

**(1972) 11 RAJ CK 0008**

**In the Rajasthan High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 1083 of 1972

Jwala Prasad

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

**Date of Decision :** 22-11-1972

**Acts Referred:**

Constitution of India, 1950 — Article 166, 226  
Road Transport Corporations Act, 1950 — Section 36, 37, 38

**Citation :** AIR 1973 Raj 187 : (1973) RLW 164 : (1972) WLN 1052

**Hon'ble Judges :** S.N. Modi, J; C.M. Lodha, J

**Bench :** Division Bench

**Advocate :** Bajrang Lal Sharma, A.K. Bhandari, for the Appellant; L.M. Singhvi, General and R.N. Munshi, A.A.G. and S.K. Tewari, Deputy Govt. Advocate, for the Respondent

**Final Decision :** Dismissed

## Judgement

C.M. Lodha, J.—This is a writ application under Article 226 of the Constitution of India by Shri Jwala Prasad Sharma, erstwhile Chairman of the Rajasthan State Road Transport Corporation, Jaipur (hereinafter to be referred to as "the corporation"), which has been superseded by the State of Rajasthan by a Notification No. F. (7) (3) (3) Pari/72 dated 20th May, 1972, marked Annexure 5 on the record. Since the petitioner has challenged the validity of the said notification and has prayed that it may be set aside, it would be proper to reproduce this notification in extenso:--

"GOVERNMENT OF RAJASTHAN

Home (Group VII) Department No. F. 7 (3) (3) Pari/72, Dated the 20th May, 1972.

### NOTIFICATION

Whereas the State Government issued a notice u/s 38 of the Road Transport Corporation Act, 1950 (Central Act LXIV of 1950) to the Rajasthan State Road

Transport Corporation on 18th April, 1972 to show cause why it should not be superseded;

AND whereas the State Government after considering the explanation and objections of the Corporation is of the opinion that the Corporation is unable to perform and has persistently made default in the performance of the duties imposed on it by or under the provision of the Road Transport Corporations Act and has further abused its powers.

Now, therefore, in exercise of the powers conferred upon it under Sub-section (1) of Section 38 of the Road Transport Corporations Act, 1950 (Central Act LXIV of 1950) the State Government with the approval of the Central Government, hereby supersedes the Rajasthan State Road Transport Corporation for a period of six months.

By Order of Governor

Sd/- Ram Singh

Commissioner for Home Affairs,

& Secretary to Government."

2. In exercise of its powers u/s 3 of the Road Transport Corporations Act, 1950 (Act No. LXIV of 1950) the Government of Rajasthan established a Road Transport Corporation some time in the year 1964. The petitioner was appointed its Chairman Vide Notification dated 11-12-1967 Annexure 1, reproduced below:--

"GOVERNMENT OF RAJASTHAN

Home (B-I) Department.

NOTIFICATION

No. F.12 (3) (45). Home/B/67, Dated 11- 12-1967.

In exercise of the powers conferred by Sub-section (1) of Section 5 of the Road Transport Corporations Act, 1950 (Central Act 64 of 1950) read with Rules 3 (1) (a) and 5 (1) of the Rajasthan Road Transport Corporation Rules, 1964, and in supersession of this Department Notification No. F. 12 (5) (125)HR/Gr./66, dated the September 5, 1966, the State Government hereby appoints Shri Jwala Prasad Ex-Member of the Rajasthan Legislative Assembly as the Chairman of the Rajasthan State Road Transport Corporation, Jaipur Vice Shri Sher Singh on the following terms from the date Shri Jwala Prasad takes over the charge:--

1. Honorarium Rs. 1000/- per month
2. Such free furnished house, telephone, peon and other facilities as admissible to a Dy. Minister of the State Government.

By Order

Sd/- V. D. Sharma

Secretary to the Government."

By another Notification dated 29-3-71 (Annexure 2) the petitioner was again appointed as Chairman for a period of three years with effect from 13-12-1970. Besides the Chairman, the Corporation was constituted by 5 Official Members of whom three were nominated by the State Government and two by Central Government, There were also three non-official members being the representatives of Industry/Agriculture/ Labour or commerce who were appointed by the State Government. Thus the Corporation was constituted by nine members in all, including the Chairman as required by Rule 3 of the Rajasthan State Road Transport Corporation Rules, 1964, made by the State Government in exercise of the powers conferred by Section 44 of the Act. They were:

1. Jwala Prasad (petitioner)--Chairman Official Members nominated by the State Government.
2. Home Commissioner, Rajasthan.
3. Finance Commissioner, Rajasthan.
4. General Manager of the Corporation.

Official Members nominated by the Central Government.

5. Dy. Chief Accounts Officer, Western Railway, Bombay.
6. Marketing Officer, W. Rly, Bombay Non-official Members appointed by the State Government.
7. Shri Raghunath Das Banger.
8. Raja Dhiraj Shri Hemendar Singh, M. P.
9. Shri Hazari Lal Sharma.

3. The petitioner's case is that during his tenure of office as Chairman the Corporation greatly improved its financial position and working, yet by a notice dated 18-4-72 the Government of Rajasthan called upon the Corporation to show cause why it should not be superseded. The notice Annex. 3 runs as follows:--

"GOVERNMENT OF RAJASTHAN

Home (Gr. VII) Department

No. F. 7. (3) (3) Pari/72, Dated 18-4-72

NOTICE

Whereas the State Government, on grounds specified in the Annexure hereto, is of opinion that the Rajasthan State Road Transport Corporation is unable to

perform and has persistently made default in the performance of the duties imposed on it by or under the Road Transport Corporations Act, 1950 (Central Act LXIV of 1950) and further has abused its powers:

And whereas the State Government, on the basis of these grounds, proposes to supersede the said Corporation for a period of six months.

The State Government, therefore, hereby requires the Rajasthan State Road Transport Corporation to show cause within 7 days from the date of receipt of this notice why it should not be superseded.

Notice issued on this the 18th day of April, 1972.

By Order of Governor

Sd/- R.S. Kumat

Deputy Secretary to Government."

4. The grounds on the basis of which the Government proposed to supersede the Corporation for a period of six months annexed to the notice are also reproduced below for ready reference:--

"GROUNDS.

(1) That the State Government, in exercise of the powers conferred by Sub-section (1) of Section 34 of the Rajasthan Road Transport Corporation Act, 1950, had, after consultation with the Corporation, issued instructions to the Corporation to the effect that the City Transport Service in the City of Jaipur at present being operated by the private operators should be operated by the Corporation either by obtaining permits under Chapter IV of the Motor Vehicles Act, 1939 or by following the procedure laid down in Chapter IV-A thereof. By virtue of Section 34 of the Rajasthan State Road Transport Corporation Act 1950, the Corporation was under a duty not to depart from the above general instructions. These general instructions were issued on 22nd July, 1971 but the Corporation has not complied with these instructions although a period of about 9 months has elapsed.

(2) According to Section 18 of the Road Transport Corporations Act, 1950, it is the general duty of the Rajasthan State Road Transport Corporation to exercise its power as progressively to provide or secure or promote the provision of efficient, adequate, economically and properly co-ordinated system of Road Transport Services in the State. The Corporation has failed to perform this general duty for the following reasons;

(a) The employees of the Corporation went on complete strike with effect from 22nd February, 1972, and remained on strike for a period of one month, that is, upto 22nd March, 1972. During this period the normal Road Transport Services carried on by the Corporation came to a complete standstill, causing great financial losses to the Corporation as well as the State Government. The

Corporation did not take any serious and effective steps to avert or shortern the strike. The Corporation never paid proper attention to matters relating to recruitment, conditions of service and wages to be paid to the Corporation employees which resulted in the strike. Even during the strike, it failed to take prompt and fair decision on the demands and grievances of the employees. The Corporation did not tackle with the problems due to which the strike took place and caused undue delay in solving these problems for the following reasons:

(i) The meeting of the Corporation which was fixed for 25th February, 1972 was cancelled without any valid reason,

(ii) Even in the special meeting of the Corporation held on 28th February, 1972 no definite decision to tackle with the situation was taken.

(iii) Despite the reported failure of mediation efforts made by the Labour Commissioner and submission of the report of the Sub-Committee for rationalisation of the Pay Scales, the Chairman did not show any readiness to convene even though by that time the strike period had entered its 13th day and in view of this inaction on the part of the Chairman, the Corporation failed to take any effective steps to meet the grave situation which resulted in heavy losses to Corporation and great inconvenience to the general public.

(iv) In view of the fact deteriorating situation a procedure of calling a requisitioned meeting had to be resorted to. Even this requisitioned meeting was not convened expeditiously.

(b) The Corporation was compelled to withdraw the powers of its Chairman by a formal resolution which is indicative of the failure of the Corporation to administer its own affairs in accordance with the provisions of the Act.

(c) The Corporation despite its having come into existence since 1-10-1964 did not frame rules for recruitment, conditions of service and promotion for its employees which gave rise to constant discontent and friction among the employees resulting in a number of strikes.

(3) The Corporation is unable to perform its function because certain important record including the record of the Corporation meeting had been put under lock and key by the Chairman and the Corporation has failed to obtain the same,

(4) The Corporation has failed to implement its own resolution for appointment through Selection Committee and as such has failed to check the abuse of powers in the conduct of the business of the Corporation and in making appointments and promotions.

(5) The Corporation has failed to implement the Third party liability Insurance Fund Rules with the result that the persons injured due to accident could not get benefit of these rules. Thus, the Corporation failed to perform the statutory duties imposed upon it by the said rules.

(6) The Corporation is not running the Road Transport Services in the State

efficiently and economically for the following reasons:--

- (a) A large number of new buses are lying unutilised.
- (b) The Transport service remained paralysed for a month causing great inconvenience to the general public and also causing loss to the Corporation and the State Government.
- (c) The Corporation has failed to carry out the directions of the State Government for disposal of old and unliable vehicles.
- (d) The Corporation has failed to keep proper discipline among the staff which has resulted in chaotic conditions in the Corporation causing heavy loss in the business of the Corporation."

5. After having discussed the notice and the grounds supplied along with it in its special meeting held on 24-4-1972, the Corporation submitted its reply to the show cause notice. The reply submitted by the petitioner has been reproduced in extenso in para No. 14 of the writ petition. A detailed reference to the relevant grounds and the stand taken by the Corporation with respect to them will be made by us a little later. Suffice it to say for the present that the Corporation put up a strong opposition to show cause notice. The Government of Rajasthan, however, in exercise of the powers u/s 38 of the Act, with the previous approval of the Central Government superseded the Corporation for a period of six months by the notification dated 20-5-72, already reproduced above. By another notification dated 20-5-72 (Annex. 6) the Government of Rajasthan directed that all the powers and duties which may be exercised or performed by or on behalf of the Corporation would during the period of supersession be exercised and performed by Shri Raj Kumar Sastri, I. A. S.

6. The main points argued at length by the learned counsel for the petitioner in support of the petitions are as follows:--

(1) Since as provided u/s 36 of the Act the State Government had not appointed any person to make enquiries into the activities of the Corporation and to report to the State Government the result of such enquiry, the State Government had no material before it to form an opinion that the Corporation is unable to perform or has persistently made default in the performance of the duties imposed upon it or has exceeded or abused its powers as envisaged by Section 38 of the Act, and consequently the order of supersession is bad.

(2) That the impugned order is mala fide on the following two grounds:--

(a) Shri Barkatullah Khan, Chief Minister, Rajasthan had an axe to grind against the petitioner, who had severely criticised the conduct of Shri Barkatullah Khan when he was previously Minister for Local Self Government.

(b) Shri Barkatullah Khan wanted to appoint his cousin Shri Liyakatullah Khan, who had lost elections to the State Assembly from the Jodhpur Constituency, as Chairman of the Corporation by removing the petitioner.

(3) That the power of supersession u/s 38 of the Act is of a quasi-judicial nature and since the impugned order of supersession does not record the reasons nor is a speaking order, nor a copy of the enquiry report was made available to the Corporation the order is a nullity,

(4) That the order is based on extraneous considerations as the Minister concerned Shri Hardeo Joshi, while passing the impugned order, acted on the office note prepared by the Deputy Secretary, Home Department, Home Commissioner, and the Law Secretary to the Government of Rajasthan and had thereby delegated the quasi-judicial function of deciding the question of supersession on which he should have formed his own independent opinion based on good and adequate material,

(5) That there was no proper previous approval of the Central Government before the impugned order was passed by the Government of Rajasthan.

(6) That Shri Hardeo Joshi, who passed the impugned order in his capacity as a Minister was not competent to do so according to the Business Rules made by the Government of Rajasthan in exercise of its powers under Article 166 of the Constitution of India.

(7) That there was absolutely no material before the State Government on the basis of which it could have honestly formed an opinion that the Corporation deserved to be superseded u/s 38 of the Act.

7. The petition has been opposed by the State of Rajasthan which has also filed a written reply to the writ petition supported inter alia by the affidavit of Shri N.A.A, Narayanan, Under Secretary to the Government of India on behalf of Union of India non-petitioner No. 2.

8. At the commencement of the hearing of the case a preliminary objection was raised by the learned Advocate General on behalf of the State of Rajasthan that the petition should be dismissed on the ground that the petitioner has no locus standi to file the petition and maintain this action. It has been urged by him that the impugned order was voidable and not a nullity and even though the petitioner was Chairman of the Corporation at the time of its supersession but that does not give him any right to complain independently of the Corporation. It has been argued that the petitioner has nowhere shown that he is representing the Corporation or filing this petition on its behalf. In support of his contention the learned Advocate General placed strong reliance on *Alfred Thangarajah Durayappah v. W.J. Fernando*, 1967-2 AC 337; *K. Narasimha v. State of A. P.* 1970 1 Andh WR 322 ; *Nazla Rob Vs. The Commissioner of Wakf, West Bengal and Others*, ; *Peru Paltu Ghosi and Another Vs. Assistant Custodian, Mathura*, ; *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, and *Ayodhya Prasad Vajpai Vs. State of U.P. and Another*, .

Another ground urged in this connection is that the Corporation or its members have not been joined as parties to the case. On the other hand, the learned

counsel for the petitioner has argued that the impugned order is a nullity, and, therefore, the petitioner is entitled to maintain the action. It has also been contended by him that the petitioner is not altogether a stranger to the matter of supersession of the Corporation. It is submitted that the petitioner has been put to a pecuniary loss by the supersession of the Corporation as in his capacity as a Chairman he is entitled to receive remuneration fixed by the Government from time to time and other perquisites and emoluments such as sumptuary allowance, furnished house, telephone etc., and, therefore, he is an aggrieved person and as such is entitled to invoke the extraordinary jurisdiction of this Court to get the invalid order of supersession set aside. He has also submitted that the view taken by their Lordships of the Privy Council in Alfred Thangarajah Durayappah's case, 1967 2 AC 377 is no more a good law specially in view of the language of Article 226 of the Constitution which does not impose any such limitations on the maintainability of a writ petition. In support of his contention learned counsel has strongly relied upon Suresh Seth Vs. The State and Another, ,

9. In Durayappah's case, 1967-2 AC 377, their Lordships of the Privy Council were pleased to hold that an order of dissolution of the Jaffna Municipal Council by the Minister of Local Government in exercise of his powers u/s 277 of the Municipal Council Ordinance having been passed in violation of the principle *audi al-teram partem* was not proper. But even after having held so their Lordships came to the conclusion that the order of dissolution was voidable and not a nullity, and being voidable, it was voidable only at the instance of, the person against whom the order was made, that is, the council. It was further observed that the petitioner was no doubt a Mayor at the time of his dissolution but that does not give him any right to complain independently of the Council. It was held that if the council is dissolved, office of Mayor is dissolved with it and he has no independent right to complain because he holds no office, that is, independent of the council.

10. In (1970) 1 An WR 322 the petitioner was a Sarpanch of the Gram Panchayat, which was superseded by the District Collector u/s 2 of the Gram Panchayat Act. He questioned the act of the Collector by a writ petition which was resisted on the ground that the petitioner was not the aggrieved person and it was only the Panchayat which could, if it so chose, question the action of the Collector by filing a petition. The learned Judge following the verdict in Durayappah's case (1967) 2 AC 337 dismissed the writ application as not maintainable.

11. In Nazla Rob Vs. The Commissioner of Wakf, West Bengal and Others, the petitioner was the President of an Administrative Committee appointed in respect of Hazi Belayet Hussain's Kstate of Arna. The Administrative Committee was dissolved by the Commissioner of Wakfs. The petitioner challenged propriety and validity of the order of the Commissioner by an application under Article 226 of the Constitution. It was held that the Administrative Committee had no vested right as such in the wakf estate, and consequently the petitioner could not



maintain the petition.

12. In *Ayodhya Prasad Vajpai Vs. State of U.P. and Another*, their Lordships distinguished the earlier case decided by their Lordships: *Ram Dial and Others Vs. The State of Punjab*, and observed that in *Ram Dial*'s case the Punjab Municipality Act which was under consideration contained two provisions for the removal of a Pramukh in the public interest: by one provision he was entitled to a hearing and by the other not, and, therefore, the Court held that as it was open to choose one method rather than the other and that there was room for arbitrary action, but as against that with reference to *Uttar Pradesh Kshettra Samitis and Zilla Parishads Adhiniyam of 1961* which came up for consideration before their Lordships, it was observed that the provisions on the subject of removal of members of the Kshettra Samitis are not congruous with the subject of reorganisation of Khands.

The two provisions operate in entirely different fields, inasmuch as one is concerned directly with the removal of a Pramukji, and the members and the other is directly concerned with the abolition of the Khands and reconstitution of different Khands. It was further observed that it may be that by abolishing a Kband and its Kshettra Samili the members also must go but that is a consequence of the exercise of quite a different power. Of course, if the action in abolishing the Khand could be shown to be directly connected with, the removal of the Pramukh, the action of the Executive Government can be struck down as mala fide. On the analogy of this case, the learned counsel has sought to argue that there are two different powers under the Act: one is for the supersession of the Corporation u/s 38 and the other for removal of the Chairman u/s 8. It is contended that if, by supersession of the Corporation, the Chairman and the members must also go, that is a consequence of the exercise of quite a different power and the petitioner cannot challenge it in his own right, and that there is no case of mala fides made out by the petitioner.

13. In *Peru Paltu Ghosi and Another Vs. Assistant Custodian, Mathura*, it was held that a petitioner under Art, 226 by some members of the Sunni Wakf Board for quashing the orders of the Assistant Custodian declaring a certain property as evacuee property, is not maintainable, if the petitioners nowhere in their petition have stated what their individual rights are and how they are affected. Their merely being members of the Sunni Wakf Board does not entitle them to any right.

14. In this connection it may be pointed out that the petitioner has taken a ground of mala fides, and in the words of their Lordships in *Ayodhya Prasad Vajpai Vs. State of U.P. and Another*, : "Of course, if the action in abolishing the Khand could be shown to be directly connected with the removal of the Pramukh, the action of the Executive Government can be struck down as mala fide". The objection as to the maintainability of the action by the petition, therefore, cannot be accepted in the circumstances of the present case, unless the question of the existence of any mala fide intention is determined. It is of course well established

that the existence of the right is the foundation of the exercise of jurisdiction of the Court under Article 226 of the Constitution, Reference may usefully be made to the observations of His Lordship Kania, C.J., in *The State of Orissa Vs. Madan Gopal Rungta*, :

"The language of the Article shows that the issuing of writs or directions by the Court is founded only on its decision that a right of the aggrieved party under Part III of the Constitution (Fundamental Rights) has been infringed. It can also issue writs or give similar directions for any other purpose. The concluding words of Article 226 have to be read in the context of what precedes the same. Therefore, the existence of the right is the foundation of the exercise of jurisdiction of the Court under this Article."

15. It is obvious that in the present case the petitioner's right to act as Chairman of the Corporation has been undoubtedly infringed. He is being deprived of pecuniary benefits. In these circumstances he cannot be said to be a busy body at whose instance the validity of the order cannot be examined.

16. As to the question of the impugned order being voidable or a nullity and whether the petitioner has any right to complain independently of the Corporation the learned counsel for the petitioner has placed strong reliance on *Suresh Seth Vs. The State and Another*, . That was a case of supersession of Municipal Corporation u/s 422 of the Madhya Pradesh Municipal Corporation Act, 1958, for a period of one year, The learned Judges of the Madhya Pradesh High Court came to the conclusion that the order of supersession suffers from two defects: Firstly, that the Corporation was not given a fair opportunity to show cause before the order was made and secondly, that the reasons for making the order were not stated. After coming to the aforesaid finding the learned Judges observed as follows:

"What is the effect of these infirmities? Is the order void or nullity, or merely voidable? Is it liable to be quashed at the instance of a Municipal Councillor, who was made to retire before the expiry of his term? These questions bring us back to the decision of the Privy Council in *Durayappah's case* (1967) 2 AC 337 (supra). In that case a Municipal Council was dissolved by an order of a Minister without following the requirements of natural justice and it was held by the Privy Council that the order of dissolution was not a nullity but merely voidable at the instance of the Council and was not liable to be set aside at the instance of the Mayor; although if challenged and avoided at the instance of the Council, the order would be void ab initio. This new concept of voidable administrative order has invited criticism; (see *Wade Unlawful Administrative Action Void or Voidable* 83 L Q R 499 and 894 *Law Quarterly Review* 95; *De Smith Judicial Review of Administrative Action*, 2nd Edn., p. 227; 30 *Modern Law Review* 701). Prof. Wade on a thorough analysis of the earlier cases and principles of administrative law has shown that the view taken in *Durayappah's case* (1967) 2 AC 337 (supra) proceeds on wrong principles and on a wrong reading of the speech of Lord Morris in 1964 AC 40 (supra). Prof. Wade's conclusions, so far as relevant for our

purpose are:

(a) Acts of public authorities "are either lawful and valid or unlawful and void. That is why Voidable" has never played a part in administrative law and should play no part now;"

(b) "The question whether a third party can challenge a void Governmental act not aimed primarily at himself is governed by settled rules which vary according to remedy sought. These rules have long been in operation without any such question as "void or voidable" being thought relevant";

(c) "It is erroneous to suppose that an unlawful administrative act can have legal effect only if it is called voidable as opposed to void. If not challenged in law, or if the Court will not grant a remedy under the usual rules, a void act may have the effect of a valid act, since it cannot be opposed." (83 L Q R 529); and

(d) "The Courts have always held that failure to give a fair hearing makes (no decision void, not voidable," (84 L Q R 115.) In *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, , a case which is in line with the decision of the House of Lords in 1964 AC 40 (supra), the Supreme Court held that a Governmental order made without following the requirements of natural justice was a nullity. In *The Collector of Monghyr and Others Vs. Keshav Prasad Goenka and Others*, , it was held that an administrative order, which could be made only "for reasons to be recorded," would be void if no reasons were recorded for making it or if reasons recorded were totally irrelevant. Having given our anxious consideration to the problem, we accept as correct the analysis and the conclusions of Prof. Wade, which we have already set out and in this respect we respectfully decline to follow the theory of Voidable" administrative order expounded by the Privy Council in *Durayappah's case* (1967) 2 AC 337 (supra). In our opinion, because of the two defects, which we have already pointed out, the order of supersession made in the instant case was a nullity or void. This leaves the question whether the petitioner who was a Councillor is entitled to challenge the order by claiming a writ of certiorari. It cannot be disputed that the petitioner, who was made to retire by the order of supersession before expiry of his term, has a "grievance of his own" and fulfils the character of an "aggrieved party". We cannot also lose sight of the fact that when after order of supersession immediate effective control is taken over by an Administrator appointed by the Government (as happened in the present case), it is practically impossible to take steps at the instance of the Corporation to challenge the order. Having regard to the circumstances of this case, we hold that it would not be a sound exercise of our discretion under Article 226 of the Constitution to refuse interference at the instance of the petitioner. In our opinion, the petitioner is entitled to succeed,"

17. We have purposely reproduced in extenso the relevant observations in the *Suresh Seth Vs. The State and Another*, , with a view to point out that the Madhya Pradesh High Court has declined to follow the theory of voidable administrative order expounded by the Privy Council in *Durayappah's case*

(1987) 2 AC 337, and held that the order of supersession in that case was a nullity or void.

18. For the purpose of the present case it is not necessary to enter into the realm of controversy as to whether the acts of public authorities are either lawful and valid or unlawful and void and the word "voidable" has no place in such acts, be-cause the contention of the petitioner in this case is that the impugned order of supersession is void and a nullity and as such can be challenged by the petitioner even though other members of the Corporation have not joined him in filing the petition. This necessitates an enquiry into the merits of the petition. We may point out here that the learned Advocate-General strongly pressed upon us that the petition should be dismissed on the short ground that the action is not maintainable by the petitioner, and the petition need not be examined at all on merits.

In view of what we have stated above we are unable to accede to the submission made by the learned Advocate-General. It may not be out of place here to mention that the petitioner seeks to show that the order of supersession is invalid and null and void. Whether in the circumstances of the present case we would be inclined to interfere at the instance of the petitioner is a different question which we would answer later. Suffice it to say that the petitioner is not liable to be nonsuited on the short ground that he cannot maintain this action.

19. We, therefore, propose to deal with the objections raised by the petitioner to the impugned order on merits.

20. The first objection of the petitioner is that it was obligatory for the State Government to have first inquired into the working and the activities of the Corporation and then to have acted after receiving the result of such inquiries. In this connection the petitioner has referred to Sections 36, 37 and 38 of the Act which read as under:--

"36, Power to order inquiries.--(1) The State Government with a view to satisfy itself that the powers and duties of a Corporation established by that Government are being exercised and performed properly, may, at any time, appoint any person or persons to make inquiries into all or any of the activities of the Corporation and to report to the State Government the result of such inquiries.

(2) The Corporation shall give to the person or persons so appointed all facilities for the proper conduct of the inquiries and shall produce before, or furnish to, the person or persons any document, account or information in the possession of the Corporation which such person or persons demand for the purpose of the inquiries.

37. Power to control a part of undertaking of a Corporation.--(1) If on receipt of the report of any inquiry held u/s 36 or otherwise, the State Government is satisfied that it is necessary so to do in the public interest, the State Government

may, by notification in the Official Gazette, authorise any person to take over from the Corporation, and so long as that notification is in force, to administer in accordance with such directions as may be issued from time to time by the State Government such part of the undertaking of the Corporation as may be specified in the notification, and any person so authorised may, for the purpose of so administering the said part of the undertaking, exercise all or any of the powers of the Corporation or of any officer of the Corporation under this Act, issue such directions as he thinks fit to the officers or servants of the Corporation and employ any outside agency.

(2) The State Government may by such notification direct that all charges and expenses incurred by the person so authorised together with such remuneration as the State Government may allow from time to time to such person shall be paid within such time as may be fixed by the State Government from the fund of the Corporation, and if the expenses are not so paid, the State Government may make an order directing the persons having the custody of that fund to pay to the person so authorised such expenses in priority to any other charges against such fund and he shall, so far as the funds to the credit of the Corporation admit, comply with the order of the State Government.

(3) Every notification issued under this section together with a report on the circumstances leading to its issue shall be laid before the Legislature of the State, as soon as may be, after it is issued.

38. Power to supersede a Corporation--(1) If the State Government is of opinion that a Corporation established by that Government is unable to perform or has persistently made default in the performance of the duties imposed on it by or under the provisions of this Act or has exceeded or abused its powers, the State Government may, with the previous approval of the Central Government, by notification in the Official Gazette, supersede the Corporation for such period as may be specified in the notification:

Provided that before issuing a notification under this sub-section the State Government shall give a reasonable time to the Corporation to show cause why it should not be superseded and shall consider the explanation and objections, if any, of the Corporation.

(2) Upon the publication of a notification under Sub-section (1) superseding a Corporation-

(a) All the members of the Corporation shall, as from the date of supersession, vacate their offices as such members;

(b) all the powers and duties which may, by or under the provisions of this Act or of any other law, be exercised or performed by or on behalf of the Corporation shall, during the period of supersession, be exercised and performed by such person or persons as the State Government may direct;

(c) all property vested in the Corporation shall, during the period of

supersession, vest in the State Government.

(3) On the expiration of the period of supersession specified in the notification issued under Sub-section (i) the State Government may-

(a) extend the period of supersession for such further term as it may consider necessary; or

(b) reconstitute the Corporation in the manner provided in Section 5."

21. Section 36 empowers the State Government "to appoint any person or persons to make inquiries into the activities of the Corporation with a view to satisfy itself that the powers and duties of a Corporation are exercised and performed properly, Section 37 further empowers the State Government to control a part of the undertaking of the Corporation. If on the record of any inquiry held u/s 36 or otherwise it is satisfied that it is necessary so to do in the public interest, the State Government may by notification in the Official Gazette authorise any person to take over from the Corporation such part of the undertaking of the Corporation as may be specified in the notification.

22. Section 38 deals with the powers of the State Government to supersede a Corporation. It is, in our opinion, a provision independent of Sections 36 and 37. Section 38 does not speak of receipt of the report of any inquiry held u/s 38. It provides that if the Government is of opinion that a Corporation is unable to perform or has persistently made defaults in performance of duties imposed upon it or has exceeded or abused its powers, it may supersede the Corporation for such period as may be specified in the notification. This section does not envisage any inquiry. It is a different thing to say that the State Government must act honestly and like a reasonable person to form the opinion and the opinion must not be altogether arbitrary and must be based on some material. But that does not mean that it must get a regular inquiry conducted as contemplated by Section 36. We are, therefore, of opinion that the power u/s 38 is not governed by Section 36 of the Act and the impugned order cannot be struck down because the State Government did not get any inquiry made against the Corporation u/s 36 of the Act.

23. Then we come to the next question whether the impugned order is liable to be struck down as being mala fide? It is no doubt established that interference by the Court will be warranted by law when the executive authority is not exercising its powers bona fide for the purposes contemplated by law or is influenced by extraneous and irrelevant considerations. The petitioner's allegation in this connection is contained in para (ay) of the writ petition (at page 107). It is submitted that Shri Barkat-ullah Khan, Chief Minister of Rajasthan, is hostile to the petitioner because during the period 1957-67 when the petitioner was a member of the Rajasthan Legislative Assembly, on a number of occasions the petitioner criticised the conduct of Shri Barkatullah Khan who was then a Minister in the Rajasthan State Cabinet. It is averred that the petitioner condemned the purchase of wheelbarrows by the Local Self-Government

Department of the Government of Rajasthan of which Shri Barkatullah Khan was in-charge. It has been stated in the petition that the wheelbarrows were purchased from a relation of Mrs. Ushi Khan, wife of Shri Barkatullah Khan and were found useless and unserviceable.

The petitioner goes on to state that the various municipalities passed resolutions condemning the deal and the petitioner exposed this scandalous deal in the Rajasthan Assembly. In this connection it has been stated that in order to wreak vengeance against the petitioner Shri Barkatullah Khan, when he became the Chief Minister, encouraged some undesirable elements to create disturbance in the working of the Corporation by committing acts of violence and the State Police did not do anything to maintain law and order because the portfolio of Police was headed by Shri Barkatullah Khan, Chief Minister himself.

24. The aforesaid allegations have been emphatically denied by Shri Barkatullah Khan, and the petitioner has completely failed to substantiate them. There is nothing on the record to show that the petitioner criticised the conduct of Shri Barkatullah Khan in connection with the alleged purchase of wheelbarrows on the floor of the Rajasthan Legislative Assembly. The relevant proceedings regarding discussion of purchase of wheelbarrows were read out to us and in our opinion they do not at all show that the petitioner had made any attack against Shri Barkatullah Khan personally regarding the alleged purchase of wheelbarrows nor is the petitioner able to show how and in what manner the firm or any partner of the firm from which the wheelbarrows are alleged to have been purchased was connected with Mrs. Ushi Khan. The allegation in this respect is not well founded and is vexatious. It further appears to us that it has been so made only with a view to show that the supersession of the Corporation was directly connected with the removal of the petitioner as the Chairman of the Corporation and was therefore mala fide. We find no substance in this allegation.

25. As to the second branch of the argument under the Head "Mala fides" Shri Barkatullah Khan in his affidavit dated 11-8-1972 emphatically denied that he wanted to or now wants to make his cousin Shri Liyakatullah Khan the Chairman of the Corporation and that the supersession of the Corporation was motivated by any such consideration of appointing Shri Liyakatullah Khan as Chairman or on account of any hostility against the petitioner. In face of this denial of Shri Barkatullah Khan the ground taken by the petitioner that the supersession was motivated by ulterior considerations also fails and the objection of the petitioner that the impugned order is liable to be struck down on the ground of mala fides must be overruled.

26. The next point urged by the learned counsel for the petitioner is that the power of supersession conferred upon the State Government u/s 38 is of a quasi judicial nature and since the impugned order is not a speaking order and does not record reasons, it is invalid. In this connection it has also been argued that the impugned order was passed after the receipt of the inquiry report from the Home Commissioner Ram Singh and since a copy of the report made by Shri

Ram Singh was not made available to the Corporation, the order is void for that reason also. A lot of case law has been placed before us by learned counsel on both the sides on the question as to what is a quasi judicial function?

It has been an endeavour of the petitioner to show by reference to case law that since there is a provision u/s 38 that before issuing a notification under that Section the State Government must give a reasonable time to the Corporation to show cause why it should not be superseded and shall consider the explanations and objections if any of the Corporation, it must be held that the State Government while passing such an order acts as a quasi judicial body. On the other hand the learned Advocate General has tried to show that the power u/s 38 is of an administrative nature and is neither judicial nor quasi judicial.

27. We consider it unnecessary to enter into a discussion of a plethora of authorities laid before us by both the sides as, in our opinion, even if the power conferred upon the State Government is taken to be of a quasi-judicial nature, all the essential requirements in the exercise of such power have been complied with. There is no denying the fact that 4 notice to the Corporation to show cause along with the statement of grounds was given to the Corporation to enable it to show why it should not be superseded. It is also apparent that the; explanations and objections submitted by the Corporation to the show cause notice were examined by the State Government (vide Ex. A. 2).

No doubt in this connection it was argued on behalf of the petitioner that the examination was made by Home Commissioner and other persons who had no authority to express their views in the matter and the Minister concerned did not apply his mind to the explanations and objections but that is a different argument with which we shall deal later. For the present all that we wish to state is that the explanations submitted by the petitioner to show cause notice were examined. A detailed note was put up before the Minister Shri Hardeo Joshi, who passed the following order on 29-4-72:--

"72. I considered the reply received from the Corporation and the examination made. The reply is not satisfactory. The Corporation is unable to perform its duties and responsibilities as provided in the Rajasthan State Road Transport Corporation Act. 1950. The Rajasthan State Road Transport Corporation, therefore, should be superseded. The approval of the Central Government may be obtained."

It was neither argued nor even suggested before us that reasonable time was not given to submit the explanation. Thus so far as the procedural requirement contained in Section 38 is concerned it has been fulfilled.

28. The contention of the petitioner however is that the impugned notification Annex. 5 does not record the reasons for supersession but it merely produces the language of the section. In this connection some cases were cited before us where the impugned order was struck down on the ground that it did not contain the reasons for making the order and the direct authority relied in this



connection is Suresh Seth Vs. The State and Another, . In our opinion that authority has no application to the present case inasmuch as in that case Section 422 of the Madhya Pradesh Municipal Corporation Act. 1956 under which the order of supersession was passed itself provided that "such order shall be published in the Gazette and the reasons for making it shall be stated therein." A bare look at Section 38 of the Act relevant to the present case shows that there is no provision for recording reasons in the notification. At this stage we may also point out that even though the notification does not record the reasons, the same have been given in detail in the statement of Grounds supplied to the Corporation along with the show cause notice and also in the notings prepared by the Deputy Secretary, Home Department, and the Home Commissioner. Not a single case has been brought to our notice that an order like the impugned one was liable to be struck down for not giving reasons in the notification itself even though no provision was contained in the relevant law for giving reasons. This also disposes of the other ancillary argument under this very heading that the order is not a speaking order. In this connection we may notice at least one more authority placed before us by the learned counsel for the petitioner which according to the petitioner is very much near to the present case and that is The State of Punjab and Others Vs. Bakhtawar Singh and Others, , wherein it was observed by their Lordships of the Supreme Court, "the order of the Minister removing him (R.P. Abrol) does not disclose that he had applied his mind to the material on the record and thus the order cannot be said to be a speaking order but is arbitrary to the core." We may point out that it was a case of removal of a member of Electricity Board on certain charges. It was held in the first instance that the charges levelled against Abrol related to the alleged acts and omissions prior to his appointment as a Member of the Board.

In the impugned order the Minister had observed that he was definitely of the opinion that the petitioner was not a fit person to be retained as a part time member of the Electricity Board. It was not shown how the petitioner was "otherwise not fit to continue as a Member". In these premises their Lordships held that the order was arbitrary and being not a speaking order was liable to be struck down. The facts of that case are completely distinguishable and so also the law applicable to it. It was a case of removal of a member and not supersession or dissolution of a statutory body created by the Government in exercise of its statutory powers as in the present case. We are therefore, of opinion that the rationale of the decision of that case has no application to the facts and circumstances of the present case at all.

29. Another argument made on behalf of the petitioner in connection with the same point is that the Home Commissioner had conducted an enquiry into the activities of the Corporation and had submitted his report against it to the Government, and thereupon a show cause notice was issued to the Corporation. It is contended that the Government was bound to supply a copy of the inquiry report to the petitioner. There is indeed a serious objection raised by the learned Advocate General to the petitioner being permitted to argue this point as this

point was not taken in the writ petition. The learned counsel for the petitioner conceded that such an objection had not been taken in the petition, but he has urged that the same has been taken in the rejoinder and the facts giving rise to this objection have been revealed by the State Government itself in its reply to the writ petition. Our attention was invited to the following paragraph contained in the reply of the State of Rajasthan (at Page 168 of the Paper Book).

"That while all this was being looked into, the Home Commissioner also visited the Corporation Office and had discussions with the General Manager and two members of the Corporation. As a result of this he was of the opinion that the conditions in the Corporation had become so chaotic that normal functioning of the Corporation had become difficult. There was complete indiscipline among the staff and the Corporation was running under heavy losses. A large number of new buses were lying unutilised. The regular service which the Corporation provides was getting inefficient and the people were deeply concerned. It was also discovered and that quite a large number of files were with the Chairman who was reluctant to part with them.

Also in the meeting of the Corporation held on 18th March, 1972. it was decided to set up two Committees and the powers of the Chairman were to be exercised by these two committees though the views of the Chairman were to be taken on all matters. This shows that the powers of the Chairman had to be taken away and vested in these committees but the executive work of the Corporation could not really be carried on through the Committees. The continuation of such condition would have resulted in a great chaos and it was as a result of such circumstances mentioned above that the State Government decided to issue a show cause notice to the Corporation as to why it should not be superseded, ultimately leading to the issue of the impugned order." Reference has also been made to another para, in the reply fat page 211) which reads as under"-

"There is no question of the proceedings having been initiated at the instance of the Chief Minister. It is submitted that during the strike period the employees of the Corporation seriously agitated against the petitioner and levelled charges of corruption. This matter came for discussion In the Rajasthan Legislative Assembly as a result of an adjournment motion. On this, the Minister of Transport gave an assurance to the House that a proper inquiry asainst the Chairman in regard to the allegations of corruption will be made by the State Government. The proceedings for holding an inquiry in fact were then initiated by the State Government and in the course of these proceedings the State Government came to know about the choatic conditions which were then prevailing in the Corporation and it was in these circumstances that the show cause notice dated 18-4-72 was issued to the Corporation. All this will show that the show cause notice which was issued by the State Government to the Corporation on 18-4-72 was the result of the happenings in the Corporation itself and was due to the unsatisfactory conditions which were then prevailing in the Corporation."

30. Two affidavits, one of Shri Inderjit Khanna. Deputy Secretary to the Government of Rajasthan dated 20-10-1972 and the other of Shri Ram Singh, Commissioner for Home Affairs and Secretary to the Government of Rajasthan in the Home Department dated 26-10-1972 have been filed to clarify the position on behalf of the Government. At one stage the learned counsel for the petitioner raised an objection to these affidavits being admitted but later on he did not press his objection and himself referred to them in the course of arguments, and thereby gave an impression that he had no objection to these affidavits being looked into by us. That apart, in the circumstances we are inclined to admit these affidavits and have taken them on record.

31. After reading the relevant averments in the reply as well as the affidavit of Shri Ram Singh we are convinced that no preliminary inquiry was ordered by the Government before passing the impugned order nor any report was submitted by the Home Commissioner. It appears to us as stated by Shri Ram Singh that he happened to visit the Corporation Office in connection with the meeting of a committee of the Corporation and made a note of his impressions and the discussions, he had with some members of the Corporation. He has further clarified that the question regarding inquiry into the corruption charges levelled against the petitioner is altogether a different matter which has nothing to do with the supersession of the Corporation. In the circumstances, therefore, we are clearly of opinion that no inquiry report was submitted by the Home Commissioner, and there was no question or occasion for supplying a copy of inquiry report to the Corporation along with the show cause notice. There is thus no substance in this point also.

32. We may now deal with the next point, viz., that the Impugned order is based on extraneous considerations inasmuch as the order is based on the notings made by the office of the Minister and thus the Minister has delegated his functions to his subordinates. It needs no argument to say that the question of supersession could be decided only by the Government or in other words by the Minister representing the Government and this function could not have been delegated by the Minister to his subordinates. Does it mean that the Minister was not entitled to take into consideration the notes prepared by his Office including that of the Deputy Secretary and the Home Commissioner? In this connection learned counsel for the petitioner has also argued that since the Home Commissioner was himself an official member of the Corporation the Minister should not have taken his opinion into consideration. He also likened the duty of the Minister in deciding the question of supersession to that of the judicial function of an ordinary court and submitted that the same procedure should have been followed.

33. It may be noted that even though the Home Commissioner was an Official Member of the Corporation, he did not cease to be a Home Commissioner, and therefore, the Minister concerned could take his assistance in obtaining the necessary material. We are unable to agree with the learned counsel for the

petitioner that, the power of supersession provided in Section 38 of the Act pertains to the exercise of the judicial function of an ordinary court. It really pertains to administration and the function of the Minister in the matter of deciding the question of supersession is administrative and not in the ordinary sense judicial. In this connection we are tempted to reproduce some observations made by Haldane L. C. in *Local Government Board v. Arlidge* 1915 AC 120 133:--

"The Minister at the head of the Board Is directly responsible to Parliament like other Ministers, He is responsible not only for what he himself does but for all that is done in his department The volume of work entrusted to him is very great and he cannot do the great, bulk of it himself. He is expected to obtain his materials vicariously through his officials, and he has discharged his duty if he sees that they obtain these materials for him properly. To try to extend his duty beyond this and to insist that he and other members of the Board should do every thing personally would be to impair his efficiency. Unlike a Judge in a Court he is not only at liberty but is compelled to rely on the assistance of his staff."

34. The above observations. In our opinion, can aptly be applied to the present case. On the explanation to the show cause having been submitted by the Corporation a detailed note with respect to the grounds supplied with the notice was prepared by the Dy. Secretary, Home Department of the Government. The matter was then laid before the Law Department and the Legal Remembrancer agreed to the views expressed by the Dy. Secretary.

Thereafter the Home Commissioner and the Chief Secretary also went into the matter and expressed their views on it

The Minister concerned then states on the file itself that he had considered the reply received from the Corporation and the examination made by his office and had come to the conclusion that the reply is not satisfactory and further that the Corporation was unable to perform its duties and had defaulted in performance of its duties and responsibilities as provided in the Act, After having said so he gave his decision that the Corporation may be superseded after obtaining the approval of the Central Government In these circumstances it cannot be said that the Minister acted without jurisdiction in taking into consideration the notes prepared by his office or that he had in any way delegated his function to anybody else. Consequently, we overrule this objection.

35. The next point argued by the the learned counsel for the petitioner is that there was no proper and valid approval of the Central Government before the impugned order was passed. The specific ground taken in this connection by the petitioner is contained in para No. 22 (u) and (v) of the writ petition. In para (u) it is stated that "the approval of the Central Government can only be made in writing after considering the evidence and material on which the State Government has passed the said orders." It is further stated in para, (v) "that in the present case the approval of the Central Government which is alleged to be

received by the State Government or is alleged to be communicated by the Central Government to the State Government does not contain any material whatsoever, which shows that the Central Government has considered any particular evidence and it has come to the conclusion that any particular charge is proved against the Corporation."

36. To meet the aforesaid objections the opposite party has filed the affidavit of Shri N.A.A. Narayanan. Under Secretary to the Government of India (at Page 239 of the Paper Book), wherein it has been stated that after receiving all the relevant capers from the State Government the whole matter was carefully examined by the Central Government on the point whether in the facts and circumstances of the case it would be advisable for the Central Government to accord the necessary approval for the supersession of the Corporation and that after such examination the Central Government came to the conclusion that it was a fit case wherein the necessary approval may be accorded- It has also been stated by Shri Narayanan that in this connection the views of the Ministry of Railway were also sought and they also concurred and had no objection to the State Government's proposal for the supersession of the Corporation for a period of six months.

37. An argument was made by the learned counsel for the petitioner that it has nowhere been stated in the affidavit of Shri Narayanan as to which particular officer had examined the matter and which had accorded the sanction. It is important to note in this connection that no such objection was taken by the petitioner in his writ petition that the approval had not been given by a competent authority. If any such objection had been taken then only the opposite party would have been bound to show that the competent person had accorded the sanction. It is trite that there is a presumption of legality attached to official acts and in absence of any express challenge in the writ petition as to the approval being by not a competent person we cannot penalise the State Government or the Central Government for having not disclosed the particular officer of the Government who had accorded the approval, though we do feel that the opposite parties would have been well advised to make the affidavit of Shri Narayanan a more detailed one and to have stated as to the procedure followed in according sanction and the authority which had accorded the sanction. The only challenge of the petitioner was that the order of approval does not show as to on what material the approval was given. This objection is sufficiently answered by the affidavit of Shri Narayanan. This objection is also therefore without force.

38. The next point we have to consider is whether Shri Hardeo Joshi, Minister of the Rajasthan Government, Incharge of State-owned Motor Transport was competent to pass the impugned order. We may state here that the order is signed as shown in Ex. A, 2) by Shri Barkatullah Khan. Chief Minister also who was the Incharge of the Home Department. The objection taken by the petitioner in this connection is as follows:--

"(bb) Because under the Rules of business a particular ministry can handle only those matters which are allocated under the Business Rules to the said Ministry, If an item of Government business is not allocated to any of the Ministry as to the second schedule appended to the Rules of Business framed by the Governor under Article 166 of the Constitution the matter can be handled only by the Chief Minister and the Governor. As submitted above in the instant case though the notice dated 18-4-72 as also the order dated 20-5-1972 are alleged to have been issued by the orders of his Excellency the Governor of Rajasthan but at no stage of the supersession proceedings the matter was placed before his Excellency the Governor and no order was obtained from him. Therefore the entire supersession proceedings are incompetent, invalid without jurisdiction, null and void."

39. Rule 4 of the Rules of Business for Rajasthan made in exercise of the powers conferred by Clauses (2) and (3) of Article 166 of the Constitution of India lays down that the business of the Government shall be transacted in the Secretariat Departments specified in the First Schedule, and shall be classified and distributed between those departments as laid down therein. Rule 5 further lays down that the Government shall On the advice of the Chief Minister allot among the Ministers the business of Government by assigning one or more departments to the charge of a Minister provided that nothing in this rule shall prevent the assigning of one department to the charge of more than one Minister. In the first schedule "the State Owned Motor Transport" appears at Item No, 13, under the Head (iii) Home Department. We are told by the learned Advocate General, and a Gazette Notification was also shown to us that the State Owned Motor Transport Was assigned to the charge of Shri Hardeo Joshi, though the Home Department was in the charge of the Chief Minister. This according to us, could legitimately be done under the proviso to Rule 5 referred to above.

40. Article 166 provides that all executive action of the Government of a State shall be expressed to be taken in the name of the Governor. It further provides that orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor. In view of this provision also it is clear that the validity of the impugned order expressed in the name of the Governor cannot be called into question on the around that it is not an order or instrument made or executed by the Governor. Consequently, the contention of the petitioner that the order is bad because at no stage the matter was placed before His Excellency the Governor has no substance and must be reiected.

41. It may be noticed here that the learned counsel for the petitioner wanted to enlarge the scope of his contention by making reference to the points raised by him in the rejoinder and submitted that all these points should be taken into consideration. We may observe in this connection that when this case came up for hearing before our learned Brother Gattani, J., sitting singly (before the case

was referred to us) an objection was raised by the opposite party that the rejoinder should not be looked into as it contains new pleas and our learned Brother Gattani J., by his order dated 26-9-1972 held "that the rejoinder may be taken on record and the matter contained therein so far as it relates to the new points raised in the replies be taken into consideration. But so far as disputed questions of fact are involved the court may pass proper order when the occasion arises." In our opinion, we cannot allow the petitioner to extend the scope of his writ application by adding new matters in the rejoinder which involve controverted question of fact, and new pleas which had not been taken in the writ application. In this view of the matter the petitioner must confine himself to the grounds taken by him in the writ petition.

42. We may now deal with the last argument raised on behalf of the petitioner that there was absolutely no material before the State Government on the basis of which it could have honestly formed an opinion for supersession of the Corporation, In this connection we wish to point out that the number of grounds relied upon by the State Government in support of the impugned order and mentioned in the statement of grounds supplied to the Corporation along with the show cause notice are not controverted. For instance it is not denied by the petitioner that in accordance with the instruction issued by the State Government on 20-7-1971 to create City Transport Service for the city of Jaipur no City Transport Service in the City of Jaipur was created. It is also not denied (at page 77 of the writ petition) that about 100 new vehicles are lying idle at present. Similarly it is not controverted that the Corporation failed to implement the third party liability Insurance Fund Rules, inasmuch as it is admitted at page 77 of the writ petition by the Corporation that in many cases the reports were not regularly made to the District Magistrate as contemplated by the Rules.

It is also incontrovertible that the employees of the Corporation went on strike from 22-2-72 and the strike lasted till 27-3-1972. It is not necessary to multiply the various grounds relied upon by the State Government as if not all most of them are not controverted. It is true that the petitioner has come forward with an explanation with respect to each of the grounds and has tried to justify his stand, but it was for the State Government, to form an opinion in the matter. After having heard learned counsel for the parties at length and after having applied our own scrutiny to the several grounds relied upon by the State Government in support of its order of supersession of the Corporation we are of opinion that the Impugned order is not liable to be quashed on the ground of mala fides, dishonesty or corrupt purpose. We are also unable to hold that the order is without jurisdiction or has been passed on (grounds extraneous to the legislation or that no one can reasonably arrive at the opinion requisite under the legislation.

The formation of opinion is a subjective process and it cannot be said, in the facts and circumstances of the present case that it is impossible for any one to form the opinion which the State Government did. Our conclusion, therefore, is

that the contention on behalf of the petitioner that there was no material at all on which the opinion for supersession of the Corporation could be formed has no substance.

43. Before we close we may state that at the commencement of his reply to the arguments made on behalf of the petitioner the learned Advocate General wanted us to throw out the petition on certain alleged mis-statements of facts made in the affidavits. We consider it unnecessary to deal with the argument inasmuch as in the first place he was not able to convince us that there was any suppression of material facts or gross mis-statements in respect of them so as to disentitle the petitioner to be heard on merits. Moreover this argument was made when the whole case had been argued out by the petitioner from start to the finish. That apart, we have dealt with all the points argued by the learned counsel for both the parties and it is no stage for nonsuiting the petitioner on the ground of alleged mis-statements in the writ petition.

44. In the result we see no force in this writ petition, and hereby dismiss it, but, without any order as to costs.