48A of Maharashtra Municipality Act 1965 has civil consequences in that the right to continue in office is put to an end.

31. Mr. Naranarayan Guptoo, learned Advocate-General appearing on behalf of the State-Respondents, has urged that the order of supersession u/s 553 after its amendment by the Amendment Act 1980 pro-vides for immediate action and the question of following the principles of Audi Alteram Partem is ruled out. He also submits that the order of super-session is an administrative order and not a quasi-judicial order and consequently excludes the following the rule of natural justice. He further submits that the order of supersession is a temporary

measure that the supersession shall only remain effective for the maximum period of 1 1/2 years in view of the amendment of the Section by 1982 Amendment that the Commissioners are kept in animited suspension and there is also the chance of Commissioners coming back to power and such action is less onerous then the action u/s 552 of the Bengal Municipal Act and consequently taking such temporary action in emergency expressly rules out the following of the principles of natural justice and if the letter issuing of show cause notice and reasonable opportunity is offered then the action of the State Government to take emergent decision of supersession on the basis of the relevant materials so far collected will be frustrated.

32. Mr. Somnath Chatterjee, learned Counsel appearing for the other respondents has also supported the arguments of Mr. Guptoo and has further urged that even though in the context of provision of Section 553 after the Amendment of 1980 any case the opportunity to show cause was not contemplated and was not given but there is no bar to the petitioners making representation even after the order of supersession has been passed and such post decisional hearing is approved by the Supreme Court in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, and in the circumstances the failure to give any pre-decisional hearing to the petitioners before the order of supersession is passed does not render the order of supersession void as it is a temporary urgent action taken and for such temporary urgent action pending investigation of the allegations against the present petitioners there is no obligation to follow the rules of natural justice. Mr. Chatterjee has in this respect referred to be the decision of the Supreme Court in Liberty Oil Mills and Others Vs. Union of India (UOI) and Others, . I would first consider as to whether that the order of supersession u/s 553 of the Bengal Municipal Act is a temporary measure or not and as to whether the petitioners have at any future stage any chance to come back to power or not. For that purpose, the provision of Sub-section (2) of Section 554 of the Bengal Municipal Act is necessary to be considered. Under Sub-section (1) of Section 554 when an order of supersession has been passed u/s 553 then with effect from the date of the order of Commissioners shall, as from the date of the order vacate their offices as such Commissioners. Sub-section (2) lays down that the State Government may at any time by order reconstitute the body of the Municipal Commissioners by appointment of all Commissioners for such period as may be specified in the order or order holding for general election for reconstitution of the body of the Municipal Commissioners and on such reconstitution the provision of Sub-section (1) of Section 554 will cease to have effect from the date of the first meeting of the newly appointed or elected Commissioners, as the case may be at which the quorum is present. Therefore, even though the Amendment Act of 1982 has clearly provided by adding a proviso to Section 553 that the order of supersession shall not exceed the maximum period of 1/2 years, yet, after the Commissioners vacates their office as such Commissioners u/s 554(1) of Bengal Municipal Act as soon as the order of supersession has been passed u/s 553 of the Act then there is no provision in

the Act for the superseded Commissioners to come back to power at any future date, either the reconstituted body of the Municipal Commissioners will take office or the new body of Municipal Commissioners will take office after the election.

33. Mr. Saktinath Mukherjee, learned Advocate appearing for the writ petitioners, urges that the learned Advocate-General's contention that the order of supersession u/s 553 is a temporary measure will not be borne out from the analysis of the provision of Section 554 of the Bengal Municipal Act.

34. I am in full agreement with the above submissions of Mr. Mukherjee that the order of supersession once passed, is a final order, that the Commissioners vacate their offices as such Commissioners from the date of the order and there is no question of their offices to remain in animated suspension.

35. Mr. Guptoo, learned Advocate-General contends that the order u/s 553 is an emergency provision and for such emergency provision following the principles of natural justice is ruled out. Mr. Mukherjee refutes the above contention by drawing my attention to the judgment of Supreme Court in S.L. Kapoor Vs. Jagmohan and Others, , in which Chinnappa Reddy, J., has clearly held that in the matter of supersession of a municipality there is the obligation to follow the principles of natural justice. He has drawn my attention to the observation of Chinnappa Reddy, J. in paragraph 11 that in such case even "minimal natural justice", "barest notice", and the little opportunity in the shortest time may serve".

36. Mr. Guptoo urges that Section 553 as it stands of the Amendment Act 1980 provides for supersession of the Commissioners of Municipality on three grounds, namely (1) mis-appropriation of municipal fund on account of the incompetency of the Commissioners to perform or their persistent default for the purpose of the duties imposed on them by or under this Act or by any other law, or.

(2) Where more than 2/3rd of the total number of Commissioners holding office in the time being have, for any reason resigned, or (3) Where in the opinion of the State Government there is mis-management of the affairs of the Municipality.

37. So according to the learned Advocate-General for any of these grounds if natural justice is to be followed the whole purpose of taking emergency action of supersession will be frustrated. He specifically points out that where more than 2/3rd of the total number of Commissioners holding office for the time being have for any reason resigned then the State Government has to take immediate action otherwise the municipal services will come to a stand still.

38. He, therefore, submits that under the amended Section 553 there is no obligation for the State Government to follow the principles of Audi Alterant Parterm.

39. He also submits that a five Bench division of Supreme Court in Radeshym Khare and Another Vs. The State of Madhya Pradesh and Others, has clearly held

that in the case of an administrative act of the State Government there is no obligation to follow the principles of natural justice and for taking such administrative action only the State Government has the obligation to observe the ordinary rules of fair play.

40. He, therefore, submits that this Court should not rely on the decision of S.L. Kapoor Vs. Jagmohan and Others, which is a Bench decision of Supreme Court consisting of three Judges and when the learned Judges in S.L. Kapoor Vs. Jagmohan and Others, did not at all take into consideration the Five Bench judgment of Supreme Court in Radheshyam Khare's case then in view of the principals laid down in *Mattulal v. Radhelal* AIR 1984 S.C. 1597 then when the earlier larger Bench Judgment of the Supreme Court is ignored by a later Smaller Bench Judgment of the same court the earlier judgment is to prevail.

41. I have carefully considered the judgment of the Supreme Court in *Radeshyam Khare and Another Vs. The State of Madhya Pradesh and Others*, . Before the Five Bench Judges of the Supreme Court the question arose as to whether there was any obligation to follow the principles of *audi alteram partem* before taking an action against the municipality u/s 53A of the C.P. and Berar Municipalities Act. u/s 53A of the above Act, the State Government had the power to appoint an Executive Officer to any municipality, if a committee is not competent to perform the duties imposed on it or Undertaken by it or under this Act or any other enactment for the time being in force and the State Government considers that the general improvement in the administration of the Municipality is likely to be secured by the appointment of the servant of the Government as the Executive Officer of the Municipal Committee. It is also gathered that under the same Act there is a provision for supersession of the municipality u/s 57 of the Act but before such action is to be taken reasonable opportunity has to be given to the committee to furnish an explanation. The Five Bench Judges of the Supreme Court in that decision were considering an action of the State Government appointing an Executive Officer u/s 53A of the Act. In that context out of five learned Judges, three Judges in majority treated such action u/s 53A is an administrative act of such a nature in which there was no obligation to follow the principles of, *Audi Alteram Partem* but it was clearly held that even though the action to be taken u/s 53A of the C.P. and Berar Municipality Act is an administrative action but that does not absolve the State Government of observing the ordinary rules of fair play. The majority of the Judges having found that such rules of fair play have been observed by the State Govt. the action u/s 53A was found to be a valid one.

42. It is, therefore, clear that the Five Bench Judges of the Supreme Court in *Radheshyam Khare's* case was not called upon to decide as to whether an order of supersession of a Municipality on the ground of incompetence of the Commissioners of the Municipality required the following principles of the *Audi Alteram Partem* or not. Therefore, while deciding a case of supersession of the Municipality by the Judges of the Supreme Court in *S.L. Kapoor Vs. Jagmohan*

and Others, the above Five Bench Judgment of the Supreme Court could not at all have been relevant and only because the three Bench Judges of Supreme Court in S.L. Kapoor Vs. Jagmohan and Others, did not consider the Five Bench Judgment of Radheshyam Khare's case then I am unable to agree with the learned Advocate-General that the judgment in S. L. Kapoor's case cannot be considered by this Court as laying down correct principles. Moreover, even in Radheshyam Khare's case the Supreme Court had the occasion to compare the provision of Section 53A with those of Section 57 of the same Act in order to emphasise that the action u/s 53A is far less drastic as regards the consequence than those of an order of supersession passed u/s 57 of the Act. As there were drastic consequences of a supersession u/s 57 the Supreme Court in that judgment recorded its approval and appreciation of the provision of giving an opportunity to the effected committee to give an explanation against that proposed action. Therefore, the connection of the learned Advocate-General that the decision of S. L. Kapoor's case suffers from the defect of such silentio and that this Court would have to ignore that judgment and follow the Five Bench Judgment of Radheyshyam Khare's case while deciding as to whether there is any obligation for the State Government in this case to follow the principles of audi alteram partem of the natural justice is not acceptable.

43. However, I agree with the learned Advocate-General that while passing an order of supersession on the ground that majority of the members of the Commissioners have resigned there may not be any obligation for the State Government to follow the principles of audi alteram partem but when the allegations against the Commissioners that they have misappropriated the fund of the Municipality or that they are incompetent then such allegations against the Commissioners of the Municipality attached stigma to them for all time to come and by depriving the Commissioners of holding their office to the full term, it has the effect of depriving them of their right to property and such action has definite serious civil consequence and in view of the judgment of the Supreme Court in S. L. Kapoor's case there is the definite obligation to the State Government to follow the principles of Audi Alteram Partem even though I agree with the learned Advocate-General that the order u/s 553 is an administrative act.

44. I have carefully considered the provision of old Section 553 with those of new Section 553 as substituted by the Amendment Act 1980 except that a new ground for supersession has been introduced, namely, the resignation of the majority of members, all other grounds were there in the old Section 553. I have already indicated that when the supersession order is passed on the ground that the majority of the members have resigned then such order not entailing any civil consequences to any Commissioner may not require the following the principles of natural justice. But for supersession of the Municipality for the two other grounds, namely, mis-appropriation and incompetence there is definite obligation for the State Government to follow the principles of audi alteram partem.

45. In S. L. Kapoor's case it has been clearly indicated that even in emergency a minimal opportunity has to be given.

46. The learned Advocate-General has drawn my attention to the concluding portion of paragraph 11 of S. L. Kapoor's case in which Chinnappa Reddy, J., has clearly held that by laying down the principles that the rule of Audi Alteram Partem has to be followed in the case of supersession of the Municipality even an emergency the learned Judges were not laying down any principle of universal application and that other statutes providing for speedy action to meet emergent situation may will be construed as excluding the principles of audi alterant partem. The learned Advocate-General submits that new Section 553 is such a statute providing for speedy action to meet emergent situations.

47. On carefully construing the new provision of Section 553, I am unable to agree with the above submission of the learned Advocate-General. There is nothing to indicate that supersession of the Municipality u/s 553 of the Bengal Municipal Act contemplates any speedy action to meet emergent situation. The Section is enacted in general language. In in new Section as I have already indicated one new ground has been introduced but except that there is no practical difference between old Section 553 and new Section 553. The learned Advocate-General has drawn my attention to Section 552 of the Bengal Municipal Act and according to him the action u/s 552 is more onerous than that Section 553. But on carefully construing the provision of Section 552, I am unable to agree with the above submission of the learned Advocate-General. u/s 552 if in the opinion of the State Government the Commissioners have shown their incompetence to perform or have persistently made default in the performance of duties imposed on them by or under this Act or by any other law or have exceeded or abuse their powers, the State Government can by an order publishing in the Official Gazette for reasons for making it direct that a fresh general election shall be held immediately of persons to be the Commissioners, and from the date of the first meeting Of the newly formed body of the Commissioners at which a quorum is present, former Commissioners shall, unless they are re-elected or re-appointed for the purpose of Section 56, vacate their offices.

48. Therefore, when an order is passed u/s 552 and immediate election is ordered to be held the Commissioners do not have to vacate their offices immediately with effect from the date of the order. They can continue in office upto to the date of the first meeting of the newly formed body of the Commissioners at which a quorum is present. Therefore, in my view the action u/s 552 is less onerous than that u/s 553 of the Bengal Municipal Act.

49. Mr. Mukherjee has submitted that even though the learned Advocate-General submits that the S. L. Kapoor's case should be ignored as it has failed to consider the earlier larger Bench Judgment of the Supreme Court in Radheshyam Khare's case, a Five Bench Judgment of the Supremq Court in Olga Tellis and Others Vs. Bombay Municipal Corporation and Others, has fully approved the

judgment in S.L. Kapoor Vs. Jagmohan and Others, . The following observation of the Supreme Court in Olga Tellis case approving S. L. Kapoor's case is reproduced below :

"Any discussion of this topic would be incomplete without reference to an important decision of this Court in S.L. Kapoor Vs. Jagmohan and Others, . In that case the supersession of the New Delhi Municipal Committee was challenged on the ground that it was in violation of the principles of natural justice since, no show cause notice was issued before the order of supersession was passed. Linked with that question was the question whether the failure to observe the principles of natural justice matters at all, if such observance would have made no difference the admitted or indisputable facts speaking for themselves. After referring to the decisions in Ridge v. Baldwin 1964 AC 40 at p. 68 ; John v. Rees (1970) 1 Ch 345 at p. 402 ; Annamunthodo v. Oilfield Workers' Trade Union (1961) 3 All ER 621 at p. 625 (HL) ; Margarita Fuentes of al v. Robert L. Shevin (1972) 32 LED 556 , Chintapalli Agency Taluk Arrack Sales Cooperative Society Ltd. and Others Vs. Secretary (Food and Agriculture) Government of Andhra Pradesh and Others, and to an interesting discussion of the subject in Jackson's Natural Justice (1980-Edn), the Court; speaking through one of us, Chinnappa Reddy, J. said :

"In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of denial of natural justice is unnecessary. It will come from a person who has denied justice that the person who has been denied justice is not prejudiced."

These observations sum up the true legal position regarding the purport and implications of the right of hearing."

50. Thus the principle laid down in S. L. Kapoor's case that denial of natural justice is itself a prejudice and no further proof of prejudice is necessary to prove by the petitioner has been approved by the five Bench judgment of Supreme Court in Olga Tellis case. This strengthens the view that the Supreme Court judgment in S. L. Kapoor's case is not a judgment per incuriam as submitted by the learned Advocate-General.

51. The learned Advocate-General has also sought to rely on Durayappah v. Fernando and Ors. (1967) (2) (PC) All ER 152. I have already pointed out that Privy Council in that decision has clearly observed that the rule of Audi Alteram Partem was applicable to a decision on the part of the Minister to make an order of supersession of a Municipal Council u/s 277(1) of the Municipal Ordinance on the ground of incompetence on the part of the Council. The Privy Council express the view that the above rule was applicable also for the reason that the consequence of the order was to deprive the Council of its property. Both the learned Advocate-General and Mr. Chatterjee has referred to me the latest

Supreme Court decision in R.S. Dass Ors. Vs. Union of India (UOI) and Others, and has pointed out the relevant portion of the said judgment delivered by K. N. Singh, J.

52. The following observations of the learned Judge in paragraphs 22 and 25 are reproduced hereinbelow:

"The principle of audi alteram partem is a basic concept of principles of natural justice. No one should be condemned without hearing is the essence of justice. The Court of law apply this principle to ensure fair play and justice in judicial and quasi-judicial matters. Of late these principles have been extended even to administrative actions also. However, the application of the audi alteram partem rule is not applicable to all eventualities or to cure all ills. Its application is excluded in the interest of administrative efficiency and expedition. Sometimes legislation itself excludes the application of the rule. It is difficult to conceive exhaustively all eventualities and circumstances for application or exclusion of the rule.".....

"It is well established that rules of natural justice are not rigid rules, they are flexible and their application depends upon the setting and the background of statutory provisions, nature of the right which may be effected and the consequences which may entail, its application depends upon the facts and circumstances of each case. These principles do not apply to all cases and situations. Applications of these uncodified rules are often excluded by express provision or by implication. In Union of India and Another Vs. Tulsiram Patel and Others, a Constitution Bench of this Court considered the scope and extent of applicability of principles of natural justice to administrative actions. Madon, J., summarised the position of law on this point and observed as follows:

So far as the audi alteram partem rule is concerned both in England and in India, it is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct the taking of prompt action such a right can be excluded. This right can also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion ; nor can the audi alteram partem rule be invoked if importing it would have the effect of paralysing the administrative process or where the need for promptitude or the urgency of taking action so demands, as pointed out in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, . "

53. The learned Judge in that decision has considered the following Supreme Court decisions to lay down the above principles :

(1) A.K. Kraipak and Others Vs. Union of India (UOI) and Others, (2) Union of India (UOI) Vs. Col. J.N. Sinha and Another, (3) The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee, (4) Union of India and Another Vs. Tulsiram Patel and Others, .

54. On considering the above decision of the Supreme Court it is quite clear that the Supreme Court has now clearly held that the principles of Audi Alteram Partem which a basic concept of principles of natural justice have of late been applicable to administrative actions also. It has been clearly pointed out that as to how and in what respect and upto what extent the said rule would have to be followed cannot be exhaustively laid down. It depends upon the exigencies of a, particular situation. None of the above decisions considered any case of supersession of a Municipality by the State Government. On the contrary there is a clear pronouncement of the Supreme Court in S. L. Kapoor's case that in the matter of super-session of the Municipality even when an action has to be taken in emergency the minimal rule of natural justice has to be followed and this is a clear pronouncement of the Supreme Court on the point which is subject matter of decision in this case and this principle laid down by a Bench of the learned three Judges has been referred to by a Five Bench Judges of the Supreme Court in Olga Tellis" case as indicated in the above. This is the clear judgment of the Supreme Court that before superseding a municipality even on an emergency ground the rule of natural justice even to the minimum extent has to be followed.

54a. However, in this case even from the documents which have been produced before me by way of supplementary affidavit filed by the State-Respondents, I do not find any indication that there was any emergent situation arising in the municipality for taking a decision in emergency. The documents that have been produced which are mainly reports submitted to the Government by several officers of the State Government holding some enquiries into the affairs of the Municipality in between the period of December 1987 and upto sometime July 1989. When for so long a period the officers made various enquiries and the State Government did not feel it necessary even after receiving such reports in between such long periods to take any quick action but the order superseding the municipality by order dated August 4, 1989 cannot be taken to be an action taken on emergency. Moreover, in the affidavit-in-opposition of the State it is clearly averred that in deptts. enquiry is going on over the allegation of misappropriation of huge amount of municipal fund by the Commissioners but such enquiry is still continuing. Before conclusion of such enquiry, the State Government could not come to a conclusion that there was any misappropriation of the Municipal fund. So, during the pendency of such enquiry the order of supersession is sought to have been passed. Therefore, it would be proper to hold that when enquiry or investigation is going on there was no such emergency pending such enquiry or investigation for the State Government to take an action on emergency. Therefore, I am unable to accept the contention of the learned Advocate-General that the order of supersession dated 4th August, 1989 was an action taken in emergency and there was, therefore, no time or scope for following the principles of audi alterem partem. However, in view of the Supreme Court Judgment in S. L. Kapoor's case even in emergency, there is the obligation for the State Government to follow the principles of audi alterem partem even to the barest minimum. But in this case regard being had the facts

and circumstances there was no emergent situation prevailing for the State Government for not following the principles of natural justice enjoined in *audi alterem partem*.

55. Mr. Somnath Chatterjee appearing for the other respondents has referred to me a decision of *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, But this is a decision of a case in which the Government employee has been ordered to be compulsorily retired. In such a case of compulsory retirement it has been unanimously held by the Supreme Court that the concerned authority has only the obligation to act fairly and reasonably but the affected employee is not entitled to be held before the decision is taken But in the case of supersession of municipality which carries a stigma and a civil consequences in view of the clear decision of the Supreme Court in *S. L. Kapoor's* case the following principles of natural justice of *audi alterem partem* is a must.

56. The decision in *The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee*, was a case of cancellation of certificate by the Board of Mining Examination. The report on the basis of which the cancellation was made was known to the candidate. The candidate submitted an explanation or representation against the report and the only complaint was that the Board did not provide a personal hearing. The Supreme Court negated the contention that the candidate was entitled to any personal hearing before cancellation of the certificate. This case is clearly distinguishable.

57. The decision of *R. S. Das v. Union of India AIR 1983 S.C. 593* has also been referred to me by Mr. Somnath Chatterjee. But it was a case in which the petitioner was aggrieved by non-inclusion of his name in the select list of the Indian Administrative Service. In such a case there was no obligation to give any personal hearing to an officer who has been refused promotion by not including his name in the select list in the Indian Administrative Service.

58. In none of those decisions, the supersession of the Municipality was involved. The decision of *Liberty Oil Mills and Others Vs. Union of India (UOI) and Others*, is a case in which in the case of interim temporary measure taken pending investigation the Supreme Court ruled out the following principles of *Audi Alterem Partem*. The facts of the above case being entirely different the principles of this decision cannot be applied to the present case. In that decision the interim measure under Clause 8(B) of the Control Order in which the import of Beef Tallow was prohibited by way of a temporary measure pending further investigation was challenged. Such interim prohibition without giving reasonable opportunity of hearing was upheld by the Supreme Court even though *audi alterem partem* rule was followed.

59. Both the learned Advocate-General and Mr. Chatterjee have urged that even though no regular show cause notice had been issued the petitioners were put to notice about the action proposed to be taken against them in view of the several irregularities and acts of mis-management and violation of the Municipal Act and

the Rules committed by them. According to them such complaints were enquired into by the several officials of the State Government and the reports which have been submitted by way of supplementary affidavit of the State Government would indicate that when such enquiries were held, concerned officers had gone to the office of the Municipality for the purpose of holding such enquiries and necessary enquiries were made to the Chairman whenever available or to the Vice-Chairman or to other officers of the Municipality and therefore, the Chairman and the Vice-Chairman were fully aware that the officers concerned were holding relevant enquiries against the various allegations which the State Government were constantly receiving against their affairs of the Municipality. The learned Advocate-General, therefore, submits that when during such enquiry relevant queries were made and explanations sought for before submitting the reports, then the petitioners were put to notice and the order of supersession passed by the State Government on the basis of the said reports must therefore be construed as one taken on the basis of the relevant materials bona fide and on putting the petitioner Commissioners to notice.

60. I am unable to accept the above contentions of the learned Advocate-General and Mr. Chatterjee. The enquiries into the various allegations from time to time were made no doubt. I have already indicated that those enquiries were held in between the period of December, 1987 to July 1989- Those enquiries were definitely secret enquiries into the allegations and for such purpose of holding such enquiries some queries were made with the Chairman or Vice-Chairman or with the other members of the staff of the Municipality. But it is conceded by the learned Advocate-General that copies of none of those reports were sent to the Chairman of the Municipality and whatever reports were received were kept in the office of the State Government without disclosing the contents thereof to the Commissioners at any point of time. Therefore, I am unable to accept the contention of the learned Advocate-General that before passing the Order of supersession the petitioners were put to notice and there was thus no further obligation for the State Government to follow the rule of audi alterem par tern.

61. Mr. Somnath Chatterjee has referred to me an unreported judgment of Banerjee, J., dated August 8, 1972 in Matter No. 114 of 1972 Kallmuddin Shams and Anr. v. State of West Bengal and Ors. and has submitted that this is a decision contrary to the decision of Anil K. Sen, J., that before an order of supersession of a Municipality or Corporation is to be passed the principles of audi alterem partem has to be followed. He has pointed out that in that judgment Banerjee, J. has held that the order of supersession of Calcutta Corporation being an administrative order there is no obligation to follow the principles of audi alterem partem before passing such an order.

62. I have carefully considered the unreported judgment which has been referred to me. Under the Calcutta Municipal Act as it originally stood, there was the express provision of giving a reasonable notice to show cause before an order of supersession of the Corporation was passed. The State Government by inserting

Section 47C by Ordinance No. III/72 as also the Calcutta Municipal (Second Amendment) Act 1972 specifically excluded the following of the rule of natural justice before the order of super-session has been passed and immediately after making such amendment the order of supersession was passed. The vires of the said Ordinance and Amendment Act was challenged before the learned Judge as well as the order of supersession. It was also urged that the order is bad as there was a violation of the principles of natural justice. It was a case in which the State Legislature by making an express provision excluded the principles-of natural justice and when such State Legislature excludes the principles of natural justice and the vires of such provision could not be successfully challenged by the petitioners then it was a case in which the State Legislature by express provision excluded the principles of natural justice. Therefore, in such a case, the order could not be set aside on the ground that the principles of natural justice was not followed. However, the above judgment was passed before 5. L. Kapoor's case in which it has been clearly held by the Supreme Court that before any order of supersession has to be passed the principles of natural justice to be followed. But in the above decision the learned Judge was considering a case in which the principles of natural justice was expressly excluded, therefore for construing Section 553 of the Bengal Municipal Act the above decision cannot have any relevance. On the other hand, I have already indicated that while construing Section 553 of the Bengal Municipal Act, Anil Kumar Sen, J. in 78 CWN 835 has held that principle of natural justice has to be followed and the Division Bench judgment of F.M.A. 567 of 1984 has upheld the order of Mrs. Pratibha Bonnerjea, J. setting aside the supersession of Budge Budge Municipality in 1984 on the failure of the State Government to follow the rule of audi alterem partem before superseding the said Municipality.

63. Mr. Somnath Chatterjee has also argued that the Supreme Court has in several decisions observed that when an action is taken in emergency a post decisional hearing would fulfil the requirement of audi alterant partem and regard being had to the facts and circumstances of the case, the order cannot be held to be invalid if no pre-decisional hearing was given and the petitioners can very well ask for post-decisional hearing.

64. Mr. Chatterjee refers to me the case of AIR 1971 963 (SC) That was a case in which an order of requisition of a premises was passed under the West Bengal Act II of 1948. The Supreme Court having expressed the view that as the object of ACT II of 1948 is to provide for the requisition and speedy acquisition of land for certain purposes there is no obligation to give a pre-decisional hearing prior to passing an order of requisition but the person aggrieved can make a representation to the concerned authority against the order of requisition and the concerned authority can and should consider such representation.

65. When an order of requisition is passed then even after passing such order of requisition, the property can be de-requisitioned if the concerned authority on being satisfied with the representation made against the order of requisition is

satisfied that such order should be revoked. But in the case of supersession of the municipality, a post decisional hearing will be absolutely useless because the State Government after passing an order of supersession cannot revoke such an order and the consequences as contemplated in Section 554 have to ensue and the order will cease to have effect only in either of the two contingencies namely (i) re-constitution of the Commissioners of the Municipality or (ii) a fresh election. Therefore, the Post Decisional hearing in the case of order of supersession will be nothing but an illusory. *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, was a case in which in the matter of cancellation of a passport of the petitioner, the Supreme Court has laid down the principle that if in the interest of public safety immediate action is essential and it is not possible to give a hearing before the decision, the post decisional hearing would have to be given. But this is not a case when a Municipality is superseded by an order of supersession.

66. Mr. Saktinath Mukherjee has referred to me the following observation in Jain and Jain "Principles of Administrative Law and has urged that there are limits of Post Decisional hearing and when such post decisional hearing will be of no effect then the contention of Mr. Chatterjee that the petitioners could seek for Post decisional hearing is not acceptable and is not a substitute for the pre-decisional hearing when the Supreme Court in *S. L. Kapoor*'s case has clearly held that in the case of supersession of a Municipality principle of audi alterem partem has to be followed. The following observation of the Principles of Administrative Law by Jain and Jain at page 128 as referred to before me is reproduced hereinbelow :

"In *Maneka Gandhi*, the Supreme Court pronounced the principle that if in the interest of public safety immediate action is essential, and it is not possible to give a hearing before the decision, it should be given after the decision. The Post decisional hearing has several disadvantages for the individual as compared with the pre-decisional hearing. In view of these limitations of post decisional hearing, prior hearing has to be the rule and post decisional hearing an exception. The idea of post decisional hearing is to strengthen the concept of administrative fairness and not to weaken it. In that sense, subsequent hearing is not a substitute for prior hearing, but it is to be resorted to where no hearing would have been otherwise available."

67. I have already indicated that in the case of supersession of a Municipality the order of supersession is such an order which has the effect of the Commissioners of Municipality vacating the office of the Commissioners as soon as such order is made and under the provision of Section 554 such vacation of office is a permanent feature. Thus, the Post decisional hearing as I have already indicated would be nothing but an idle formality.

68. I would, therefore, hold that the contention of Mr. Chatterjee that the petitioners can have post decisional hearing and can make a representation against the order of supersession and such post decisional hearing would serve the purpose of the ends of justice in this case is not at all acceptable. The

supersession of Municipality is such a permanent measure that post decisional hearing is not at all a substitute for a pre-decisional hearing.

69. I have already held that in Anil K. Sen, J. 78 CWN 835 has clearly observed that the order of supersession is invalid because of the failure of follow the principles of natural justice and I have also indicated that a Division Bench Judgment of this Court in the un-reported judgment in Rishikesh Pandit v. State of West Bengal, F.M.A. No. 567/84 even in the case of a supersession u/s 553 of Bengal Municipal Act as amended by 1980 Act has clearly approved the order setting aside the order of supersession by the learned trial Judge on the ground of failure of the State Government to follow the principle of natural justice before superseding the commissioners of Budge Budge Municipality.

70. In the result, I am of the view that the order of supresession of Berhampore Municipality dated 4th August 19.89 is invalid and void because of the failure of the State Government to follow the principles of natural justice. I am also convinced that even if the order of supersession of Municipality is treated as an administrative orders, following the principle of audi alteram partem before passing such an order is mandatory and its failure renders the order void ab initio.

71. The second ground of challenge of the petitioners is that the order is arbitrary and without any valid reasons, that the reasons assigned are vague, that even though persistent default in the performance of the duties on the commissioners cannot be ground of action of supersession unless such persistent default results in misappropriation of municipal funds the same is made a ground for supersession that the section itself provides for giving reasons which is a mandatory requirement that in the impugned order containing vague and indefinite allegations which can neither be verified nor effectively dealt with cannot be treated as reasons and that in the affidavit-in-opposition of the State Respondents nothing specific was indicated on the basis of which the State Government formed the required opinion and that failure to give real and verifiable reasons vitiate the order as mala fide being a case of malice in law and in fact.

72. The learned Advocate-General refutes the above submission made on behalf of the petitioners. According to him, order of supersession has been passed on the ground of mis-management that the instances of the mis-management were specified in the order which are illustrative and that in the supplementary affidavit the State Government has produced several reports of the officers of the State Government including one of Deputy Director of Local Bodies, the last report being as late as of 17-7-1987 which indicated various instances of mis-management in the affairs of the Municipality that the Chairman and other officers of the Municipality were kept informed and given opportunity for explanations at all stages during these enquiries on various allegations as recorded therein and as there are certain findings in those reports it would be apparent that State Government had relevant materials on which its could form

its opinion bona fide regarding the mis-management in the Municipality and the sufficiency or adequacy of the materials leading to the formation of the opinion could not be open to judicial review in writ jurisdiction. The learned Advocate-General further urges that an in-depth enquiry is going on to enquire into the allegation of huge mis-appropriation of Municipal fund but mis-appropriation of Municipal fund is not a ground for supersession but mis-management is the only ground that the documents submitted by the State Government bear sufficient basis for the State Government to take immediate action not to further deteriorate the affairs of the Municipality and the situation was such that it brooked no delay.

73. There is no doubt that the language of Section 553 clearly reveals that the reasons for supersession have to be specified in the order itself. That such giving of reasons is a mandatory statutory provision whose non-compliance would vitiate the order is admitted by the learned Advocate-General. He only submits that when reasons have been assigned then the order is valid and sufficiency and adequacy of such reasons is not open for judicial review.

74. In *The State of Maharashtra and Another Vs. B.K. Takkamore and Others*, of the judgment it has been clearly observed that when the statute requires reasons to be stated in the order then such statement of reasons is a condition for exercise of such power.

75. Mr. Mukherjee for the petitioners refers to *The Municipal Committee and Others Vs. The State of Punjab and Others*, which is a Division Bench Judgment of Punjab High Court in which the order of supersession without giving any reason has been set aside. The Division Bench of Madhya Pradesh High Court in *Suresh Seth Vs. The State and Another*, is also another decision cited by him in which because of the absence of reasons the order has been held to be vitiated. The learned Advocate-General has sought to distinguish the above decisions by urging that in those cases there were actually no reason given but when in the order dated 4th August 1989 reasons have been assigned the order is a valid order and cannot be held to be illegal relying on the above decisions.

76. I find from the order dated 4th August, 1987 that following grounds have been given for supersession :

(i) diversion of allotted government fund for 1 D.S.H.T. project by the Commissioners of the Municipality,

(ii) irregular purchase by the Commissioners of different parts of tube wells, pipes, etc., and substandard tubes and other electrical equipments After reciting the above grounds or reasons the order states-

"And whereas in the opinion of the Governor there has been persistent default in the performance of the duties imposed on the Commissioners and mis-management of the affairs of the Municipality".

77. It is an admitted position that "persistent default in the performance of the

duties imposed by the Commissioners" is not a ground for super-session unless such persistent default results in mis-appropriation of municipal fund. It is admitted by the learned Advocate-General that mis-appropriation of fund is not a ground for supersession and for which in-depth enquiry is still going on. He, however, submits that persistent default in the performance of duties is also an aspect of mis-management and also supplies the reason for supersession. I am of the view only by stating "persistent default in performance of duties" or "mismanagement" in the order it does not supply the reason for the order. The particulars have to be given in the order indicating in what may the Commissioners were committing management. In the first two paragraphs such instances have no doubt been given. But in my view way by stating "persistent default in the performance of the duties imposed on the Commissioners" which is ground for taking action u/s 552 it would not supply the reason for superseding the Municipality on the ground of mis-management. So, I would have to confine myself only two reasons assigned for justifying action for supersession on the ground of mis-management. The learned Advocate-General, however, has read out before me all the reports submitted by various officers from time to time in between December 1987 and July 1989 and some letters in connection therewith and submits that these reports and documents clearly show various acts of mis-management, namely, financial mis-management, administrative mis-management and in the order two instances were given which were illustrative and all these relevant materials were before the State Government for framing a bona fide opinion that there was mis-management in the affairs of the Berhampore Municipality and the propriety or justifiability of the reasons is not matter for the writ court to consider and when there were relevant materials that was enough for coming to the conclusion that the order was passed on relevant materials and with reasons and consequently the contention of the petitioners that it is a mala fide act of the State Government for mala fide political motive should be rejected. He has also urged that there are about 11 other Municipalities in West Bengal where Congress (I) Commissioners are at the helm of the administrations of the Municipality but when no such action has been taken by Government because such serious and. grave mal-administration and mis-management has not been found out as in the case of Berhampore Municipality.

78. Mr. Mukherjee appearing for the petitioners submits that the learned Advocate-General cannot introduce new reasons or grounds not mentioned in the order itself by way of justification of the alleged action taken. The validity of the order has to be judged by the reasons assigned in the order, that in the order two reasons have been assigned, that in none of the reports there is any clear finding that there was any diversion of I.D.M.S.T. fund by the petitioners or that there was any irregular purchase of tube-wells or pipes or purchase of substandard bulbs and other electrical fittings that in the result the averments made in the writ petition denying the above allegations are correct averments and the reasons thus assigned for super-session of Municipality not being valid

reasons it must be held that there was no valid reason for superseding the Municipality and the order is vitiated because of violation of the mandatory provision of passing orders with reasons and is consequently invalid. He also points out that in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, the Supreme Court has clearly observed as follows :

"when a statutory functionary makes an order based on certain grounds its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to-court on account of a challenge, get validated by additional grounds later brought out."

79. He also points out that in *Mohinder Singh Gill's* case the Supreme Court has quoted with approval the following observations of Bose, J. in *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, as follows :

"Public orders publicly made, in exercise of a statutory authority can-not be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

80. Mr. Mukherjee urges that the above principles of Supreme Court has been laid down even in a case where the statute did not specifically mention to give reasons for the order and when in this case there is a mandatory requirement for passing order of supersession with reasons the validity of the order shall have to be judged by the reasons that have been assigned but not on the reasons which find place in reports of government officials which was not mentioned in the order. He also submits that when those grounds mentioned in the reports were not mentioned in the order then it would have to be presumed that the State Government while passing the order did not consider them sufficient reasons and that is why those were; not mentioned in the order and the learned Advocate General cannot now supplement the reasons mentioned in the order by the alleged new reasons mentioned in those reports of government officials.

81. I am of the view that the submissions made by Mr. Mukherjee have strong force. Even in *Mohinder Singh Gill's* case the Supreme Court in a case where there was no statutory obligation to pass orders with reasons it has been observed that when statutory authority makes an order on certain grounds its validity has to be judged by those grounds or reasons alone and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.

82. I am unable to accept the contention of the learned Advocate-General that the reasons assigned in the order are illustrative and the other reasons found in the reports of Government officials and submitted by him by supplementary

affidavit would very well support the order that there was. mis-management in the affairs of the Municipality. I would not, therefore, take any notice of the reports showing reasons other than those mentioned in the order itself.

83. I would now consider as to whether any of the two reasons given in the order were bona fide reasons for the action taken by the State Government superseding the Municipality.

84. As regards the diversion of I.D.S.M.T. fund only report relevant is the report of Deputy Director of Local Bodies dated 30-9-1988 for which he held inspection on August 18, 1988.

85. In item No. 2 of his report he enquired into the allegations of such diversion of fund. But his conclusion was as follows-"in the absence of reasons, the appropriate registered, the government orders and bills, etc., it was a futile effort to arrive at a conclusion as regards genuineness or otherwise of allegation".

86. In his lengthy report he recommended special audit to ascertain the truth or otherwise of various complaints against the municipality which he was asked to enquire because without special audit the veracity of the complaints could not be ascertained. It is needless to mention that till the date of impugned order of supersession no special audit was ordered. So there was no material before the State Government that the Commissioners of the Municipality made diversion of I.D.S.M.T. fund which could have been ascertained by special audit.

87. As regards the irregular purchase of tube-well and pipe, etc., there is only the report of Assistant Chief Engineer and Chief Engineer dated 23-12-1987, complaint was that tube-wells or pipes were purchase from local tenderers on the basis of the spot quotation. But Mr. Mukherjee points out that there is no rule that Municipality cannot purchase such goods from local tenderers on spot tender only because there was no formal quotation purchase cannot be irregular.

88. Similar is the case of purchase of lamps and tubes. Their report was that they were purchased on the basis of quotations from local traders without formal quotations. But the Engineer's report indicate that it could not be verified instantly as to whether the rate was fair and reasonable or not. The report did not also indicate that bulbs and tubes that were purchased were of substandard quality. Even though this report was submitted in December 1987 no attempt was made during this period one and half year to ascerttain as to whether the purchase of tube-well or pipes were actually irregular or whether the petitioners really purchased any sub-standard quality of tubes and bulbs.

89. Thus none of the two reasons mentioned in the order appears to be valid reason for superseding the Commissioners of the Municipality. It is, therefore, clear that without any valid reasons the Commissioners of the Municipality who were elected as representatives of the people of the locality to run the municipal administration and who were to hold office for a full term of five years have been superseded. I am also of the view that the order is invalid because there was no

valid reason to pass the order of supersession of the Municipality. Passing such an order without any valid reasons amounts to not only an act which is contrary to law but also a mala fide act on the part of the State Government.

90. On behalf of the petitioners it is also urged that clear language of Section 553 of Bengal Municipal Act indicates that in order to bring about the legal consequences the order under that section can be said to be made only when the order containing the reasons is published in the Official Gazette that the order will remain inchoate until published with the reasons is made and that no publication was made of the order before it was given effect to on 5th August 1989, that the order appears to have been actually printed on 10th August 1989 even though the date of publication is mentioned in the order as 6th August 1999 and that even when the writ petition was filed challenging that no such publication was made and that the publication that was made after the present writ petition has been filed is a mala fide act of the State Government as the publication has been ante dated and such mala fide conduct of the State Government vitiates the order. The learned Advocate-General submits that it is an admitted position that the State Government passed the order of supersession on 4-8-1989 and the officer appointed u/s 554 took over charge of the administration of the Municipality on 5-8-1989 and till then the order was not published in the Official Gazette. But according to him that does not create any infirmity or invalidity in the eye of law since it has been expressly provided u/s 554 of the Bengal Municipal Act that the Commissioners shall vacate their offices as from the date of order passed u/s 553 of the Act and that Commissioners must be deemed to have vacated the office as soon as the order is passed on 4-8-1989 and on the subsequent day the charge of the affairs of the Municipality was taken over validly by the officer appointed by the Government. Mr. Somnath Chatterjee fully supports the learned Advocate-General on this question.

91. Mr. Mukherjee for the petitioners draws my attention to the language of the Section 553, namely, "the State Government may, by an order published with reasons for making, in the Official Gazette supersede the Municipality." He argues that the order of supersession remains inchoate till it is published and when the assumption of office by the S.D.O. Sadar was on the basis of such inchoate order the assumption of office is illegal and the action is mala fide exercise of power not contemplated by the Statute. In support of the contention that the statute has provided for statutory mode of making the order and it cannot have effect prior to publications Mr. Mukherjee refers to me the decision of Mahendra Lal Jaini Vs. The State of Uttar Pradesh and Others, , The State of Maharashtra and Another Vs. B.K. Takkamore and Others, , The Municipal Council, Malkapur and Another Vs. The State of Maharashtra and Another, , State of M.P. v. Ram Raghubir AIR 1979 SC 888 and Jayanta Kumar Banerjee Vs. State of West Bengal and Others, .

92. Of the above decisions only the decision of The State of Maharashtra and Another Vs. B.K. Takkamore and Others, and The Municipal Council, Malkapur

and Another Vs. The State of Maharashtra and Another, are the decisions on the point. Other decisions in connection with different statutes cannot have any useful guide. The decision of Jayanta Kumar Banerjee v. State of West Bengal is a decision under Land Acquisition Act. There the question arose as to whether the notification u/s 4 of the Land Acquisition Act would be declared invalid as it was proved that it was ante dated as a result thereof the petitioner was deprived of the right to file objection u/s 5A of the Land Acquisition Act. G. N. Ray, J. in the facts of the case quashed such notification on the ground that it was ante dated.

93. Mr. Somnath Chatterjee has drawn my attention to my own unreported judgment in Matter No. 1704 of 1985 dated 17th July 1989 (Pumshottam Lal Jalan v. L.A. Collector and Ors.) in which while considering the similar question of ante dating of the notification u/s 4 of the Land Acquisition, I did not quash the order on being satisfied that the ante dating of the notifications had not affected the right of the petitioner to file objection and that after its actual publication the petitioner filed objection u/s 5A of the Land Acquisition. In that decision it was held that even if it be found that the notifications u/s 4 was found to be ante dated it must be deemed to have been published on the actual date of publication in the Gazette. Mr. Somnath Chatterjee submits that even if it be conceded that the order u/s 553 of the Act was published on 10th August 1989, the fact that it was published in the Gazette renders the order valid and it does not matter that it is actually published a few days after the date of making the order. He also points out that there would definitely be a gap between the date of making the order and the date of publication of the order in the Official Gazette and when the order has admittedly been published in Official Gazette on 10th August 1989 there was compliance with the provisions of the Act and there is no infirmity and illegality in the action of the State Government.

94. The Supreme Court in The State of Maharashtra and Another Vs. B.K. Takkamore and Others, has observed that publication of the order of supersession in the Official Gazette is one of the conditions of the exercise of power. But in the decision it has not been held that the order will remain inchoate until it is published in the Gazette. In this case there has been publication in the Gazette so the condition for exercise of power has been fulfilled.

95. However, the Division Bench of Bombay High Court in Malkapur Municipality v. State AIR Bom. 244 251 while dealing with the provision of Section 313 of the Maharashtra Municipality Act in which the expression "the State Government may, by an order published in the Official Gazette appoint a Government official as Administrator" has been used, has observed that the section contemplates publications of the order in the Gazette and unless the formalities mentioned in the section including the publications of the order in the Gazette is made the order passed u/s 313 cannot be a valid and legal order nor can it come into operation and the Administrator can be appointed only by an order passed in the Official Gazette. According to the Division Bench the publication of the order or

law in the Official Gazette is treated as sufficient notice to everybody and that is the significance of publications of such order.

96. In the context of the language used in Section 313 of the Maharashtra Municipalities Act the Administrator has to be appointed by publication of the order in the Official Gazette. Therefore, under that Act an Administrator cannot be appointed except by publication of the order in the Gazette and he cannot assume office until and unless the order is published in the Official Gazette. But u/s 554 of the Bengal Municipal Act the State Government can appoint an administrator to exercise the powers and functions of the Commissioners of the Municipality with effect from the date of the order.

97. The expression "with effect of the date of the order u/s 553" used in Section 554 of the Act cannot be interpreted as "with effect from the date of publication of the order in the Official Gazette". If that were the intention of the Legislature, the legislature should have clearly provided in Section 554 that the consequence contemplated in Section 554 would commence only on the order being published in the Official Gazette. On the contrary the opening words of Section 554 is to the following effect:

"When an order of supersession has passed u/s 553 then with effect from the date of the Order (aa) all the Commissioners shall, as from the date of the order, vacate their offices as such Commissioners; *****"

When Section 554 contemplates consequences to ensue immediately on the making of the order u/s 553 and when the making of the order and publishing the order are two different acts, then the submission of Mr. Mukherjee that the assumption of the office of the S.D.O. Sadar, Berhampore on 5th August 1989 is illegal cannot be accepted.

98. In the result, my conclusion is that the order of supersession of the Commissioners of the Berhampore Municipality is invalid on the ground that before passing such order the petitioners were not given any opportunity of hearing against the order of supersession passed and that was a mandatory duty of the State Government to give such opportunity as the impugned order had serious civil consequences on the petitioners and as it had the effect of throwing out of office the elected Commissioners of the Municipality, the Commissioners holding office in the Municipality are units of local self Government and they cannot be condemned unheard in which case they being superseded on the ground of mis-management shall carry their stigma throughout their life. The order is invalid also on the ground that the reasons that have been assigned in the order are not valid reasons and consequently the impugned order passed on such invalid grounds is an order without any reasons and is arbitrary and unfair and in view of the decision of Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, an arbitrary order violates the Article 14 of the Constitution and is invalid.

99. I, therefore, set aside the Order No. 307/C-10/IR-30/87 dated 4th August

1989 and the consequential Order No. 308/C-10/IR-30/89 dated 4th August 1989 forthwith.

100. All interim orders are vacated.

101. There is no order as to costs.