

(1981) 02 KAR CK 0052

In the Karnataka High Court

Case No : Writ Petition No's. 7621 of 1977, 174, 338, 339, 650, 2296 and 7937 of 1978, 1978, 4562 and 10831 of 1979 and 19655 of 1980

M.A. Kamath and etc.

APPELLANT

Vs

Karnataka State Financial Corporation and etc.

RESPONDENT

Date of Decision : 20-02-1981

Acts Referred:

Constitution of India, 1950 — Article 226, 254, 254 (4)
Karnataka Public Moneys (Recovery of Dues) Act, 1979 — Section 3
Transfer of Property Act, 1882 — Section 69

Citation : AIR 1981 Kar 193

Hon'ble Judges : G.N. Sabhahit, J

Bench : Single Bench

Advocate : K. Subba Rao, R.S. Hegde, S. Pramila, S.V. Narasimhan, H.S. Dwarakanath, M.S. Purushothama Rao, S.U. Sastry and C.N. Kamath, for the Appellant; C.B. Nandeewar, R.V. Vasanthakumar and S.G. Doddakalegouda, Government Advocate, for the Respondent

Judgement

1. These writ petitions are instituted under Article 226 of the Constitution of India. Petitioner in each case is an industrialist and he took loan and advance, from the Karnataka State Financial Corporation (respondent 5) for the development of industry. It is the case of the respondents that the loans did not repay the loans in accordance with the terms of the agreement for advancing loans and in some cases they did not even utilise loans for the proper purpose. Hence, the loans were recalled and steps were taken for recoveries under the Karnataka Public Moneys (Recovery of Dues) Act, 1976. The present writ petitions are filed challenging the competence of respondent 5 the Karnataka State Financial Corporation to so recover the loans as arrears of land revenue under the provisions of the Karnataka Public Moneys (Recovery of Dues) Act 1979.

2. The writ Petitions are resisted by the respondents. They have contended by the counter filed by respondents 4 and 5 Viz,, the Managing Director, Karnataka

State Financial Corporation , and the Karnataka State, Financial Corporation, that they had the competence to call for the dues as the moneys were not paid in accordance with the terms and the loans defaulted and in many cases they did not utilise the loans for the proper purpose. They affirmed that they had the power to take steps under the Karnataka Public Moneys (Recovery of Dues) Act, 1976, as validated by the Karnataka Public Moneys (Recovery of Dues) /Act, 1979.

3. The learned counsel appearing for the writ petitioners in the different cases raised the following points in these writ petitions:

(1) The loans having been advanced under the State Financial Corporations Act, 1951, the respondents had no authority to take steps for the recovery of loans under the provisions of the Karnataka Public Moneys (Recovery of Dues) Act.

(2) The Karnataka Public Moneys (Recovery of Dues) Act, (hereinafter called "the Karnataka Act"), is a legislation and the State Financial Corporations Act, 1951, is a Central Legislation. According to them, the Central Legislation prevails over the State Legislation.

(3) They also contended that the Karnataka State has no competence to enact the Karnataka Public Moneys (Recovery of Dues) Act in question.

(4) Alternatively, they contended that Section 3 of the Karnataka Act which empowered the Managing Director to send a certificate to the Deputy Commissioner mentioning the sum due from a loanee and requesting that such sum, together with cost of the proceedings, be recovered as if it were arrears of land revenue, is unconstitutional as it does not, provide for an enquiry before issuing the certificate and thus violates the principles of natural Justice.

(5) They further contended that the Managing Director (respondent 4) of the Financial Corporation did not give any opportunity to the various loans to show cause before certifying the dues recoverable from them and, as such, the procedure followed by him was vitiated and no steps could be taken on the basis of such certificate.

4. The learned State Government Advocate and Shri C. B. Nandeewar and Shri R. V. Vasantha Kumar, the learned counsel appearing for the Karnataka State Financial Corporation, argued meeting these points raised by the learned counsel for the various writ petitioners.

5. The points, therefore, that arise for my consideration in these writ petitions are:

(1) Whether the State Legislature has competence to enact the Karnataka Public Moneys (Recovery of Dues) Act. 1979 ?

(2) Whether the Karnataka Act prevails over the Central Act, viz., the State Financial Corporations Act, 1951?

(3) Whether Section 3 of the Karnataka Act has to be struck down as unconstitutional because it does not provide for the application of principles of natural justice before certifying the loan ?

(4) Whether the Managing Director has followed the principles of natural justice by issuing a show cause notice and holding enquiry wherever necessary, before issuing the loan due certificate for recovery of the same ?

(5) If not, whether such certificate have to be struck down as offending the, principles of natural justice?

(6) What order?

6. Point No. 1: - There is no dispute raised before me about the validity of the State Financial Corporations Act, 1951. It is covered under Entries 43 and 45 of Schedule VII, List I, of the Constitution. The said Act contains provisions about the recovery of loans also.

7. Section 29 of the State Financial Corporations Act, 1951, speaks of rights of Financial Corporation in case of default. Section 30 contains power to call for repayment before agreed period. Section 31 contemplates the special, provisions for enforcement of claims by Financial Corporation. It reads:

"(1) Where an industrial concern, in breach of any agreement, makes any default in repayment of any loan or advance or any instalment thereof or in meeting its obligations in relation to any guarantee given by the Corporation or otherwise fails to comply with the terms of its agreement with the Financial Corporation or where the Financial Corporation requires an industrial concern to make immediate repayment of any loan or advance u/s 30 and the industrial concern fails to make such repayment, then, without prejudice to the provisions of Section 29 of the Act and of Section 69 of the Transfer of Property Act, 1882, any officer of the Financial Corporation, generally or specially authorised by the Board in this behalf, may apply to the district Judge within the limits of whose jurisdiction the industrial concern carries on the whole or a substantial part of its business for one or more of the following reliefs, namely:

(a) for an order for the sale of the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation as security for the loan or advance; or

(b) for transferring the management of the industrial concern to the Financial Corporation; or

(c) for an ad interim injunction restraining the industrial concern from transferring or removing its machinery or plant or equipment from the premises of the industrial concern without the permission of the Board, where such removal is apprehended.

(2) An application under sub-section (1) shall state the nature and extent of the liability of the industrial concern to the Financial Corporation, the ground on which it is made and such other particulars as may be prescribed."

Then comes Section 32 which contemplates procedure before District Judge in respect of applications u/s 31.

That is the mode of recovery contemplated in the State Financial Corporations Act, 1951.

8. The State Government, however, enacted the Karnataka Public Moneys (Recovery of Dues) Act, (first published) In the Karnataka Gazette (Extraordinary) on the 7th day of December, 1976). This Act, however, came to be repealed and the Act was re-enacted as the Karnataka Public Moneys (Recovery of Dues) Act,

1979. It received the assent of the President on the 18th day of April 1990 and was published in the Karnataka Gazette (Extraordinary) as Karnataka Act No. 16 of 1980 on the 24th day of April 1980. This Act provides for recovery of dues as arrears of land revenue.

9. The relevant portion of Section 3 of the said Act reads :

"Recovery of certain dues as arrears of land revenue:

(1) Where any person is party ---

(A) to (C) ...

(D) to any agreement providing that any money payable there under to the State Government shall be recoverable as arrears of land revenue;

and such person---

(a) makes any default in payment of the loan or advance or any instalment thereof; or

(b) having become liable under the conditions of the grant to refund

or any portion thereof, makes a in the refund of such grant or portion or any instalment thereof ; or

(c) otherwise fails to comply with the terms of the agreement,

then,---

(i) in the case of the State Government, such officer as the State Government may by notification authorise in this behalf;

(ii) in the case of a Corporation or a Government Company, the Managing Director thereof; and

(iii) in the case of banking company, the local agent thereof by whatever name called,

may send a certificate to the Deputy Commissioner, mentioning the sum due from such persons and requesting that such sum together with the cost of the

proceedings and future interest at the prescribed rate up to the date of recovery be recovered as if it were arrear of land revenue. A certificate sent to the Deputy Commissioner may be withdrawn at any time."

Sub-section (2) states that the Deputy Commissioner, on receiving the certificate, shall proceed to recover the amount stated therein as an arrear of land revenue.

Sub-section (5) states that no suit for the recovery of any sum due as aforesaid shall lie in a Civil Court against any person referred to therein if proceedings to recover the same are pending before the Deputy Commissioner.

Section 4(1) speaks of savings.

Section 6 speaks of repeal and validation etc. Sub-section (1) of Section 6 stated that the Karnataka Public Moneys (Recovery of Dues) Act, 1976, (Karnataka Act No. 79 of 1976) is hereby repealed. Sub-section (2) reads:

"Notwithstanding any judgment, decree or order of any court, anything done or any action taken, (including rules or orders made, notices or certificates issued and proceedings initiated to recover any amount) or purported to have been done or taken under the Karnataka Public Moneys (Recovery of Dues) Act 1976, (hereinafter referred to as the 1976 Act) shall be deemed to be as valid and effective as if such thing or action was done or taken under the corresponding provisions of this Act, which under sub-section (3) of Section 1 shall be deemed to have come into force on the 15th day of June, 1976, and accordingly no suit or other legal proceedings shall be maintained or continued in any court questioning the validity of anything done or any action taken or purported to have been done or taken under the 1970 Act on the ground that the said Act is unconstitutional or void as it has not been reserved for the assent of the President and assented to by the President."

10. The learned counsel appearing for the writ petitioners submit that when there is a Central Act viz., the State Financial Corporations Act, 1951, (hereinafter called "the Central Act"), making provision for the recovery of loan, it was not competent for the State Legislature to legislate on the same subject and, thus, according to them, the Karnataka Act should be struck down as unconstitutional.

11. The learned State Government Advocate Shri S. G. Dodda Kale Gowda, however, invited my attention to Entry No. 43 in List II (State List) which, according to him, empowers the State Government to legislate the Karnataka Act in question.

12. Entry No. 43 reads:

"Public Debt of the State."

13. The learned Advocate Shri C. B. Nandeeshwar pointed out that that Entry is not relevant for enacting the Karnataka Act because that speaks of "Public Debt

of the State". "Public Debt of the State" means "Debt that is due from the State". Hence, that would not enable the State Legislature to enact the Karnataka Act in question. On the other hand, he pointed out that the Act is covered by Entry No. 30 which reads:

"Money-lending and money-lenders, relief of agricultural indebtedness."

14. The learned counsel appearing for the writ petitioners, however, submit that the subject of the present Karnataka Act is not so much of money-lending and money-lenders, but it specifically refers to recovery of public demand and, as such, Entry No. 30 also would not cover the subject of the Karnataka Act.

15. There is some force in the submission so made. There is, however, in Item NO. 43 of List III (Concurrent List), this subject viz., Recovery in a State of claims in respect of taxes and other public demands, including arrears of land revenue and sums recoverable as such arrears, arising outside that State.

16. Thus, the subject of recovery in a state of claims in respect of taxes and other public demands falls under Entry No. 43 in List III (Concurrent List) of the Seventh Schedule of the Constitution of India. It is in the Concurrent List. It is, therefore, obvious that the State could legislate for the recovery of claims in respect of. public demands, The recovery of the sums in question obviously relates to public demands. The recovery of loans due that are spoken of in Section 3 of the Karnataka Act all fall within the terms "Public Demands". They are dues relating to State Government, Corporation, or a Government Company. It is made clear in the Central Act in Section 4(3) that the State Government shall, with the approval of the Central Government, determine the number of shares which may, respectively, be distributed among---

(a) the State Government,

(b) the Reserve Bank,

(ba) the Development Bank,

(c) scheduled banks, insurance companies, including the Life Insurance Corporation of India established u/s 3 of the Life Insurance Corporation Act, 1956, investment trusts, co-operative banks or other financial institutions, and

(d) parties other than those referred to in clauses (a), (b), (ba) and (c):

Provided that the number of shares which may be allocated to the parties referred to in clause (d) shall in no case exceed twenty-five percent, of the total number of shares.

Thus, it is obvious that demand by State Financial Corporation established under the Central Act is a Public Demand. Therefore, it is obvious that the State Legislature has competence to legislate the Karnataka Act under Entry No. 43 in List III of the Seventh Schedule.

17. It is relevant to remember in this context that the various entries in the three

Lists are not powers of Legislation but fields of Legislation, (Vide: The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, . The power to legislate is given by Article 246 of the Constitution and other relevant Articles, (Vide: Union of India (UOI) Vs. Shri Harbhajan Singh Dhillon, The entries in the Lists are mere legislative heads and are of an enabling character. They are designed to define and delimit the respective areas of legislative competence of the Union and the State Legislatures, (Vide: The State of Bihar Vs. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Others, . They neither impose any implied restrictions on the legislative power conferred by the Articles nor prescribe any duty to exercise that legislative power in any particular manner, (Vide: The State of Bihar Vs. Sir Kameshwar Singh, . It is settled law that the language of these entries should be given the widest scope of which their meaning is fairly capable because they set up a machinery of Government, (Vide: Sri Ram Ram Narain Medhi Vs. The State of Bombay, and Hans Muller of Nuremburg Vs. Superintendent, Presidency Jail, Calcutta and Others, . It is also ruled that each general word should accordingly, be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it, e.g., the validation of executive orders or a defective law relating to the subject referred to in the entry. (Vide: Jadao v. Municipal Committee AIR 1961 SC 1486).

18. Bearing these principles in mind, I have no hesitation to hold that the State Government is competent to legislate the Karnataka Act and also to validate the action taken under the defective Act of 1976.

19. It may also be pointed out in this context that a Full Bench of the Travancore-Cochin High Court, reported in AIR 1954 Trav-Co 518, has observed that Item No. 43 in List III of the Seventh Schedule authorises the Parliament as also the State to legislate in respect of recovery of all claims whether they accrue before or after the Constitution. The decision in the case of Manna Lal and Another Vs. Collector of Jhalawar and Others, , may also be perused in this context.

20. These decisions support the view that I am taking. Thus, I hold that there is no substance in the submission that the Government has no competence to legislate the Karnataka Act No. 16 of 1980 and to validate the action taken under the provisions of the defective Act viz., the Karnataka Act. No. 79 of 1976.

21. Point No. 2: Article 254 of the Constitution of India deals with a situation where there is inconsistency between the law made by the Parliament and the law made by the Legislatures of the State. It reads:

"(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the

repugnancy be void.

(2) Whether a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

22. Thus, it is clear that the present legislation viz., the Karnataka Act, falls directly within the scope of clause (2) of Article 254 of the Constitution of India and, as such, the law made by the Karnataka Legislature shall prevail over the provisions of the Central Legislature, as the legislation was reserved for the consideration of the President and has received the assent, as stated above on the 18th day of April 1980.

23. The Supreme Court of India had an occasion to consider this aspect at length in the case of *M. Karunanidhi Vs. Union of India and Another*, wherein, inter alia, the Supreme Court has laid down:

"Where, however, a law made by the State Legislature on a subject covered by the Concurrent List is inconsistent with and repugnant to a previous law made by the Parliament, then such a law can be protected by obtaining the assent of the President under Art. 254(2) of the Constitution. The result of obtaining the assent of the President would be that so far as the State Act is concerned, it will prevail in the State and overrule the provisions of the Central Act in their applicability to the State only. Such a state of affairs will exist only if Parliament may at any time make adding to, or amending, varying or repealing the law made by the State Legislature under the proviso to Art. 254." (Vide: Para 8 of the judgment).

24. It may be noticed in this context that the earlier Act viz., the Karnataka Act No. 79 of 1976, was not reserved for the consideration of the President and that it did not receive the assent of the President. That is why Karnataka Act No. 16 of 1980 is enacted and it has received the assent of the President on the 18th day of April 1980, as stated above. This Act makes provision as quoted above for validation of the action taken under the earlier Act viz., Act No. 79 of 1976 and that is within the competence of the Legislature.

25. Thus, I am satisfied that till the Parliament by virtue of the power vested in it under the proviso to Article 254 of the Constitution passes a new legislation adding, amending or repealing the provisions of the Karnataka Act No. 16 of 1980, the Karnataka Act No. 16 of 1980 prevails over the provisions of the Central Act viz., the State Financial Corporations Act, 1951, and there is no

substance in the submission made by the, teamed counsel for the writ petitioners that the Karnataka Act cannot prevail over the provisions of the Central Act.

26. Point No. 3: It is true that Section 3, which speaks of recovery of certain dues as arrears of land revenue in the Karnataka Act, does not mention under sub-clause (c) that any opportunity should be given to the loanee before the concerned authority may send a certificate to the Deputy Commissioner, mentioning the sum due from such persons and requesting that such sum, together with the cost of the proceedings and future interest at the prescribed rate up to the date of recovery, be recovered as if it were arrear of land revenue.

27. It is for that reason that the learned counsel submitted that the provision should be struck down as offending the principles of natural justice. It may be mentioned in this context that the law is settled that if a particular section is silent about the application of the principles of natural justice, the Court should so interpret that the authority concerned is bound to apply the principles of natural justice. On that account, the provision itself cannot be struck down.

28. In the case of *State of Mysore Vs. West Coast Papers Mills Ltd. and Another*, , the Supreme Court of India had an occasion to examine this aspect while considering the provisions of the Karnataka Slum Areas (Improvement and Clearance) Act (8 of 1959). In para 2 of the judgment, his Lordship Justice Alagiriswami, who delivered the judgment for the Bench, has observed:

"There are two possible approaches to this question. One is to hold that the provisions of the statute are themselves unconstitutional because they do not provide a reasonable opportunity for the affected parties to be heard, the other is to hold that as there is nothing in the statutory provisions which debar the application of the principles of natural justice while the authorities exercise the statutory powers under the Act, and as the principles of natural justice would apply unless the statutory provisions point to the contrary the statutory provisions themselves are not unconstitutional though the notifications issued under them may be struck down if the authorities concerned do not observe the principles of natural justice while exercising their statutory powers. As there is a presumption of constitutionality of statutes unless contrary is established it- is the latter course that appears to us to be the proper approach. "

29. These observations apply on all fours and answer the contention raised before me by the learned counsel for the writ petitioners.

30. There is no bar in the provisions of the Karnataka Act for the authority to apply the principles of natural justice. If the authority does not apply the principles of natural justice, the order passed by him certifying the recovery of loan has to be quashed and that does not justify the striking down of the provisions of the statute itself. That is my answer to Point No. 3.

31. Before I proceed to the next points, it is necessary to refer to a feeble argument advanced before me that the provisions of the Karnataka Act should be

struck down as offending Article 14 of the Constitution of India. According to the learned counsel for the writ petitioners, there was no justification in providing for a special procedure for the recovery of public moneys. This point is answered by the Supreme Court of India in the case of *Manna Lal and Another Vs. Collector of Jhalawar and Others*, , briefly and succinctly thus:

"The last point argued was that in so far as the Act. enables moneys due to the Government in respect of its trading activities to be recovered by way of public demand, it offends Art. 14 of the Constitution. It is said that the Act makes a distinction between other bankers and the Government as a banker, in respect of the recovery of moneys due. It seems to us that the Government, even as a banker, can be legitimately put in a separate class. The dues of the Government of a State are the dues of the entire people of the State. This being the position, a law giving special facility for the recovery of such dues cannot, in any event, be said to offend Art. 14 of the Constitution."

Hence, I am constrained to reject that submission also of the learned counsel appearing for the writ petitioners.

32. Points Nos. 4 & 5:- It is settled law as pointed out above that wherever the statute does not exclude the application of the principles of natural Justice, it is the duty of the authority to apply the same before making any order affecting the interests of the party concerned - the loans in the instant cases. It is an established fact, which is not in dispute, that the Managing director, before issuing the certificate to the Deputy Commissioner for recovery of the loans due as arrears of land revenue, has not given an opportunity to the loans concerned by issuing a show cause notice and holding an enquiry about the actual amount due, wherever necessary.

33. The learned Advocate Shri C. B. Nandeeshwar, however, strenuously argued that in all these cases notices, were issued to the concerned loans u/s 30 of the State Financial Corporations Act, 1951, calling for repayment of loans and that they did not raise any objection and, as such, it was redundant to give them further opportunity under the Provisions of the Karnataka Act.

34. It is true that notices were issued to the loans u/s 30 of the Central Act calling upon them to repay the loans and mentioning also the amounts due. It is also true that they did not raise any objection for the said notices of demand. The point for my consideration, however, is; Whether that could dispense with the show cause notice before the Managing Director took action u/s 3 of the Karnataka Act?

35. For that purpose, it is necessary to understand the scheme of the Central Act. As stated above, Section 30 speaks of the power to call for the repayment before the agreed period. Section 31 contemplates special provisions for enforcement of claims by Financial Corporation. It contemplates that the Financial Corporation should apply to, the District Judge asking for the reliefs and the District Judge is expected under the Act to hold an enquiry obviously giving

opportunity to the loans to put in their say. That is how the principles of natural justice are safeguarded under the scheme of the Central Act.

36. The learned counsel appearing for the writ petitioners in the circumstances contended that giving a notice of demand recalling the money u/s 30 of the Central Act would not in any way satisfy the principles of natural justice to be observed by the Managing Director before issuing certificate of recovery to the Deputy Commissioner.

37. In view of the certificate now issued by the Managing Director under the Karnataka Act, the loans would be deprived obviously of the opportunity that they had under the Central Act to contest the matter before the learned District Judge. Therefore, there is substance in the submission made by the learned counsel for the writ petitioners that opportunity should have been given to the loans to submit their say before the Managing Director issued certificates for the recovery of the loans from the writ petitioners.

38. The learned Advocate Shri C. B. Nandeeswar further submitted that the Managing Director has taken care to calculate the amounts due in accordance with the registers kept in the Corporation and giving further opportunity to the loans would have amounted to an empty formality and nothing more. He further submitted that the Court should be guided by the substance and not by the mere formality. He also submitted that in Writ Petitions Nos. 174, 650 and 7937 of 1978, 4562 of 1979 and 1955 of 1980, letters were issued informing the action proposed to be taken under the Karnataka Act. Hence, he submitted that the action taken by the Managing Director cannot be struck down on the mere formality of not issuing a show cause notice to satisfy the principles of natural justice. According to him, the facts of each case should be appreciated while holding whether the principles of natural justice are satisfied or not. In view of the statutory notices issued u/s 30 of the Central Act and also the letters addressed to the loans under the Karnataka Act, he submitted that no further action was necessary to satisfy the principles of natural justice on the facts of the present cases.

39. The letter that he speaks of, as issued under the Karnataka Act, is certainly not a show cause notice calling upon the loanee to submit his say before certifying dues for recovery to the Deputy Commissioner; I would reproduce one such letter. It reads:

"Dear Sirs,

I am desired to state that your case was reviewed by our Managing Director on the 24th morning. It Was seen that the dues amount to about Rs. 74,000 and the default started as far back as 12-8-1975.

You are given time till 15th September 1976 to clear the dues; failing which it has been decided to refer your case to the concerned Deputy Commissioner to take further action, after due local publicity for recovery of the dues as arrears of

land revenue"

40. Thus, the letter simply informs the proposed action to be taken. It no doubt intimates the amount found due by the Managing Director. It is, however, necessary to remember that show cause notice has to be issued for settling the dues as in most of the cases there were disputes regarding the quantum of dues. Hence, by no stretch of imagination can it be said that these letters, informing the parties about the proposed action, would amount to a show cause notice as to satisfy the principles of natural justice.

41. The Supreme Court of India had an occasion to consider these aspects raised before me in the argument of the learned Advocate Shri C. B. Nandeewar in the case of S.L. Kapoor Vs. Jagmohan and Others, . Their Lordships have, inter alia, observed in para 10 of the judgment thus:

"One of the submissions of the learned Attorney General was that when the question was one of disqualification of an individual member, Section 16 of the Punjab Municipal Act expressly provided for an opportunity being given to the member concerned whereas Section 238 (1) did not provide for such an opportunity and, so, by necessary implication, it must be considered that the principle audi alteram partem was excluded. We are unable to agree with the submission of the learned Attorney General. It is not always a necessary inference that if opportunity is expressly provided in one provision and not so provided in another, opportunity is to be considered as excluded from that other provision. It may be a weighty consideration to be taken into account but the weightier consideration is whether the administrative action entails civil consequences. This was also the view taken in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others,"

The Supreme Court of India, having held that even in such cases it was necessary to apply the doctrine of audi alteram partem, has further observed in para 14 of the judgment thus:

"Thus on a consideration of the entire material placed before us we do not have any doubt that the New Delhi Municipal Committee was never put on notice of any action proposed to be taken u/s 238 of the Punjab Municipal Act and no opportunity was given to the Municipal Committee to explain any fact

or circumstances on the basis (of which) that action was proposed. If there was any correspondence between the New Delhi Municipal Committee and any other authority about the-subject matter or any of the allegations, if information was given and gathered it was for entirely different purposes. In our view, the

requirements of natural justice are met only if opportunity to represent is given in view of proposed action. The demands of natural justice are not met even if the very person proceeded against has furnished the information on which the action is based, if it is furnished in a casual way or for some other purpose. We

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

In the instant cases, before the Managing Director certified that a. certain amount was due from the loanee and directed action for recovery to the Deputy Commissioner, as if they were arrears of land revenue, it was obviously necessary for the Managing Director to issue a show cause notice to the loanee and, on hearing him, he should have fixed the amount due. That is the opportunity that is to be given. It is not enough if some notice was issued under the Central Act for a different purpose and the loanee did not reply to it. Hence, as laid down by the Supreme Court of India, as extracted above, it has to be held that the doctrine of *audi alteram partem* was not observed and that it was followed in its breach by the Managing Director.

Again, in para 24 of the aforesaid judgment, the Supreme Court of India has observed:

"The matter has also been treated as an application of the general principle that justice should not only be done but should be seen to be done. Jackson's Natural justice (1980 Edn.) contains a very interesting discussion of the subject. He says:

The distinction between justice being done and being seen to be done has been emphasised in many cases.

xx xx xx"

The requirement that justice should be seen to be done may be regarded as a general principle which in some cases can be satisfied only by the observance of the rules of natural justice or as itself forming one of those rules. Both explanations of the significance of the maxim are found in Lord Widgery C. J.'s judgment in *R. v. Home Secretary, Ex. P. Hosenball* (1977) 1 WLR 766 where after saying that "the principles of natural justice are those fundamental rules, the breach of which will prevent justice from being seen to be done, he went on to describe the maxim as "one of the rules generally accepted in the bundle of the rules making up natural justice."

It is the recognition of the importance of the requirement that justice is seen to be done that justifies the giving of a remedy to a litigant even when it may be claimed that a decision alleged to be vitiated by a breach of natural justice would still have been reached had a fair hearing been given by an impartial tribunal. The maxim is applicable precisely when the Court is concerned not with a case of actual injustice but with the appearance of injustice or possible injustice. In *Altco Ltd. v. Sutherland* (1971) 2 Llo. Rep 515 Donaldson J., said that the Court in deciding whether to interfere where an arbitrator had not given a party a full hearing was not concerned with whether a further hearing would produce a

different or the same result. It was important that the parties should not only be given justice, but, as reasonable men, know that they had had justice or "to use the time hallowed phrase" that justice should not only be done but be seen to be done"

The Supreme Court of India further observed:

"In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice to say that the person who has been denied justice is not prejudiced. As we said earlier 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 is not necessary to observe natural justice but because Courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal."

Speaking of a similar situation as the present, the Supreme Court, in para 21 of the aforesaid judgment, has observed:

"In *Margarite Fuentes Et Al v. Robert L. Shevin* (1972) 32 L Ed 556, it was said (at page 574):

But even assuming that the appellants had fallen behind in their instalment payments, and that they had no other valid defences, that is immaterial here. The right to be heard does not depend upon an advance showing that one will surely prevail at the hearing. "To one who protests against the taking of his property without due process of law, it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defence upon the merits." " "

42. Thus, the observations of the Supreme Court of India adequately answer the contentions raised by the learned Advocate Shri C. B. Nandeeswar, including the submission that giving of opportunity on the facts of the present cases would have been a futile formality.

43. For the foregoing reasons, I am satisfied that the Managing Director in these cases has not followed the doctrine of *audi alteram partem* and has not given opportunity to the various loans before coming to the conclusion that so much amount was due from them and, hence, I am constrained to hold that the certificates issued by him about the loan due for recovery in various cases are vitiated and have to be quashed.

44. In the result, therefore, the writ petitions are allowed. The rules issued are made absolute. The certificate issued by the Managing Director in each case to the Deputy Commissioner mentioning the sums due from the loans and

requesting that such sums together with cost of the proceeding and future interest at the prescribed rate up to the date of recovery be recovered as if they were arrears of land revenue, is hereby quashed. Any action taken Pursuant to the said certificate in each case is also quashed. The Managing Director is at liberty to take action afresh in accordance with law in the light of the observations made above.

45. No costs.

46. Petitions allowed.