

(1980) 11 KAR CK 0010
In the Karnataka High Court
Case No : WP. 18126/80

Jagadish Patil

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 24-11-1980

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Co-operative Societies Act, 1959 — Section 30a

Citation : (1981) 1 KarLJ 310

Hon'ble Judges : N. D. Venkatesh, J

Judgement

1. The District Central Co-operative Bank Ltd., Gulbarga (hereinafter called the Bank) 3rd respondent herein is a Co-operative Society registered under the Karnataka Co-operative Societies Act, 1959 (the Act). Amongst its objects one of the objects is to finance co-operative societies registered under the Act and to raise funds for this purpose. The operations of the Bank extend to the revenue district of Gulbarga. At the time of its establishment the Bank had a capital of Rs. 2 crores and the said capital was made up of shares classified as "A" and "B" each "A" class share being of the value of Rs. 1,000 and "B" class share being of the value of Rs. 100. Every registered co-operative society within the district of Gulbarga is entitled to become a member of this Bank. The State Co-operative Bank is also made eligible for admission as a member.

2. Though the ultimate authority in all matters relating to the general administration of the Bank vests in the General Body, the day-to-day management of the affairs of the Bank vests in a Board of Management (what is called under Sec. 2(b) of the Act as a Committee).

3. The Board of Management, as per bye-law, should consist of 15 members. At the relevant time three places were vacant.

4. The members of the Board, from amongst themselves, have to elect, as per the bye-laws of the Bank, a President and a Vice-President by ballot. This they had to do in their 1st meeting after the annual general Body meeting. During this

year Sri Jagadish Patil, the petitioner in this case, had been elected as the President of the Board and was functioning as such.

5. Bye-law No. 19 of the Bank provides that the quorum for a meeting of the Board shall be eight. That bye-law also lays down the guide lines as to who should call the meeting and how its deliberations have to be conducted. Bye-law No. 19 reads as follows:

"19. The Board shall meet as often as may be necessary for the transaction of the business of the Bank but at least once a quarter. Questions arising at any meeting of the Board shall be decided by the majority of votes. In the case of equality of votes, the President shall have casting vote. The quorum for a meeting of the Board shall be eight". (underlining supplied).

6. In the month of August this year (1980) seven members of the Board resigned from the Board. Since three places were vacant there remained, after the resignation of the aforesaid seven persons, only 5, including the President and the Vice President in the Board. The State Government felt that, the quorum for the meeting of the Board being 8 members and there remaining only 5 members in the Board under the circumstances narrated above, it was not possible for the Board to conduct any business and that, therefore, it has to step in. Exercising its powers under Section 30A(1) of the Act it replaced the Board, appointed a Special Officer, and directed him to exercise and perform all the powers and functions of the Committee of the Bank (vide Notification No. RDC 58 CLM 80 dated 11th September 1980 issued by the State Government, annexure-C). The said notification reads as follows:

Notification

No. RDC 58. CLM. 80 Mysore Govt. Secretariat, Bangalore, dt. 11-9-1980. Whereas, it has been reported by the Registrar of Co-operative Societies that as a result of the resignation of 7 members of the Board of Directors of the Gulbarga District Co-operative Central Bank Limited, Gulbarga, having become final by reason of non-withdrawal on or before 29-8-1980, only 5 members are now continuing on the Board of Directors of the said Bank.

Whereas, in view of the Bye-law No. 19 of the said Bank which requires that the quorum for a meeting of the Board shall be 8, the remaining 5 members are not competent to convene and conduct any meeting of the said Board.

And whereas, as a result of the result of the above circumstances, the Government is satisfied that a situation has arisen when the said Bank is not functioning in accordance with the provisions of the Act, the rules made thereunder and the bye-laws of the said Bank.

Now, therefore, in exercise of the powers conferred by sub-section (1) of Sec. 30A of the Karnataka Co-operative Societies Act, 1959, the Government of Karnataka hereby appoints the Deputy Commissioner, Gulbarga, as the Special Officer of Gulbarga District Central Co-operative Bank limited for a period of six

months.

By Order and in the name of the Government of KarnatakaSd/-(M.N. Aswathanarayana)

Officer on Special duty and Ex-Officio Under Secy. to Govt. Rural Development and Co-operation Department.

7. In this petition, filed under Art. 226 and 227 of the Constitution of India, Jagadish Patil, the petitioner herein, seeks a writ of Certiorari quashing the Notification, Annexure-C, and also seeks a writ of Mandamus against the State Government directing it not to take any action either under S. 30 or under Section 30A of the Act, and interfere in the affairs of the Bank. Caveat was entered by the learned Government Advocate on behalf of the State Government (the 1st respondent). A joint statement of objections on behalf of respondents 1 and 2, the State Government and the Registrar of Co-operative Societies respectively, has been filed.

8. Since the Deputy Commissioner, Gulbarga, has been appointed as the Special Officer under Annexure-C with a direction to take over the affairs of the Bank, the Deputy Commissioner of Gulbarga stating that he had assumed charge of the Bank, the 3rd respondent herein, also desires to be heard in the matter. In the circumstances, learned Counsel for the petitioner, the learned Government Advocate, and the, learned. Counsel appearing for the Deputy Commissioner of Gulbarga, were all heard.

9. While challenging Annexure-C, the learned Counsel for the petitioner submitted that the impugned notification was void because that in issuing the said notification the Government had acted: (i) arbitrarily and with a mala fide intention; (ii) without issuing any prior notice to the office bearers and members of the Board and thus in violation of the principles of natural justice; and (iii) without any authority in law.

10. Let us first examine as to whether the action taken by the Government was without any basis on facts and without any authority in law. Counsel for the petitioner argued that there being vacancies in the committee, though had resulted in lack of quorum, cannot be said to have made the committee non-functional or ineffective. In this connection he drew my attention to bye-law No. 17 and the proviso to sub-rule (3) of Rule 13 of the Karnataka Co-operative Societies Rules, 1960 (the rules). The proviso to sub-rule (3) merely provides that the committee whose term of office is deemed to expire, shall continue in office till the new committee is elected. Bye-law No. 17 reads as follows:

"17. Filling up of Interim Vacancy: An interim vacancy among the elected representatives be filled up by the co-option for the unexpired portion of the original period from the delegates of the class of societies in respect of which the vacancy has occurred. Any vacancy in the case of nominated representatives shall be filled up by the State Government or the State Co-operative Bank as the

case may be. The proceedings of the Board of Management shall not be invalidated on account of any vacancy or vacancies of the Board which shall remain unfilled."

But, this bye-law has to be read not merely along with bye-law No. 19 but also with sub-sections (2) and (3) of S. 29A of the Act. Counsel for the petitioner argued that sub-section (2) of S. 29A has reference only to the constitution of the new committee at the first instance when it is formed after the general body meeting but not to its continued functioning subsequently. S. 29A(1) to (3) read as follows:

"29A. Commencement of term of Office-(1) The term of office of the elected members of a Committee shall commence on the date immediately after the expiry of the term of office of the outgoing-members of such Committee or on the date the newly elected members assume office.

(2) Notwithstanding anything contained in this Act or the Rules or the Bye-laws of a co-operative society, the Committee shall be deemed to be duly constituted when not less than two-thirds of the elected directors or the number specified in the Bye-laws to form a quorum, whichever is less, is available to function as members of the Committee after the annual election.

(3) The Committee deemed to be constituted under sub-section (2) shall be competent to exercise all the powers and perform all the functions of the Committee of the co-operative Society.

I am unable to agree with the learned Counsel for the petitioner that these provisions have reference only to the committee as it comes to be first constituted but not thereafter. Sub-section (2), which provides for a quorum amongst the members of the committee, clearly lays down that that quorum is available to function as members of the Committee after the annual election. This means that the prescribed quorum should be available at all times so that the committee could validly transact its business. Sub-section (2), which starts with a non obstante Clause prevails over all the other provisions, if there were to be any, either in the Act, the Rules, or the bye-laws of the Bank dealing with this matter."

11. Further, in this connection, the learned Government Advocate rightly drew my attention to some of the decisions of the Courts, both foreign and Indian, reported in Stroud's Judicial Dictionary, Vol-4, page 2233 (4th Edn.) and in the Law of Meetings in India (1969 Edn.) by B.A. Masodkar, page 243 respectively. Of the cases cited in Stroud's Judicial Dictionary, he drew my attention to the following:

"Where a quorum of directors or share holders is prescribed, that means imperatively, that no business shall be transacted unless the prescribed number, at least, be present (Re Alma Spinning Co., 50 LJ Ch. 171; Sub nom. Bottomley's case, 16 ch. D. 681; following Kirk vs. Bell 16 Q.B. 290, and

criticising *Thames Haven etc., v. Rose*, 12 L.J. C.P. 90); see further *Hemans v. Hotchkiss Co.* (1899) 1 Ch. 115.

"In order that there may be a duly constituted quorum of the Directors of a company "it is necessary that they should act conjointly and as a board of directors. I do not say that they are bound to meet at any particular place or any particular time; but they are bound to be together, as a board, at the time the thing is ordered to be done" (per Bramwell B., *D'Arcy v. Tamar, etc-Railway L.R.* 2 Ex. 158 see on this case *Re Great Northern Salt Works*, 44 Ch.D. 472).

"Quorum of Members", Companies Act 1862 (c. 89), Table A, Art. 37, meant a quorum of effective members i.e., members qualified to take part in, and to decide upon, questions brought before the meeting; and such a quorum had to be present when such questions were being decided: merely being present at the beginning of the meeting was not sufficient (*Henderson v. Louttit*, 21 Rett. 674). See now Companies Act 1948 (c. 38) Table A, Art. 53."

In the Law of Meetings in India, he drew my attention to the following:

"Prescription Mandatory-If the quorum is prescribed either by the statute or by the bye-laws or rules and unless that number of persons are present, it cannot be said that the meeting has been validly constituted. The prescription with regard to quorum is always treated as mandatory. It is settled that no lesser number of persons can transact the business. Those who are present at the time of meeting can be counted for the purpose of constituting the quorum. It follows that the business transacted when no quorum is present is invalid. (*Re Romford Canal Co.* 1883, 24 Ch.D. 85). It is well settled that only one member present cannot constitute a quorum and the minimum to constitute is two. (*Sharp v. Dawes*, 1876 2 QBD 29, AIR 1958 Kerala 91).

Necessity of Quorum throughout.-If a quorum having been constituted the meeting proceeds to business, it appears to be a practice that any member can point out that quorum is wanting at a later stage. The presiding authority is duty bound to take count and ascertain that the meeting is duly constituted (*Deodutta v. Zahir* AIR 1960 Raj 25). It is the rule of quorum that it must be counted of those persons who are entitled to be present personally and proxy would not be counted for the purpose of quorum. The underlying principle is thus that an act of a given number of persons to be the act of the entire body must be done by that number alone and not less. If regulations or bye-laws lay down a particular quorum, then unless the stated number is present, no assembly is duly met."

12. Admittedly, after the resignation of the members as referred to above, the members remaining in the committee were less than the number required to constitute the quorum. There is no dispute about this fact. But the learned Counsel for the petitioner submitted, pointing out to bye-law No. 17, that it was possible to co-opt new members as provided therein and that if such co-option had been made, and, on such co-option of the new members, there would have been a full fledged committee or Board of Management. Bye-law No. 17 has

already been extracted at para-10 above. It is not clear as to whether, in the case of elected members, it was the Board of Management or the General Body which is conferred with powers to co-opt as provided in this bye-law. So far as nominated members are concerned the State Government or the State Co-operative Bank had to fill up those vacancies. Even, if it was the Board or the Committee that had to co-opt, to so co-opt the committee or the Board had to meet and take a decision, and this, it could do, provided it had the required quorum. This aspect was rightly stressed by the learned Government Advocate and also by the learned Counsel appearing for the Special Officer.

13. The learned Counsel for the Petitioner drew my attention to S. 126 of the Act which provides that "no act of a co-operative society or any committee or of any office shall be deemed to be invalid by reason only of the existence of any defect in the constitution of the society or the committee or in the appointment or election of an officer or on the ground that such officer was disqualified for his appointment." But then, if that provision is read with sub-sections (2) and (3) of S. 29-A of the Act, it is clear as already stated, that these latter provisions prevail over S. 126. Besides this, S. 126 is like a safety valve incorporated in the statute in order to safeguard the interests of the public. It is possible that in a given case an act of the committee of the society or of an official of the society is questioned on the ground that, when that transaction had taken place, that the committee was not duly constituted or the official was not duly empowered to so act. In order to save such acts done bona fide by these authorities of the co-operative society the Legislature has incorporated this provision. It is thus clear, from what is stated above, that at the relevant time i.e., when the Government issued the impugned order, there was no committee or board of management with the required number of members to transact business. As provided in bye-law No. 22 "the entire administration of the Bank shall vest in the Board of Management." Its powers extend to the raising of funds for the purpose of the Bank, granting of loans and advances to members, making investment of the funds, scrutinising and putting up the annual budget, looking after establishment, supervising the affiliated Societies, recovering the arrears due to the society, and etc. But, in the circumstances narrated above, the administration of the Bank can be said to have virtually come to a halt. It is in such a situation the Government chose to act. It cannot, therefore, be said that the Government had acted without any basis on facts.

14. The next question is, even though the facts warranted such an interference on the part of the Government in the affairs of this Bank, could it have acted in such a manner either under S. 30A of the Act as it has now done or under any other provision of the Act? The learned Counsel for the petitioner says there is no provision in the Act at all enabling the Government to take over the management of the Bank in these circumstances and for the reasons mentioned by it. It is true that the only reason given by the Govt. at Annexure-C is that there was no validly constituted committee, the members remaining less than the number of members required for purpose of quorum and that, therefore, the Bank was not

in a position to function according to the provisions of the Act, the Rules, and the bye-laws.

15. S. 30-A, under which the impugned Notification is issued, reads as follows:

"30A. Appointment of Special Officer.-(1) Where the State Government, on a report made to it by the Registrar or otherwise is satisfied that any co-operative society is not functioning in accordance with the provisions of this Act or the rules made thereunder or its bye-laws or any order, direction or circular issued by the State Government or the Registrar, it may, notwithstanding anything contained in this Act, by order appoint a special officer for such co-operative society for such period not exceeding two years:

Provided that the State Government, may, if it considers it necessary extend the said period of two years by such further period not exceeding one year.

(2) On the issue of the order under sub-section (1):

(a) the members of the committee of the co-operative society shall vacate and shall be deemed to have vacated their office; and (b) the Special Officer shall be deemed to have assumed charge of the affairs of the co-operative society.

(3) The Special Officer shall, subject to the control of the State Government and the Registrar, exercise and perform all the powers and functions of the committee of the co-operative society and take such actions as may be required in the interest of the co-operative society.

(4) The Special Officer shall, before the expiry of his term, arrange for the constitution of a new committee for the co-operative society in accordance with its Bye-laws."

Section 30-A can be invoked if the co-operative society is not functioning in accordance with the provisions of the Act, the Rules, or the bye-laws. It would be the duty of the Special Officer, appointed under this provision, to arrange for the constitution of a new committee before the expiry of his term in accordance with the bye-laws of the society. It cannot, therefore, be said that the Government, in issuing Annexure-C, had acted without any authority in law.

16. The learned Counsel for the petitioner submitted that the action of the Government was mala fide in nature. In this connection he referred to the previous litigation between this petitioner and the Government reported in AIR 1979 Karnataka, 4 and decided in the month of October, 1978, wherein this petitioner had challenged the nominations made by the Government to the Board of Management as being motivated with a mala fide intention, and this Court held that the said nominations were illegal. It appears that subsequently no fresh nominations have been made to the Board of Management. The petitioner's grievance is that, if the Government had made nominations as provided in the bye-laws, this situation could have been avoided. But we may note here that the situation arose not because the Government did not make its nominations but

because seven members serving in the Board of Management or the committee came to resign their offices. From the averments made in the petition and the materials placed before me it is not possible to hold that in issuing Annexure-C the Government had acted in a mala fide manner.

17. The learned Counsel's further contention, as stated above, is that in issuing Annexure-C the Government had acted in violation of the principles of natural justice. He argued that the office bearers and the remaining members of the committee should have been heard, or, at least should have been provided with an opportunity of explaining their stand prior to the Government issuing the impugned notification. Admittedly no show-cause notices were issued to any of the remaining members of the committee including the petitioner. S. 30-A of the Act does not provide for issuing any show-cause notice prior to taking action under that provision. The consequence of issuing of Annexure-C is that the petitioner and the remaining members of the committee lost their offices. Rightly placing reliance on a decision of the Supreme Court in *Menaka Gandhi v. Union of India*, AIR 1978 SC 597, the learned Counsel for the petitioner submitted that in a Case like this the petitioner and the remaining members of the committee should have had notice and should have been provided with an opportunity to have their say in the matter prior to the issuance of Annexure-C. In *Menaka Gandhi's* case, AIR 1978 SC 597. Bhagwati, J., with whose views the other learned Judges have agreed, has been pleased to observe as follows:

"Per Bhagwati, J., jointly with Untwalia and Murtaza Fazal Ali, rest of the Judges concurring:

Although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature. The principle of *audi alteram partem*, which mandates that no one shall be condemned unheard, is part of the rules of natural justice. (Para-57)

Natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. The inquiry must, always be: does fairness in action demand that an opportunity to be heard should be given to the person affected? (Para-58)

The law must now be taken to be well settled that even in an administrative proceeding, which involves civil consequences, the doctrine of natural justice must be held to be applicable. (Para-61).

The power conferred under S. 10 (3)(c) Passports Act, on the Passport Authority to impound a passport is quasi-judicial power. The rules of natural justice would, in the circumstances, be applicable in the exercise of the power of impounding a passport. The same result would follow even if the power to impound a passport were regarded as administrative in character, because it seriously interferes with the constitutional right of the holder of the passport to go abroad and entails adverse civil consequences. (Para-62)"

(Extracted from Head-Note "B")

The ratio enunciated as above clearly applies to a case like this. Even though S. 30A does not provide for any such notice, the rules of natural justice do apply to the case and the members of the committee and the office-bearers should have had an opportunity of placing their points of view before the Government and earlier to its decision under S. 30A. The learned Counsel submits that in view of this breach of the rules of natural justice on the part of the Government in issuing Annexure-C, the said Notification should be held as null and void, and declared as such. It is true that, however meritorious the action taken by the authorities may be, if, in the process of taking that action, there is any violation of the principles of natural justice, the action cannot be sustained merely because it was ultimately found to be correct on merits.

18. But, as observed by the learned Author H.W.R. Wade in his "Administrative Law" (4th Edn.) at page 455, in these matters there is "the question of the Court's discretion" even though there has been a violation of the principles of natural justice in the matter of making either quasi judicial or administrative decisions. In appropriate cases, exercising their writ jurisdiction, the Courts may not interfere with the decision having regard to the circumstances of that particular case. The observations of the learned Author at page 455 of the book may be noted:

"Relief refused in discretion: Closely akin to the subject of the foregoing paragraphs, and overlapping it in some cases, is the question of the Court's discretion. Nearly all the remedies which are of use in natural justice cases—certiorari prohibition, injunction, declaration—are discretionary, so that the court has power to withhold them if it thinks fit; and from time to time the court will do so in the case of an unmeritorious plaintiff, even though there has been a clear violation of natural justice."

Again, at page 456, in the last-but-one para, the learned Author has observed as follows:

"Judicial discretion in withholding remedies is very carefully exercised and is a good deal less dangerous than some other arguments which have been used as excuses for condoning breaches of natural justice. Nevertheless it needs to be exercised with constant regard to the dangers mentioned in the preceding section."

19. In what sense are we to understand, when it is said, that a particular decision, for breach of the principles of natural justice is null and void. In this connection the learned Author refers to the observations of Lord Denning M.R. in *F. Hoffmann-LA Roche & Co. A.G. v. Secretary of State for Trade and Industry*, 1975 AC 295. The observations of Lord Denning M.R. are at pages 319 and 320. I may usefully extract the same:

"As against all this, however, the plaintiffs submit that the order made by the

Secretary of State is invalid, or, at all events, that they have an arguable case that it is invalid. They say that the Monopolies Commission treated them unfairly, that the Commission acted contrary to the rules of natural justice; and that the order of the Secretary of State discriminated unlawfully against them; and on this account they say that the report of the Monopolies Commission was void and the statutory order based on it was a nullity.

I will assume for present purpose that the Monopolies Commission did act contrary to the rules of natural justice-though I would not wish to imply that it was in fact the case. Mr. Yorke says that their report would be void. He referred us to passage from *Ridge v. Baldwin* 1964 AC 40, 80, *Durayappah v. Fernando*, 1967 AC 337, 355, *Anisminic Ltd. v. Foreign Compensation Commission* (1969) 2 AC 147, 171.

I have always understood the word "void" to mean that the transaction in question is absolutely void-a nullity incapable of any legal consequences-not only bad but incurably bad-so much so that all the world can ignore it and that nothing can be founded on it: see *Mac Foy v. United Africa Co. Ltd.* 1962 AC 152, 160.

If the word "void" is used in that sense, the report of the, Monopolies Commission was certainly not void. A failure to observe the rules of natural justice does not render a decision or order or report absolutely void in the sense that it is a nullity. The legal consequences are best told by recounting the remedies available in respect of it. A person who has been unfairly treated (by reason of the breach of natural justice) can go to the courts and ask for the decision or order or report, or whatever it is, to be quashed, or for a declaration that it is invalid, that it has not and never has had any effect as against him. But it is a personal remedy, personal to him. If he does not choose himself to query it and seek a remedy, no one else can do so, see *Durayappah v. Fernando*. But it is within the discretion of the court whether to grant him such a remedy or not. He may be debarred from relief if he has acquiesced in the invalidity or has waived it. If he does not come with due diligence and ask for it to be set aside, he may be sent away with nothing: see *Reg. v. Aston University Senate, Ex Roffey* (1969) 2 QB 538. If his conduct has been disgraceful and he has in fact suffered no injustice, he may be refused relief: see *Glynn v. Keele University* (1971) 1 WLR. 487 and *Ward v. Bradford Corpn.* (1971) 70 LGR 27. If it is a decision or order or report which affects many other persons besides him, the court may not think it right to declare it invalid at his instance alone: see *Maxwell v. Department of Trade and Industry* (Unreported), December 20, 1972 a decision of *Wien J.*, of which we were; supplied with a transcript. Moreover, pending a decision by the Courts as to its validity, other persons may be justified in acting on the footing that it is valid. If the decision or order or report is good on the face of it, and there is no good reason for supposing it to be invalid, other persons can treat it as valid. To it I would apply the words of Lord Radcliffe in *Smith v. East Elloe Rural District Council* 1956 AC 736, 769 770.

An order is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the, most impeccable of orders."

Thus, a decision rendered without hearing the party concerned though void is not void, in the sense, that all the world can ignore it and nothing can be founded on it. Unless it is avoided, it (the decision) "is still an act capable of legal consequences". Now, as observed by the learned Judge that if the decision or order is one "which affects many other persons besides him (the person questioning) the Court may not think it right to declare it invalid at his instance alone."

20. In the instant case, as already stated, there has been no board of management with the requisite strength to administer the affairs of the Bank. The Bank is a premier co-operative institution in the District of Gulbarga. It carries on transactions amounting to lakhs of rupees. It has to function continuously and without any break. If it does not satisfactorily function the share-holders and the public would suffer. Even if this impugned Government Notification is quashed there is no immediate possibility of the affairs of the Bank being set right or it functioning properly. If it does not function well, the institution would suffer and consequently the share-holders and the public also. The appointment of the Special Officer replacing the Committee enables the Bank to perform its functions. In this view the decision of Government can be said to have affected (favourably) large number of others.

21. There is also another reason as to why in its discretion this Court has to withhold the relief sought for. From the facts placed before us it is clear that there is no likelihood of there coming into existence a full fledged committee capable of managing the affairs of the Bank even if the impugned Notification, Annexure-C, is struck down. The Government will have to step in again, may be after notice to the petitioner and other remaining members of the committee, taking recourse to S. 30-A of the Act. In the circumstances issuing the writ would be futile. The learned Government Advocate, in this connection, rightly drew my attention to S.L. Kapoor v. Jagmohan, CA 1516/80 dt. 18-9-80. The following observation of Chinnappa Reddy, J., made therein may be noted:

"Linked with this question is the question whether the failure to observe natural justice does at all matter if the observance of natural justice would have made no difference, the admitted or indisputable facts speaking for themselves. Where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it approves the non-observance of natural justice but because Courts do not issue futile writs. But it will be a pernicious principle to apply in other situations where conclusions are controversial, however, slightly, and penalties are discretionary."

Taking all these factors into consideration I am of the view that it may not be in the ends of justice to quash Annexure-C even though, in issuing it, the Government had committed breach of one of the basic principles of natural justice, the right to a fair hearing.

22. While issuing Rule this Court has passed an interim order on 17-9-80 granting the interim relief as sought for in the petition, it being, "staying the operation of further proceedings in pursuance of the notification No. RDC 58 CLM 80 dated 11-9-80, Annexure-C" pending disposal of the writ petition. Ultimately this matter reached the Supreme Court, and while rejecting the Special Leave Petition (Special Leave Petition No. 8910 of 1980) the Supreme Court, clarifying the position, has observed as follows:

"But, we may make it clear that the interim order passed by Mr. Justice Kudoor on 17th September, 1980 will operate as directing maintenance of status quo as on 17th September, 1980 as not to, disturb what has happened prior to that date."

It is not clear as to how in financial and administrative matters the Bank was functioning as on the 17th of September, 1980. The Special Officer, appointed under Annexure-C, will exercise and perform all the powers and functions of the Board of management and take appropriate actions as provided in law.

23. For the reasons mentioned above, this petition fails and the same is dismissed. The rule issued is discharged.

24. Parties are directed to bear their own costs.