

(1994) 03 DEL CK 0008

In the Delhi High Court

Case No : Civil Writ Appeal No. 263 of 1992

N.S. Tewana

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 25-03-1994

Acts Referred:

Citation : (1994) 2 AD 593 : (1994) 54 DLT 578 : (1994) 29 DRJ 258

Hon'ble Judges : Chander Mohan Nayar, J;A.B. Saharya, J

Bench : Division Bench

Advocate : Arun Jaitley, H.S. Phoolka, Madan Lokur and Y.P. Adhyara, for the Appellant;

Judgement

C.M. Nayar, J.

(1) The present petition has been filed to quash the Notification No. S.O. 813(E) dt. December 2, 1991, and Notification No. S.O. 814(E) of the same date as well as for quashing the communication dated December 3, 1991, repatriating the petitioner to his home State and for directing the respondents to allow the petitioner to continue to function as Chairman of Central Pollution Control Board.

(2) The petitioner was working in the field of Environment since March, 1983, when he was appointed as Member Secretary to the State Pollution Control Board, Punjab. It is further stated in the petition that since that time the petitioner was working in the field of Environment and was being identified as one of the top Environmentalist in the country. He is also known at international level in the field of Environment and has distinction of under taking special assignment of World Health Organisation in Sri Lanka for planning the environmental Pollution Control measures to be adopted by that country. The petitioner was working earlier in the Department of Public Health in the State of Punjab since 1964. In that capacity he designed three major sewerage plants in Punjab and Himachal Pradesh. In view of the special interest of the petitioner in the field of Environment, he was shifted from Department of Public Health in the

year 1983 to the Environment field and joined the State Pollution Control Board, as Member Secretary of the State Pollution Board, Punjab and continued to hold such post till August, 1989. He was thereafter appointed as Director Environment. During his tenure the petitioner did pioneering work in the field of Pollution Control and prevention and his efforts in this regard were acknowledged by various other State Pollution Control Boards. The petitioner started practice of putting up demonstration plants in small scale industries. In the World Bank Loan Schemes signed by Government of India in September, 1991, the demonstration plants was one of the main components. He was appointed as director (Environment), Punjab State Council of Science and Technology in August, 1989, and continued to function as such till October 10, 1990.

(3) It is further averred in the writ petition that sometimes in the year 1988, the Ministry of Environment and forests advertised for the post of full time Chairman of Central Pollution Control Board (hereinafter referred as the Central Board). The relevant portion of advertisement reads as follows :

"GOVERNMENT OF India Ministry Of Environment & Forests Advt. No. 12012/8/88-PGP-1 Applications are invited for appointment to the post of Chairman of the Central Pollution Control Board. The Central Pollution Control Board was established in 1974 under the provisions of the Water (Prevention and Control of Pollution) Act, 1974. The Board also exercises the powers and functions under the Air (Prevention and Control of Pollution) Act, 1981. the Board consists of members, not exceeding 17 in number, including a full-time Chairman and a Member Secretary. Qualifications and Experience: The Chairman is a full-time incumbent. He should have special knowledge or practical experience in respect of matters relating to environmental protection or have knowledge and experience in administering institutions dealing with the aforesaid matters Tenure: Appointment will be initially for a period of three years, the incumbent will be eligible for nomination for two terms. Remuneration: The Chairman will draw pay and allowances in the scale of Rs. 7300- 100-7600. He will be governed by terms and conditions 63 applicable to Grade-1 Officers of the Central Government. Interested candidates may apply to the Secretary of the Ministry of Environment & forests in the format below to reach the following address, latest by February 15, 1989. The Under Secretary (PGH) Room No. 917, "B" Block, Ministry of Environment & Forests, Paryavaran Bhavan, Cgo Complex Lodhi Road, New Delhi - 110 003. Note : 1 :-Candidate working in Govt./Public Sector Undertakings/ Autonomous Organisations should apply through proper channel. Advance copy may be sent direct. Note : 2 :- Short - listed candidates will have to appear for an interview in New Delhi for which traveling allowance equivalent to 1st class Railway fare will be paid.

(4) There were large number of applicants, including the petitioner, and the interview was conducted by a High powered Selection Committee comprising of Secretary, Ministry of Environment and forests and other high officials and well known Experts in the field of Environment in the country. The petitioner was

finally selected for the post of full time Chairman, Central Board and the same was approved by the Appointment Committee of Cabinet. The process of selection, appointment and approval took about two years and petitioner was appointed as Chairman vide communication dated October 10, 1990 and joined as such on October 12, 1990. The appointment letter dated October 10, 1990, is filed as Annexure P.I to the petition and the relevant contents are reproduced as follows

"BHARAT Sarkar/Government of India Paryavaran Aur Van Mantralaya Ministry of Environment & Forests Paryavarn Bhavan, Cgo Complex, Lodi Road, New Delhi-110 003. Dated the 10th October, 1990. The Secretary to the Govt. of Punjab Depti. of Science & Technology and Environment, Chandigarh. Smb : Appointment of Shri N.S. Tiwana. Director (Environment) Punjab State Council of Science and Technology as Chairman, Cpcb, New Delhi. I am directed So refer to your letter No. D, 90/35 dated the 4th january 1990 to Shri Lahes Prasad Secretary, Environment & Forests, on the subject: noted above and to convey the sanction of the President to the appointment of Shri N.S. Tiwana, Director (Environment) Punjab State Council of Science and Technology on the following terms : (i) His appointment will be on deputation and the period of deputation will be three years. The period of deputation will commence from the date on which, he hands over charge of his post under the present Department and end on the date on which he assumes charge of a post under the parent department. (ii) Pay The post carries the pay scale of Rs. 7300-100-7600. However, Shri Tiwana will have the option either (a) to get his pay fixed in the deputation post under the operation of the normal rules or (b) to draw. pay of the post held by him in his parent department plus deputation (duty) allowance in accordance with and subject to the conditions, as modified from time to time and under other general or special orders issued by the Ministry of finance. In case the above terms and conditions are acceptable to Shri M.S. Tiwana, his formal acceptance may kindly be obtained and communicated to this Ministry and he may also be relieved to take up his new assignment."

(5) In view of the above appointment letter, the petitioner has contended that his appointment as Chairman of the Board was for a period of 3 years and there was no clause in the above said letter for terminating his services before the expiry of his tenure of three years.

(6) The Central Pollution Control Board is a statutory body constituted under the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as the Act). The Board is also performing the functions under the Air (Prevention and Control of Pollution) Act, 1981, and Environment (Protection) Act, 1986, and the Water(Prevention and Control of Pollution)Cess 1977. The Central Broad was constituted u/s 3 of the Act and the terms and conditions of service of members including the Chairman arc governed by Section 5 of the Act. Sections 3 and 5 of the Act are reproduced as follows :

"3. Constitution of Central Board :-

(1) The Central Government shall, with effect from such date (being a date not later than six months of the commencement of this Act in the states of Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal and in the Union Territories) as it may, by notification in the Official Gazette, appoint, constitute a Central Board to be called the Central Pollution Control Board to exercise the powers conferred on and perform the functions assigned to that Board under this Act.

(2) The Central Board shall consist of the following members, namely :-

(a) a full-time Chairman, being a person having special knowledge or practical experience in respect of matters relating to environmental protection or a person having knowledge and experience in administering institutions dealing with the matters aforesaid, to be nominated by the Central Government;

(b) such number of officials, not exceeding five to be nominated by the Central Government to represent that Government;

(c) such number of persons, not exceeding five to be nominated by the Central Government, from amongst the members of the State Boards, of whom not exceeding two shall be from those referred to in Clause (c) of sub-section (2) of Section 4;

(d) such number of non-officials, not exceeding three to be nominated by the Central Government, to represent the interests of agriculture, fishery or industry or trade or any other interest which, in the opinion of the Central Government ought to be represented;

(e) two persons to represent the companies or corporations owned, controlled or managed by the Central Government, to be nominated by that Government;

(f) a full-time member-secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by the Central Government.

(3) The Central Board shall be a body corporate with the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and to contract, and may, by the aforesaid name, sue or be sued. 5. Terms and conditions of services of members:-

(1) Save as otherwise provided by or under this Act, a member of a Board, other than a member-secretary, shall hold office for a term of three years from the date of his nomination : Provided that member shall notwithstanding the expiration of his term continue to hold office until his successor enters upon his office.

(2) 4 The term of office of a Member of a Board nominated under Clause (b) or Clause (e) of sub-section (2) of Section 3 or Clause (b) or clause (e) of sub-

section (2) of Section 4 shall come to an end as soon as he ceases to hold the office under the Central Government or the State Government or, as the case may be, the company or corporation owned, controlled or managed by the Central Government or the State Government, by virtue of which he was nominated.

(3) The Central Government or, as the case may be, the State Government may, if it thinks fit, remove any member of a Board before the expiry of his term of office, after giving, him a reasonable opportunity of showing cause against the same.

(4) A Member of a Board, other than the member-secretary, may, at any time, resign his office by writing under his hand addressed -

(a) in the case of the Chairman, to the Central government or as the case may be, the State Government ; and

(b) in any other case, to the Chairman of the Board, and the seat of the Chairman or such other member shall thereupon become vacant.

(5) A Member of a Board other than the member-secretary, shall be deemed to have vacated his seat if he is absent without reason, sufficient in the opinion of the Board, from three consecutive meetings of the Board, or where he is nominated under Clause (c) or Clause (e) of sub-section (2) of Section 3 or be a member of the State Board or of the local authority or, as the case may be, of the company or corporation owned, controlled or managed by the Central Government or the State Government and such vacation of seat shall, in either case, take effect from such date as the Central Government or, as the case may be, the State Government may, by notification in the Official Gazette, specify.

(6) a dual vacancy in a Board shall be filled by a fresh nomination and the person nominated to fill the vacancy shall hold office only for the remainder of the term for which the member in whose place he was nominated.

(7) A member of a Board shall be eligible for renomination.

(8) The other terms and conditions of service of a Member of a Board, other than the Chairman, and member-secretary, shall be such as may be prescribed.

(9) The other terms and conditions of service of the Chairman shall be such as may be prescribed."

(7) The petitioner has stated in the writ petition that he has a very long experience of about 27 years in the field of environmental engineering and protection and has authored 14 papers on pollution control, which were presented in various Seminars and Conferences. He is also functioning as an active member of 20 Committees relating to Environment Protection and Control of Pollution. It is further submitted in paragraph 15-a of the writ petition that during the chairmanship of the petitioner, the Central Board has done substantial work in the field of Pollution control and such work is cited as below :

"(i) The Central Board identified 4000 polluting industries in Delhi alone against whom the Board initiated action.

(ii) The Central Board has initiated the practice of carrying out Environmental Audit of major industries to identify hazardous wastes and to monitor compliance of pollution control measures and promote waste minimisation.

(iii) The Central Board is adoption mass based standards for the first time with the object of simplifying the control of industrial effluents and emissions.

(iv) The Central Board identified 13 stretches of major rivers in India as highly polluted. The Ministry of Environment and Forest, bascdonthe said findings of the Central Board has prepared a National River Action Plan akin to Ganga Action Plan.

(v) The Central Board has identified 17problem areas in the country which are highly polluted and has drawn Action plan to improve the environmental qualities on priority basis."

The petitioner laid stress on the theory that Environment is a valuable national asset and must be protected at all costs and all industries, small, medium or public sector be properly educated and persuaded to keep the environment pollution free and it is argued that the petitioner proposed to the Ministry of Environment and Forests that firm target must be fixed for highly polluting industries so as to convince such industries that they must adopt all measures by the target fixed, otherwise punitive action shall be taken against them under the law. In view of this, the Central Board issued directions through State Pollution Control Board to 17 categories of industries, both in public and private sectors, which were identified as highly polluting and control measures were recommended by December 31, 1991, failing which punitive action was contemplated. The Directions were given in this regard by the Central Board to the said industries in December, 1990 and one year's time was granted to adopt such measures and it was made clear by the Board that no further extension shall be given. The petitioner has alleged that there has been a tremendous pressure from the industry in private as well as in public sector for further extension of time to adopt the pollution control measures and comply with the provisions of the related enactments. An All India Meeting of State Secretaries of Environments, Chairman of all State Pollution Control Boards, and Chairman of Central Pollution Control Board was convened by the Ministry of Environment and forests on 26th and 27th November, 1991. In this meeting, the petitioner proposed that no further extension be given to the defaulting industries as proposed by him in his letter of November 20, 1991.

(8) The petitioner attended his office in a routine manner on Monday, December 2, 1991, where he remained till 6 P.M. On December 2, 1991, at Ii P.M., the petitioner alleged that Shri Mukul Sanwal, Joint Secretary, Ministry of Environment and For sets accompanied by Dr. N. Bagchi, Director in the same Ministry came to his residence and informed him that the Central Board has been

reconstituted and the petitioner has been removed from the Chairmanship of Central Board with immediate effect, but no written orders nor copy of the Notification was handed over to the petitioner in this regard. The petitioner came to know on the next day that Notification No. 813 (E) was issued by the Ministry of Environment and Forests on December 2, 1991, superseding the Central Board for a period of one month and Mr. A.P. Bhattacharya, respondent no. 3 who was Additional Secretary in the Ministry of Environment and Forest was entrusted with all the powers and functions of the Central Board. The above said notification is reproduced as under :

"TO BE Published In Part II Section 3 SUB-SECTION (II) Of The Gazette Of India (EXTRA ORDINARY) Government of India Ministry of Environment & Forests Paryavarn Bhawan, C.G.O. Complex, Lodi Road, New Delhi - 110003. Dated the 2nd December, 1991 Notification S.O. 813(E) Whereas the Central Government is of the opinion that circumstances exist which render it necessary in the public interest for it to supersede the Central Pollution Control Board. Now, Therefore, in exercise of the powers conferred by sub-sections (1) (b) and (2) of section 61 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), the Central Government hereby. (i) supersedes the Central Pollution Control Board for a period of one month from the date of publication of this notification in the official Gazette, and (ii) directs that A.P. Bhattacharya in the Ministry of Environment and Forests shall exercise all the powers, perform the functions and discharge the duties which may, by or under the aforesaid Act, be exercised ,performed and discharged by the Central Pollution Control Board. sd/- x xx Q. 15014/1 /90/CPW (Mukul Sanwal) Joint Secretary to the Government of India"

(9) The Central Board was re-constituted on the same day i.e. December 2, 1991 by means of another Notification No. 814(E) issued by the same Ministry of Environment and Forest and the same is reproduced as under :

"GOVERNMENT of India Ministry of Environment & forests Paryavarn Bhawan, C.G.O. Complex, Lodi Road, New Delhi - 110 003. Dated 2.12.1991 Notification S.O. 814(E): In exercise of the powers conferred by sub section (3) of Section 61 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), the Central Government hereby reconstitutes the Central Pollution Control Board with the following members, namely : 1. Shri A.P. Bhattacharya Chairman nominated by the Project Director, Ganga Central Government Project Directorate Ministry of Environment & Forests. 2. Dr. S.C. Maudgal, Advisor Representative of the Central Ministry of Environment Government nominated by it. & Forests, New Delhi. 3. Mr.T.George Joseph Representative of the Central Joint Secretary Government nominated by it. Ministry of Environment & Forests, New Delhi. 4. Shri A.K. Basak, Adviser Representative of the Central Ministry of Industry Government nominated by it. 5. Dr.K.V. Swaminathan Representative of the Central Adviser, Department of Government nominated by it. Science & Technology New Delhi. 6. Dr.P.K.. Ray,Director Representative of the Central

Industrial Toxicology Government nominated by it. Research Centre, Lucknow. 7. Dr.R.C.Das,Chairman4 * Representative of State Board Orissa State Pollution nominated by the Central Control Board, Government Bhubaneshwar. 8. Shri J. Venugopalan Nair Representative of State Chairman, Kerala Pollution Boards nominated by the Control Board, Trivendrum Central Government 9. Shri S.S. Juneja * Representative of State Member Secretary Himachal Boards nominated by the Board, Shimlah Central Government. 10. Dr.J. Shankar, Mayor Representative of State Municipal Corporation Boards ,representing the Vijayawada local authorities on the Andhra Pradesh Pollution Control Board, nominated by the Central Government. 11. Shri S. Suratwala, Mayor Representative of State Boards Pune Municipal Corporation representing the local Pune authorities on the Maharashtra Pollution Control Board, nominated by the Central Government. * The representations from the State Pollution Control Boards will be on rotation for a prepped of one year, to begin with the above Board"s representative are nominated. 12. Dr. S.K. Kacker Non-official member nominated Director, All India . by the Central Government. Institute of Medical Sciences, New Delhi. 13. Ms. Nalini Singh Non-official member nominated 268 (Media person)Ncw Delhi by the Central Government 14. Prof. Dinesh Mohan Non-official member nominated Indian Institute of by the Central Government Technology, New Delhi. 15. Shri Hansmukh Shah Representative of companies/ Chairman, Indian Petro owned, controlled and managed Chemical Corporation Ltd. by the Central Government Vadodara 16. Shri Subroto Roy P Representative of companies/ Managing Director Corporations controlled and Bhilai Steel ant managed by the Central Bhilai (M.P.) Government. 17. Dr.K.R. Ramanathan Member Secretary appointed by the Central Government. sd/- x xxx (Mukul Sanwal) Joint Secretary to the govt. of India File No. Q-15014/1/90/CPW"

(10) The impugned notification re-Constituting the Central Board appointed Mr.A.P. Bhattacharya as the Chairman of Central Pollution Control Board. It is reiterated by the petitioner that said Mr. Bhattacharya is an I As officer and at the relevant time was working as Additional Secretary in the Ministry of Environment and Forests and, as such, was not qualified to be appointed as Chairman of the Central Board. The Chairman had to be full time and there was no provision in the Statute for appointment of the Chairman in the manner it was done by appointing a in Sing Mr. Bhattacharya as such on additional charge. The petitioner has further contended that he has been removed by the imputed Notification under the pretext of superseding the existing Central Board and by the purported reconstitution of the Board. The petitioner thereafter received copy of another communication, which was addressed to Chief Secretary, Government of Punjab to the effect that services of the petitioner were placed at the disposal of Government of Punjab and the said communication reads as follows :

"SPEEDPOST Government of India Ministry of Environment & Forests Paryavaran Bhawan, Cgo Complex Lodi Road, New Delhi-110003 December 3,1991 No.A-12012/8/88-PGP.1 To The Chief Secretary, Government of Punjab Chandigarh. Sir, Consequent on the dissolution of the Central Pollution Control

Board vide Notification So 813 (E) of 2.12.1991, the services of Shri N.S.Tiwana, formerly Chairman of the Central Pollution Control Board on deputation from the Government of Punjab, are placed at the disposal of the Government of Punjab. Yours faithfully, sd/- (Dr.M.K. Ranjit Singh) Additional Secretary of Govt. of India
Copies by Special Messenger to : 1. Member Secretary, Central Pollution Control Board, New Delhi 2. Shri N.S.Tiwana 37, Engineers Enclave, Pitampura (near Wazirpur Bus Depot) New Delhi. sd/- (Dr. M.K. Ranjitsingh)"

The Government of Punjab sent a Telex message to respondent no. 1 on December 12, 1991, requesting the said respondent to retain the services of petitioner till the completion of deputation as the Government of Punjab was not in a position to adjust the petitioner. The petitioner was working, at the time of his selection as Chairman of Central Board, as Director, Environment, Government of Punjab and the said post was already occupied by another person and there was no other post of an equivalent status on which the Government could post the petitioner. Despite this communication from the Government of Punjab, respondent no. 1 did not take any step and maintained silence on the issue.

(11) The petitioner, as a consequence, appealed this Court by filing the present petition under Article 226 of the constitution of India impugning the action of his removal as Chairman of the Central Board by superseding the said Board before completion of his tenure. The power of supersession was exercised by the Central Government under sub-section 1(b) of Section 61 of the Act. The said provision is reproduced as under :

"61.Power of Central Government to supersede the Central Board and Joint Boards -

(1) If at any time the Central Government is of opinion -

(a) that the Central Board or any Joint Board has persistently made default in the performance of the functions imposed on it by or under this Act; or

(b) that circumstances exist which render it necessary in the public interest so to do, the Central Government may, by notification in the Official Gazette, supersede the Central Board or such Joint Board, as the case may be, for such period, not exceeding one year, as may be specified in the notification:

Provided that before issuing a notification under this sub-section for the reasons mentioned in Clause (a) the Central Government shall give a reasonable opportunity to the Central Board or such Joint Board, as the case may be, to show cause why it should not be superseded and shall consider the Explanations and objections, if any, of the Central Board or such joint Board, as the case may be. (2) Upon the publication of a notification under sub-section (1) superseding the Central Board or any Joint Board, - (a) all the members shall, as from the date of supersession vacate their offices as such: (b) all the powers, functions and duties which may, by or under this Act, be exercised, performed or

discharged by the Central Board or such Joint Board shall, until the Central Board or the Joint Board, as the case may be, is reconstituted under sub-section (3) be exercised performed or discharged by such person or persons as the Central Government may direct : (c) all property owned or controlled by the Central Board or such Joint Board shall, until the Central Board or the Joint Board as the case may be, is reconstituted under sub-section (3) vest in Central Government. (3) On the expiration of the period of supersession specified in notification issued under sub-section (1), the Central Government may (a) extend the period of supersession for such further term, not exceeding six months, as it may consider necessary of (b) reconstitute the Central Board or the Joint Board, as the case may be, by fresh nomination or appointment, as the case may be, and in such case any person who vacated his officer under Clause (a) of sub-section (2) shall not be deemed disqualified for nomination or appointment: Provided that the Central Government may at any time before the expiration of the period of supersession, whether originally specified under sub-section (1) or as extended under this sub-section, take action under Clause (b) of this sub section."

(12) The learned counsel appearing for the petitioner has contended that the petitioner was appointed as Chairman of the Central Board for a term of three years, which would have in the normal circumstances expired on October 11, 1993, and it was incumbent on the Central Government to give reasonable opportunity to the petitioner to show cause before supersession of the Board, which culminated in removal of the petitioner as Chairman. The action, which has been sought to be taken, was u/s 61 of the Act, which authorised the Central Government to supersede the Central Board in terms of sub-section (1) (b) if it was of the opinion that the circumstances existed, which rendered it necessary in the public interest so to do, whereas the impugned notification actually deemed to be issued u/s 5(3) of the Act, as the petitioner was sought to be removed before the expiry of his term of office and it was incumbent upon the Central Government to give him a reasonable opportunity to show cause against the same. Therefore, there is colourable exercise of power in the removal of a Member, which includes the Chairman in the garb of supersession. Even in such a case when the Act is silent, a pre-decisional inquiry must be held and the petitioner should have been provided with reasonable opportunity to place his view points before the power of supersession was exercised. The reason of supersession/removal are not in public interest and are in fact contrary to public interest. The existence of public interest itself is a justiciable factor and justifiability of public interest will indicate that the grounds taken by the Central Government are irrelevant and non-existent. The counsel has argued that the petitioner was holding a tenure post for a period of three years and it was his legitimate expectation to complete the tenure and in case, it was interfered with, principles of natural justice must be complied with.

(13) The affidavit in reply to the petition has been filed on behalf of the respondent no.1 and it has been reiterated that the Central Government is vested with powers for supersession u/s 61 of the Act and the Central Board has

been superseded by the Government of India in view of such powers vested u/s 61(1)(b). The said Section clearly indicates that all members of the Board, including the Chairman, shall vacate their offices automatically on supersession. There is no violation of the principles of natural justice, as the provisions of Section 61(1)(b) does not contemplate giving any show cause notice when the Government is of the opinion that it is in the public interest to supersede the Board, which in the instant case has been done. The Board can also be superseded, if it persistently fails in the performance of the functions imposed on it by or under the Act. The Central Government in the present case was of the opinion that the circumstances existed, which rendered it necessary in the public interest to effect the supersession. "The perception of the public interest involved is that of the cause.

(14) The question now arises as to what material existed before the Central Government to supersede the Board by exercising powers under the provisions of Section 61(1)(b) of the Act and whether there was any justifiable cause for such supersession in public interest. In this regard, it will be relevant to re- produce paragraph 8 of the reply of respondent no.1, which reads as follows:

"It has been the experience of the Government that ever since Boards were set up and the Act of 1974 came into force, not enough had been done at various levels to deal with the problems of pollution. In the 80's, the Government had been looking at the problem of air, water and soil pollution, since it had increased both in complexity and scale and affected the developmental process in the country. Internationally, pollution control has been given priority in the developmental process it had never had. and various international organisations are now insisting that in the developmental process domestic legislation must be made more strict and that maintenance of standards, which prevent pollution of water, air and the atmosphere, must be strictly given effect to. The Government, prior to this, had not made any policy statement in respect of a national policy on abatement of pollution. It was, Therefore, thought that an effective thrust ought to be given in this regard. The Government, Therefore, decided to enunciate a policy in respect of the abatement of pollution. Matters came to a head during discussions in Parliament in November 1991, in relation to the amendments to be effected in the provisions of the Water (Prevention of Pollution) Cess Act. The issue of the effective functioning of the Central Pollution Control Board and the State Pollution Control Boards was brought into focus. This is reflected in the various speeches made by the Members of Parliament, which will be referred to and relied upon at the time of the hearing. The Hon'ble Minister for Environment and Forests in this context gave assurances in Parliament that he would improve the functioning of the Boards by having more scientific and expert inputs. Infact, the matter was discussed on several occasions and on December 11, 1991, the Hon'ble Minister informed the Rajya Sabha during discussions on the Cess Amendment Bill that he would be urging the State Governments to take corrective measures for remedying the existing situation in respect of the functioning of the State Pollution Control Boards. These are matters of record

and, if necessary, will be demonstrated to the Court at the time of the hearing. The relevant newspaper items in this regard are appended hereto and marked Annexure-I (colly). It may further be mentioned that on January 13, 1992, the Hon"ble Minister wrote a letter to the various Chief Ministers to the effect that State Pollution Control Boards, the main agencies for environmental impact assessment on projects and implementation of various environmental laws, must be strengthened and adequately equipped and that their capability be enhanced with the manning of appropriate technical people having the requisite background and expertise so that they can work as effective professional units without hindrance or interference. This is in the context of the fact that with the liberalisation of the industrial policy giving a general impetus to developmental and industrial projects, the environmental impact on air, soil and water is bound to increase. In this context, the Minister mentioned that in order that State Pollution Control Boards are made effective instruments for implementation of environmental policies, one of the steps that must be taken is to make them autonomous bodies and that with a view to having them function more effectively a review should be conducted at the highest level ensuring that qualified members are appointed to the Boards and that the Boards are reconstituted so that the Boards can be revitalised with adequate staff and necessary support in order to meet the new challenges which will be required to be met on account of the liberalisation of the industrial policy and its necessary impact on environment. A sample letter of the Hon"ble Minister in this regard is annexed hereto and marked as Annexure-II. It is, Therefore, in this over-all context that the action of the Government u/s 61(1)(b) must be looked at and appreciated. The policy statement on the abatement of pollution, the new liberalisation policy in respect of industry, the need to develop an effective expertise to achieve national goals and objectives in the area of pollution, to introduce clean ,new and latest technologies and to man Boards with expertise in this field and to have highly qualified and technical people mentally attuned to the new environmental programmes are all matters that the Government has considered for the purposes of having a national developmental strategy in the field of environment; and it is in this context that the decision of the Government to supersede the Central Pollution Control Board must be viewed. It is not the case of the Government that the incumbents of the Board were guilty of defaults committed, on account of which the said action has been taken. Indeed, the power u/s 61(1)(a) for the purposes of supersession can only be used in the case of defaults, but in contra-distinction to the exercise of the said power, u/s 61(1) (b) may decide to substitute certain members of the Board in the light of the over-all policy of the Government for serving the larger public interest. In the exercise of this power, it is not necessary for the Government to demonstrate or to satisfy this Hon"ble Court that the incumbents of the Board, who stood superseded, were in any way defaulters. What is to be shown is that the Government in its perception considered it necessary to change the constitution of the Board in order to meet its policy objectives and did not generally find the erstwhile incumbents of the Board to be persons who, it considered, would have

been effective enough in the implementation of the overall objectives of the Government. I here is no stigma attached to the supersession of those who are no longer members of the Board on account of the exercise of the powers by the Government u/s 61(1)(b) and the petitioner has, Therefore, mis-appreciated the action of the Government in this regard."

(15) The averments with regard to the petitioner are contained in paragraph 11 wherein it has been mentioned that the Government does not deny the fact that the petitioner is qualified or is an expert in his own field. The respondent does not wish to submit that the petitioner was not then qualified or otherwise to perform the duty of the post of Chairman of the Board. However, the Central Board was of the opinion that more expert and scientific in put was required and to enable the Central Government to give thrust to its new policy, it was felt that the Board in view of the new liberalisation policy in respect of industrial policy would have to be superseded so that a revitalized Board could meet the new challenges on that account.

(16) Learned counsel appearing for the Union of India has fairly conceded that only material for exercise of power was the Parliament debates, which are referred to in the reply of the Union of India. It is further argued that some members of Parliament had asked the Central Board to be strengthened for the same to become a more effective body and the Minister of Environment and Forests, in this view of the matter, had acted by superseding the Board and, consequently, the impugned action was taken.

(17) The provisions of Section 61 have not been used as a cloak for action u/s 5 of the Act. The debate in parliament will indicate that the Hon"ble Members were not happy with the implementation of Pollution Laws and felt that the Central Pollution Control Board should be strengthened and made more effective and in view of the assurance of the Minister, as referred to above, it cannot be said that the views expressed by Hon"ble Members of the Parliament were irrelevant and could not be given appropriate weightage. The opinion formed on the basis of such views must be held to be in public interest and since the Minister gave an assurance that needful will be done, there was no other option but to supersede the Board to make it more effective. The alleged impugned action caused no stigma on anybody including the petitioner and, Therefore, the action u/s 5 could not have been taken as it would obviously have caused stigma and since it was not intended the impugned action was taken u/s 61(1)(b). The learned counsel has further contended that there can be no quarrel with the proposition that normally there should be a pre-decisional hearing and in view of some ground of urgency, if it was not possible to give such hearing then it should be remedied by a post-decisional hearing. However, where an action is taken in public interest and no stigma is intended to be caused, it was not necessary to even comply with the principles of natural justice. The Hon"ble Supreme Court has accepted the principle that hearing can be excluded by necessary implication in Union of India (UOI) Vs. Col. J.N. Sinha and Another, of the judgment is relied upon in this

context and reads as follows:

"FUNDAMENTAL Rule 56(j) in terms does not require that any opportunity should be given to the concerned Government servant to show cause against his compulsory retirement. A Government servant serving under the Union of India holds his office at the pleasure of the President as provided in Article 310 of the Constitution. But this "pleasure" doctrine is subject to the rules or law made under Article 309 as well as to the conditions prescribed under Article 311. Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. As observed by this Court in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, "the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law but supplement it." It is true that if a statutory provision can be read consistently with the principles of natural justice, the Courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand, a statutory provision either specifically or by necessary implication excludes the application of any or all the rules or principles of natural justice then the Court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power."

Reference is also made to the judgment of the Supreme Court in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, .

(18) In the present case, it has to be assumed by necessary implication that the Legislature excluded the principles of natural justice from the second clause, as it has specifically incorporated the same in the first clause. The support is further sought from the proposition that the Supreme Court has held that if the concerned Authority bonafide forms an opinion in the public interest, the correctness to that opinion cannot be challenged in Court except in three cases; (a) the requisite opinion has not been formed: (b) the opinion is based on collateral grounds (c) the decision is arbitrary. (*Union of India vs .J.N. Sinha*, (supra) and *R.L. Butah Vs. Union of India (UOI) and Others*, .

(19) The counsel for the petitioner has argued that the Government has committed fraud on power and there was no need to supersede the Board as it did not require re-constitution. He has further submitted that the supersession was effected only with malafide intent to get rid of the petitioner, who was found inconvenient by the Government. The malafide is indicated from the fact that the public interest, which is sought to be raised as a plea to supersede the Board has no basis either in facts or in the subsequent action taken by the Government. The only ground which has been used to supersede the Board is reference to the

Parliament debates and assurance of the Minister, who had promised to re-constitute the same. There is factual truth in the averments of the petitioner that in case it was intended that more technocrats would be added in the Board, as demanded by the Members of Parliament, the Chairman would not be replaced by a Bureaucrat and if the intention of the Government was only to induct more technocrats, this could be achieved by filling up 9 vacancies with technocrats, which had already arisen and there was no need of taking drastic step of supersession. Reference is made to Commissioner of Police, Bombay Vs. Gordhandas Bhanji, . The proposition is that "public Authorities cannot play fast and loose with the powers vested in them, and persons to whose detriment orders are made are entitled to know with exactness and precision what they are expected to do or forbear from doing and exactly what authority is making the order".

(20) The judgment of the Supreme Court in Ram Dial and Others Vs. The State of Punjab, dealt with the removal of member in public interest u/s 14(e) of the Punjab Municipalities Act, 1911, which did not contemplate hearing before removal of member in public interest whereas. Section 16 provided for hearing in the manner indicated therein. The Court held that Section 14(e) is hit by Article 14 of the Constitution and the following passage may be reproduced in this regard:

"WE are of opinion that these contentions on behalf of the appellants are correct. There is no doubt that the removal contemplated, in S.16 (1) for reasons in els. (a) to (g) thereof as their content shows, is in the public interest and the proviso to Section 16(1) provides for a hearing in the manner indicated therein. On the other hand S.14(e) which also provides for removal in the public interest makes no provision for hearing the member to be removed. Even if S.14 (e) is wider than Section 16(1), there is no doubt that all the reasons given in els. (a) to (g) are in the public interest and, Therefore, even if the State Government intends to remove a person for any reasons given in els. (a) to (g) it can take action u/s 14(e) and thus circumvent the provisions contained in the proviso to Section 16(1) for hearing. Thus there is no doubt that Section 14 (e) which entirely covers Section 16(1) is more drastic than Section 16(1) and unlike Section 16(1) makes no provision for even calling upon the member concerned to explain. In this view of the matter it is clear that for the same reasons the State Government may take action u/s 16(1) in which case it will , have to give notice to the member concerned and take his Explanation as provided in the proviso to Section 16(1) ; on the other hand it may choose to take action u/s 14(e) in which case it need not give any notice to the member and ask for an Explanation from him. This is obviously discriminatory and, Therefore, this part of Section 14(e) must be struck down as it is hit by Article 14 of the Constitution."

(21) We may also notice that the power vested in the Central Government to determine the circumstances, which render it necessary in "public interest" u/s 61(1)(b) of the Pollution Act is very wide without any guidance in the Act. In this

context, it is relevant to refer to the following passage from the judgment of Mudholkar, J.

"The expression "public interest" is of wide import and what would be a matter which is in the public interest would necessarily depend upon the time and place and circumstances with reference to which the consideration of the question arises. But it is not a vague or indefinite ground, though the Act does not define what matters would be regarded as being in the public interest, It would seem that all grounds set out in Section 16, which confers upon the State Government the power to remove any member of a Committee and sets out a number of grounds upon which this could be done, would be in the public interest. Section 14, however, apart from the fact that the power it confers upon the State Government is not limited to matters set out u/s 16, confers upon the Government the power to determine not merely what is in the public interest but also what "for any reason which it may deem to affect the public interest". This would suggest that the power so conferred would extend to matters which may not be in the public interest. For, that would be the effect of introducing the fiction created by the words "for any reason which it may deem". There is no guidance in the Act for determining what matters, though not in public interest may yet be capable of being deemed to be in the public interest by the State Government. In the circumstances it must be held that the power which conferred upon the State Government being unguided is unconstitutional. For this reason, I hold that Section 14m so far as it confers power on the State Government to require a seat of a member of a committee to be vacated for any reason which it may deem to affect public interest is violative of Article 14 of the Constitution and, Therefore, unconstitutional."

(22) The case of *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, has been cited to support the proposition that even "though an order passed in exercise of power under a Statute cannot be challenged on the ground of propriety or sufficiency, it is liable to be quashed on the ground of mala fides, dishonesty or corrupt purpose. Even if it is passed in good faith and with the best of intention to further the purpose of the legislation which confers the power, since the Authority has to act in accordance with and within the limits of that legislation, its order can also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation. In any one of these situations it can well be said that the authority did not honestly form its opinion or that in forming it, it did not apply its mind to the relevant facts." This proposition of law has clearly been laid down by the judgment of Shclat, J. We have also to construe on a true interpretation of Section 61 to hold that the circumstances existed and the Central Government had "reasonable grounds to believe" that rendered it necessary in the public interest to supersede the Board. The opinion must be formed by the Central Government and the same must be an "honest" opinion. In this context, the paragraphs 26 and 27 of the above said

judgment may be reproduced as under:

"IN dealing with this problem the first point to notice is that the power is discretionary and its exercise depends upon the honest formation of an opinion that an investigation is necessary. The words "in the opinion of the Central Government" indicate that the opinion must be formed by the Central Government and it is of course implicit that the opinion must be an honest opinion. The next requirement is that "there are circumstances suggesting, etc." These words indicate that before the Central Government forms its opinion it must have before it circumstances suggesting certain inferences. These inferences are of many kinds and it will be useful to make a mention of them here in a tabular form: (a) that the business is being conducted with intent to defraud- (i) creditors of the company, or (ii) members, or (iii) any other person: (b) that the business is being conducted (i) for a fraudulent purpose, or (ii) for an unlawful purpose, (c) that persons who formed the company or manage its affairs have been guilty of- (i) fraud. or (ii) misfeasance or either misconduct-towards the company or towards any of its members. (d) that information has been withheld from the members about its affairs which might reasonably be expected including calculation of commission payable to- (i) managing or other director (ii) managing agent (iii) the secretaries and treasurers (iv) the managers. These grounds limit the jurisdiction of the Central Government. No jurisdiction, outside the section which empowers the initiation of investigation, can be exercised. An action, not based on circumstances suggesting an inference of the enumerated kind will not be valid. In other words, the enumeration of the inferences which may be drawn from the circumstances, postulates the absence of a general discretion to go on a fishing expedition to find evidence. No doubt the formation of opinion is subjective but the existence of circumstances relevant to the inference as the sine qua non for action must be demonstrable, If the action is questioned on the ground that no circumstances leading to an inference of the kind contemplated by the section exists, the action might be exposed to inference unless the existence of the circumstances is made out. As my brother Shelat has put it trenchantly: "It is not reasonable to say that the clause permitted the Government to say that it has formed the opinion on circumstances which it thinks exist...." Since the existence of "circumstances" is a condition fundamental to the making of an opinion, the existence of the circumstances, if questioned, has to be proved at least prima facie. It is not sufficient to assert that the circumstances exist and give no clue to what they are because the circumstances must be such as to lead to conclusions of certain definiteness. The conclusions must relate to an intent to defraud, a fraudulent or unlawful purpose, fraud or misconduct or the withholding of information of a particular kind. We have to see whether the Chairman in his affidavit has shown the existence of circumstances leading to such tentative conclusions, If he has, his action cannot be questioned because the inference is to be drawn subjective and even if this Court would not have drawn a similar inference that fact would be irrelevant. But if the circumstances pointed out are such that no inference of the

kind stated in Section 237(b) can at all be drawn the action would be ultra virus the Act and void."

(23) The learned counsel for the petitioner has next contended that since there was no imminent danger or injury, which was likely to be caused if the Board had not been superseded with undue haste and without affording proper opportunity to the petitioner to place his view points, the rules of natural justice had to be complied with and reliance is placed on the judgment of the Supreme Court in *Swadeshi Cotton Mills Vs. Union of India (UOI)*, , where it has been highlighted that the rules of natural justice can operate in are as not covered by any law, validly made. The provisions of Section 61 may not broadly include the rules of natural justice but such provisions can be read into the Statute and the Central Government was duty bound to afford reasonable opportunity to the petitioner before passing the impugned order. Reference may be made to paragraphs 30,31 and 42 of the above said judgment to reiterate the proposition, as advanced by counsel for the petitioner:

"30. The maxim audi alteram partem has many facets. Two of them are :(a) notice of the case to be met; and (b) opportunity to explain. This rule is universally respected and duty to afford a fair hearing in Lord Loreburn's oft-quoted language⁹, is "a duty lying upon every one who decides something", in the exercise of legal power. The rule cannot be sacrificed at the altar of administrative convenience or celerity; for, "convenience and justice"- as Lord Atkin felicitously put it-"are often not on speaking terms" *General Council of Medical Education v. Spaceman*. (1943) AC 627.

(24) The next general aspect to be considered is: Are there any exceptions to the application of the principles of natural justice, particularly the audi alteram partem rule? We have already noticed that the statute conferring the power, can by express language exclude its application. Such cases do not present any difficulty. However, difficulties arise when the statute conferring the power does not expressly exclude this rule but its exclusion is sought by implication due to the presence of certain factors: such as, urgency, where the obligation to give notice and opportunity to be heard would obstruct the taking of prompt action of a preventive or remedial nature. It is proposed to file a little on this aspect, because in the instant case before us, exclusion of this rule of fair hearing is sought by implication from the use of the word "immediate" in Section 18-AA(1). Audi alteram partem rule may be disregarded in an emergent situation where immediate action brooks no delay to prevent some imminent danger or injury or hazard to paramount public interests. Thus, Section 133 of the Code of Criminal Procedure empowers the magistrates specified therein to make an ex-parte conditional order in emergent cases, for removal of dangerous public nuisances. Action u/s 17, Land Acquisition Act, furnishes another such instance. Similarly, action on grounds of public safety, public health may justify disregard of the rule of prior hearing.....

42. In short, the general principle-as distinguished from an absolute rule of

uniform application-seems to be that where a statute does not,in terms, exclude this rule of prior hearing but contemplates a post decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely, if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for most promptitude. In short, this rule of fair play "must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands". The court must make every effort to salvage this cardinal rule to the maximum extent possible , with situational modifications. But, to recall the words of Bhagwati.J. , core of it must,however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise."

To the same effect are the conclusions of the Supreme Court in S.L. Kapoor Vs. Jagmohan and Others, and the propositions of law are adequately dealt with in paragraphs 10 and 11, which read as under:

"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, : We have been told that wherever the Parliament has intended a hearing it has said so in the Act and the rules and inferentially where it has not specified it is otiose. There is no such sequitur. The silence of a statute has no exclusionary effect except where it flows from necessary implication. Article 324 vests a wide power and where some direct consequence on candidates emanates from its exercise we must read this functional obligation."

Another submission of the learned Attorney General was that Section 238 (1) also contemplated emergent situations where swift action might be necessary to

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

(25) In *Liberty Oil Mills and Others Vs. Union of India (UOI) and Others*, it has been held by the Supreme Court that "it is not permissible to interpret any statutory instrument so as to exclude natural justice, unless the language of the instrument leaves no option to the court. Procedural fairness embodying natural justice is to be implied whenever action is taken affecting the rights of parties." The Court was interpreting the provisions of Clause 8-B of Import (Control) Order, 1955, with regard to opportunity of hearing and it was held that it was permissible to take recourse to such provisions if public mischief is such as to outweigh the likely injury to the party. The concept of public interest in this regard was explained by the following paragraph:

"Public interest must no less volens be the paramount consideration. If the threatened public mischief is such as to outweigh the likely injury to the party, the authority may take action under clause 8-B. If the threatened public injury is very slight compared to the harm which may be done to the party, the authority may not take action under clause 8-B. There may be cases where the "abeyance" orders may themselves be productive of serious public injury as where a substantial amount of foreign exchange may be lost or a large number of workers are likely to be thrown out of employment etc. In such situations the authorities may pause and have second thoughts, consider the inevitable consequences and be guided by that element of the public interest which outweighs all others. Which element of the public interest should be given greater weight and which grounds should weigh at all are matters for the authority taking action under Rule 8-B. Courts do not concern themselves with the

sufficiency of the grounds on which action is taken or with the balancing of competing considerations, in favor of and against the action."

(26) The Supreme Court further dealt with the concept of natural justice in *Olga Tellis & others v. Bombay Municipal Corporation & ors. etc.* (1985) Supp2 S.C.R. 51 and held as follows:

"It must further be presumed that, while vesting in the Commissioner the power to act without notice, the Legislature intended that the power should be exercised sparingly and in cases of urgency which brook no delay. In all other cases, no departure from the audi alteram partem rule ("Hear the other side") could be presumed to have been intended. Section 314 is so designed as to exclude the principles of natural justice by way of exemption and not as a general rule. There are situations which demand the exclusion of the rules of natural justice by reason of diverse factors like time, place the apprehended danger and soon. The ordinary rule which regulates all procedure is that persons who are likely to be affected by the proposed action must be afforded an opportunity of being heard as to why that action should not be taken. The hearing may be given individually or collectively, depending upon the facts of each situation. A departure from this fundamental rule of natural justice may be presumed to have been intended by the Legislature only in circumstances which warrant it. Such circumstances must be shown to exist, when so required, the burden being upon those who affirm their existence."{UDRAFT}

(27) There is, Therefore, no doubt in the settled position of law that where exercise of a power results in civil consequences to citizens, unless the statute specifically rules out the application of natural justice, such rule would apply. The principles of natural justice must be read into unoccupied interstices of the statute unless there is a clear mandate to the contrary. (*Institute of Chartered Accountants of India Vs. L.K. Ratna and Others*, and *State of Haryana Vs. Ram Kishan and Others*, .

(28) The learned counsel for the respondents has contended that the Central Board was superseded in public interest under the provisions of Section 61(1)(b). There is no doubt that the Board can be superseded, if at any time the Central Government forms an opinion that circumstances exist, which render it necessary in the public interest so to do. We asked the counsel to place before us the relevant material and the records so that the contention of the Government could be examined. The records were produced and photo copies of the relevant communications and office notings have been placed before us. The record indicates that the Central Board was superseded for the first time since its constitution in 1975 and there is premature termination of the tenure of the petitioner. The record further indicates that the Board was superseded prima facie for getting rid of the services of the petitioner whose appointment earlier was approved by the Appointments Cabinet Committee. Reference may be made to communication dated December 2, 1991 from Shri Mukul Sanwal, Joint Secretary, Ministry of Enforcement and Forests to Shri N. Mohanty, Establishment

Officer & Secretary, Acc, Department of Personnel & Training and the relevant paragraphs 2,3,4 and 5 may be reproduced :

"2. It is proposed to reconstitute the Board to be an effective instrument for implementing the new strategy of pollution control, particularly in industry. The Ministry would-like to have persons with wide experience and a deep understanding of the technologies for prevention of pollution. New process technologies are now available which are cleaner, including emerging technologies, like bioTechnology, for treatment of hazardous and toxic wastes. 3. So far the Central Pollution Control Board has been stressing the conventional methods of pollution control based on the experience with the treatment of sewage. In the review undertaken by this Ministry, this has emerged as a critical factor in the poor implementation of industrial pollution control, and is a key issue for abatement of pollution in the proposed policy statement, which is being discussed in the Cabinet. In the recent debate on the amendments to the Water (Prevention and Control of Pollution) Cess Act, 1977 in the Lok Sabha; large number of members criticised the working of the Cpcb and the State Pollution Control Boards. The Minister has stated on the floor of the House that the Cpcb will be reconstituted to remedy the situation. 4. According to Section 61(1)(b) of the Water (Prevention and Control of Pollution) Act, 1974, if the Central Government is of the opinion that circumstances exist which render it necessary in the public interest, it may supersede the Central Board. Sectional (2)(a) states that in this eventuality all members shall vacate their offices. 5. Shri N.S.Tiwana was appointed as Chairman. Cpcb by Acc for a three year term, on 12th October, 1990. A copy of the order is enclosed. According to Rule 3(3) of the Rules notified under the Water (Prevention and Control of Pollution) Act, 1974 "where a Government servant is appointed as Chairman, the terms and conditions of his service shall be such as may be specified by the Central Government from time to time". Shri N.S. Tiwana is on deputation from the Punjab State Council for Science and Technology, where he was working as Director (Environment) since 28.8.89. Shri Tiwana belongs to the Punjab Public Works Department, Public Health Branch. His background, experience and knowledge is not adequate for the new thrust that is proposed to be given to the activities of the Central Pollution Control Board."

The Hon"ble Minister on the same date addressed a further Communication to the Hon"ble Prime Minister informing him that it was in public interest that the petitioner be repatriated to his parent cadre in Punjab and this process will be effected by superseding the Central Pollution Control Board. This was in the nature of post-decisional information, as admittedly the same was sent after the Board was superseded. We put it to the Government counsel to state on affidavit on behalf of the Central Government that there was no other material on record to indicate that the Central Board was superseded in public interest. The requisite affidavit was filed and it may be interesting to reproduce paragraphs 1 and 2 of the same, which read as under:

"DURING the course of hearing all relevant information regarding the Government decision to supersede the Central Pollution Control Board was submitted for the perusal of the Hon"ble Court, and it is respectfully submitted that the Central Pollution Control Board has been superseded by the Government of India in public interest in lawful exercise of powers vested u/s 61(1)(b) of Water (Prevention & Control of Pollution) Act, 1974. I further respectfully submit that the petitioner's allegation in the writ petition that the supersession of the Central Board by respondent no.1 has been activated by mala fides or extraneous consideration is strongly denied. I categorically again submit before this Hon"ble Court that the same has been lawfully done in exercise of the powers vested with the Central Government under the Water (Prevention & Control , of Pollution) Act, 1974."

(29) The petitioner was selected for the post of the Chairman after scrutiny and the appointment was approved by the Appointments Cabinet Committee and the appointment order was issued on October 10, 1990. The impugned order of supersession was made on December 2, 1991, which cut short the tenure of the petitioner and he was asked to go back to his parent Cadre before the expiry of his tenure period. The record, which has been produced before us is of the same date i.e. December 2, 1991, to show that the petitioner was not suited for the post and the Board is being superseded so that the tenure of the petitioner could be abruptly terminated.

(30) In this view of the matter, the question now arises whether it was necessary for the Government to comply with the basic requirement of natural justice and hear the petitioner before passing an adverse order against him. It has been clearly held in J.N.Sinha's case (supra) that it is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision. The petitioner was unceremoniously thrown out from the job without providing 'littlest' opportunity on irrelevant and vague considerations which have no nexus with the object sought to be achieved. The Central Government has not shown prima facie the existence of "circumstances" which is a condition fundamental to the formation of an opinion that the Board is being superseded in "public interest". There is no doubt that where the obligation to give notice would obstruct the taking of prompt action of a preventive nature and such action was required to avert disaster, such notice was not necessary as we have already noticed in certain judgments of the Supreme Court. Alas, such are not the facts of the present case where files moved, nothings were made and impugned orders were passed on the same date and the petitioner was informed at his residence by officers of the rank of Joint Secretary and Director in the Ministry at 11 P.M. There is no Explanation for their swift action and it has not been established that the action was motivated to avert grave disaster.

(31) In Smt. S.R. Venkataraman Vs. Union of India (UOI) and Another, , the Supreme Court categorically held that if a discretionary power has been

exercised for an unauthorised purpose, it is generally immaterial whether its repository was acting in good faith or in bad faith. The Court referred to the observations of Lord Goddard, C.J" in the judgment in *Pilling v. Abergete Urban District Council* (1950) 1 Kb 636 was quoted with approval to state the proposition that where a duty to determine a question is conferred on an authority which state their reasons for the decision, and the reasons which they state show that they have taken into account, or that they have failed to take matters into account which they ought to have taken into account, the Court to which an appeal lies can and ought to adjudicate on the matter. The other relevant passage from this judgment may also be reproduced as under:

"THE influence of extraneous matters will be undoubted where the authority making the order has admitted their influence. It will Therefore be a gross abuse of legal power to punish a person or destroy her service career in a manner not warranted by law by putting a rule which makes a useful provision for the premature retirement of government servants only in the"" public interest", to a purpose wholly unwarranted by it, and to arrive at quite a contradictory result. An administrative order which is based on reasons of fact which do not exist must Therefore be held to be infected with an abuse of power."

(32) The next question, which arises for consideration is whether the Central Government has acted for improper motives or irrelevant considerations and whether this amounts to fraud on power. The position of law is well settled by the judgment of the Supreme Court in *Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others*, and we need say no further except to cite paragraphs 117 and 118 :

"IN general, however, the Courts adhere firmly to the wide meaning of "jurisdiction" since this is the sheet-anchor of their power to correct abuses. They appear to be willing to stretch the doctrine of ultra virus to cover virtually all situations where statutory power is exercised contrary to some legal principles. There are many cases in which a public authority is held to have acted for improper motives or irrelevant considerations or have failed to take account of relevant considerations, so that its action is ultra virus and void: H.VV.R.Wade's Administrative Law, 5th Edition at Pp. 42, 348 and 369. The learned author aptly sums up situations in which error of jurisdiction may arise, at p.42 "Lack of jurisdiction may arise in many ways. There may be an absence of those formalities or things which are conditions precedent to the tribunal having any jurisdiction to embark on an inquiry . Or the tribunal may at the end make an order that it has no jurisdiction to make. Or in the intervening stage, while engaged on a proper inquiry, the tribunal may depart from the rules of natural justice; or it may ask itself the wrong questions; or it may take into account matters which it was not directed to take into account. Thereby it would step outside its jurisdiction. It would turn its inquiry into something not directed by Parliament and fail to make the inquiry which Parliament did direct. Any of these things would cause its purported decision to be a nullity."

Fraud on power voids the order if it is not exercised bona fide for the end design. There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises when an authority misuses its power in breach of law, say, by taking into account bona fide, and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would be a case of fraud on power's. The misuse in bad faith arises when the power is exercised for an improper motive, say, to satisfy a private or personal grudge or for wreaking vengeance of a Minister as in *S. Pratap Singh Vs. The State of Punjab*, . A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power for an "alien" purpose other than the one for which the power is conferred is mala fide use of that power. Same is the position when an order is made for a purpose other than that which finds place in the order. The ulterior or alien purpose clearly speaks of the misuse of the power and it was observed as early as in 1904 by Lord Lindley in *General Assembly of Free Church of Scotland v. Overtown* 1904 AC 515," that there is a condition implied in this as well as in other instruments which create powers, namely, that the powers shall be used bona fide for the purpose for which they are conferred". It was said by Warrington, C.J. in *Short v. Poole Corporation* (1926) 1 Ch 66 that:

"NO public body can be regarded as having statutory authority to act in bad faith or from corrupt motives, and any action purporting to be of that body, but proved to be committed in bad faith or from corrupt motives, would certainly be held to be inoperative." In *Lazarus Estates Ltd v. Beasley*, (1956) 2 Qb 702 Lord Denning, LJ. said "No judgment of a Court, no order of Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."

See also, in *Lazarus* case at p.722 per Lord Parker,C.J.:

""FRAUD" vitiates all transactions known to the law of however high a degree of solemnity." All these three English decisions have been cited with approval by this Court in *Partap Singh's* case."

(33) It is further contended by counsel for the petitioner that the supersession of the Central Board, in fact, amounts .to removal of inconvenient persons, including the petitioner and the principles of natural justice cannot be excluded. The petitioner was duly appointed by rigorous selection and the facts of the present case clearly indicate that he has been removed on irrelevant and non existent grounds. The Joint Secretary as well as the Minister felt that the background, expertise and knowledge of the petitioner was not adequate for the new thrust that was proposed to be given to the activities of the Central Pollution Control Board and in this view of the matter, the Board was being superseded. It is argued that the impugned order of supersession cast a serious stigma on the petitioner and is infact camouflage for the arbitrary action of the Central Government. Reference in this connection is made to the judgments of the Supreme Court in *Anoop Jaiswal Vs. Government of India and Another*, ; *Babu*

Lal Vs. The State of Haryana and others, and Om Prakash Goel Vs. The Himachal Pradesh Tourism Development Corporation Ltd., Shimla and another, .

(34) There is no doubt that the impugned order may be innocuous on the face of it, the Court, if necessary for ends of fair play and justice, can lift the veil and find out real nature of the order. The tenure of the petitioner was pre-maturely terminated mainly on the ground that he was not fully equipped to discharge his functions as the Chairman of the Board and the matter has also to be looked at from this angle, as the impugned order obviously casts a serious stigma on the capability and performance of the petitioner.

(35) Lastly, it is argued that the petitioner had legitimate expectations to complete his tenure of three years and "the doctrine of legitimate expectations imposes a sense a duty on the public Authority to act fairly by taking into consideration all relevant factors relating to such legitimate expectation." The conception. of fair play in such a case would require that reasonable opportunities must be afforded to make representation by the parties, likely to be affected by any change, such as supersession of the Central Board in the present case. The concept is further" explained and endorsed in the subsequent judgment of the Supreme Court in Union of India and other:- v. Hindustan Development Corporation and others It 1993 (3) S.C. 15 and elaborate reference is made to the settled position of law in England to indicate that the decision on that basis can be questioned, provided the same is found to be unfair, unreasonable etc. Paragraph 28 of the judgment may be reproduced:

"In Council of Civil Service Unions and others v. Minister for the Civil Service (1984) 3 All E.R. 935, a question arose whether the decision of the Minister withdrawing the right to trade union membership without consulting the staff which according to the appellant was his legitimate expectation arising from the existence of a regular practice. of consultation, was. valid. It was contended that the Minister had a duty to consult the staff as per the existing practice and that though the employee did not have a legal right, he had a legitimate expectation that the existing practice would be followed. On behalf of the Minister on the basis of the evidence produced, it was contended that the decision not to consult was taken for reasons of national security. The Court held as under: "An aggrieved person was entitled to invoke judicial review if he showed that a decision of a public authority affected him by depriving him of some benefit or advantage which in the past he had been permitted to enjoy and which he could legitimately expect to be permitted to continue to enjoy either until he was given reasons for its withdrawal and the opportunity to comment on those reasons or because he had received an assurance that it would not be withdrawn before he had been given the opportunity of making representations against the withdrawal. The appellants" legitimate expectation arising from the existence of a regular practice of consultation which the appellants could reasonably expect to continue gave rise to an implied limitation on the minister"s exercise of the power contained in art 4 of the 1982 order, namely an obligation to act fairly by

consulting the Gchq staff before withdrawing the benefit of trade union membership. xxx xxx Once the minister produced evidence that her decision not to consult the staff before withdrawing the right to trade union membership was taken for reasons of national security, that over-rode any right to judicial review which the appellants had arisen out of the denial of their legitimate expectation of consultation. The appeal would Therefore be dismissed. xxx xxx Administrative action is subject to control by judicial review under three heads: (1) illegality, where the decision-making authority has been guilty of an error of law, eg by purporting to exercise a power it does not possess;(2) irrationality, where the decision-making authority has acted so unreasonably that no reasonable authority would have made the decision; (3) procedural impropriety, where the decision-making authority has failed in its duty to act fairly." Therefore the claim based on principle of legitimate expectation can be sustained and the decision resulting in denial of such expectation can be questioned provided the same is found to be unfair, unreasonable, arbitrary and vocative of principles of natural justice. (Vide Food Corporation of India's case and Navjyoti Co-operative Housing Society's case (supra)."

(36) The principles of legitimate expectation have been further explained in Food Corporation of India v. M/s Kamdhenu Cattle Feed industries (1993) SCC 71. The following paragraph reads as follows;

"The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent."

(37) The only contention, which is sought to be raised by counsel for the Central Government, as mentioned in the earlier part of the judgment, is that the debate in Parliament indicates that Hon'ble Members were not happy with the implementation of the Pollution Laws and felt that the Central Pollution Control Board should be strengthened or made more effective. The Hon'ble Minister gave an assurance to Parliament that he will make the Board more effective. The opinion formed, Therefore, on the basis of the views expressed by the Members of Parliament must be held to be in public interest and since the Minister gave an

assurance that the needful will be done there was no other option but to supersede the Board to make it more effective. No stigma was cast on anybody. We have perused the record produced before us as well as the relevant extracts of debate in Parliament, which do not, in any manner, indicate that the pica was raised for removal of the petitioner or supersession of the existing Board and for reconstitution of the new Board. The counsel has not been able to show either on record or from the arguments advanced that compelling reasons existed, which required the Minister to act immediately by removing the petitioner as Chairman of the Central Board. The record, on the contrary, indicates that the supersession was effected only with a view to remove the petitioner before the expiry of his tenure as obviously he was found to be an inconvenient person. The grave circumstances or any imminent cause did not exist to justify an action u/s 61(1) (b) of the Act, particularly in view of the fact that no member of Parliament even remotely suggested that the Board be superseded and petitioner be removed as Chairman. It was only highlighted that the Board be strengthened and eminent Scientists be nominated to such Boards. The Hon''ble Minister gave assurance in Parliament that he will bear in mind suggestion of the members in this regard and, if necessary, shall re-constitute the Central Pollution Control Board to make it more effective in the changed context. It may be interesting to state the fact that the petitioner was a technical man and he was replaced by a Bureaucrat, who was brought in his place, when the Board was superseded which will only indicate that the petitioner was sought to be removed and the supersession was used as a cloak to get rid of him. The record also reiterates the same position and. we have no hesitation in upholding the contention of the counsel for the petitioner in this regard. This obviously amounts to colourable exercise of power.

(38) The learned counsel has next related the removal of the petitioner to the concept of compulsory retirement, as incorporated in the Fundamental Rule 56 (j). He has specifically relied on the following passage of the judgment of the Supreme Court in *Union of India v. J.N. Sinha and another* (supra):

"NOW coming to the express words of Fundamental Rule 56 (j) it says that the appropriate authority has the absolute right to retire a Government servant if it is of the opinion that it is in the public interest to do so. The right conferred on the appropriate authority is an absolute one. That power can be exercised subject to the conditions mentioned in the rule, one of which is that the concerned authority must be of the opinion that it is in public interest to do so. If that authority bona-fide forms that opinion, the correctness of that opinion cannot be challenged before Courts. It is open to an aggrieved party to contend that the requisite opinion has not been formed or the decision is based on collateral grounds or that it is an arbitrary decision. The 1st respondent challenged the opinion formed by the Government on the ground of mala fide. But that ground has failed. The High Court did not accept that plea. The same was not pressed before us. The impugned order was not attacked on the ground that the required opinion was not formed or that the opinion formed was an arbitrary one. One of the conditions of the 1st respondent's service is that the

Government can choose to retire him any time after he completes fifty years if it thinks that it is in public interest to do so. Because of his compulsory retirement he does not lose any of the rights acquired by him before retirement. Compulsory retirement involves no civil consequences. The aforementioned Rule 56(j) is not intended for taking any penal action against the Government servants. That rule merely embodies one of the facets of the "pleasure" doctrine embodied in Article 310 of the Constitution. Various considerations may weigh with the appropriate authority while exercising the power conferred under the rule. In some cases, the Government may feel that a particular post may be more usefully held in public interest by an officer more competent than the one who is holding it. It may be that the officer who is holding the post is not inefficient but the appropriate authority may prefer to have a more efficient officer. It may further be that in certain key posts public interest may require that a person of undoubted ability and integrity should be there. There is no denying the fact that in all organizations and more so in Government organizations.. there is good deal of dead wood. It is in public interest to chop off the same. Fundamental Rule 56 (j) holds the balance between the rights of the individual Government servant and the interests of the public. While a minimum service is guaranteed to the Government servant, the Government is given power to energise its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest."

(39) The only contention raised in this case was whether the High Court was right in holding that in making the impugned order, the Government had violated the principles of natural justice. The Supreme Court came to the conclusion that the compulsory retirement does not entail civil consequences and the retired Government servant does not lose any of the benefits earned by him till the date of his retirement. The Court also went on to hold that rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights.

"It is true that if a statutory provision can be read consistently with the principles of natural justice, the Courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But, if on the other hand, a statutory provision either specifically or by necessary implication excludes the application of any or all the rules of principles of natural justice then the Court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice....."

(40) The law laid down by the Supreme Court cannot have any application to the facts of the present case where the petitioner was appointed after rigorous selection for a tenure post and he was entitled to continue in the same for a period of 3 years. The tenure was abruptly terminated by the process of supersession of the Board primarily on the ground that the petitioner was not fit to be continued as the Chairman. In this situation, it cannot be said that the

impugned order does not postulate any blame-worthiness and holds no civil consequences. Moreover, Section 5 of the Act provides a reasonable opportunity in case the Central Government thinks fit to remove any member including the Chairman of the Board before the expiry of term of his office to show cause against such order of removal. The present impugned action is taken u/s 61(1) (b) and we have already referred to the type of public interest, which has been highlighted by the Central Government and it is evident from perusal of the record. The concept of compulsory retirement is applied when the Government servant has put in number of years inservice and consistent record of such officer indicates that it is in public interest that he must be replaced by a person to "undoubted ability and integrity", and minimum service of the officer so retired is guaranteed. Here the facts are glaring to the contrary. The petitioner was replaced overnight within a short span of his selection, which was duly approved by the highest body. No emergent situation has been shown to exist to warrant the Central Government to act so promptly in undue haste in terms of Section 61(1)(b) of the Act. This will make the entire exercise as irrational and arbitrary.

(41) The counsel for the Central Government has next made a faint attempt to question the locus standi of the petitioner to impugn the order of supersession. He has argued that the entire Board has been superseded and the petitioner was not entitled to complain of the order of supersession and, as such, could not maintain the present proceedings". He has relied upon the judgment of the Privy Council as reported in *Durayappah v. Fernando and others* 1967 (2) All ELR 152. He has stressed that at best the order passed by the Minister was voidable and not a nullity. The facts of the case were that as are suit of complaints against the Jaffna Municipal Council, the Minister of Local Government sent the Commissioner to inquire into the allegations and report to him immediately. The appellant therein, who was the Mayor of Jaffna, gave the Commissioner every facility, but the Commissioner did not ask any questions or give any member of the council any opportunity of expressing views. He made his report orally and then in writing on May 29. On the same day, the Minister made an order stating that the council was not competent to perform the duties imposed upon him and that pursuant to the powers conferred on him by Section 277 of the Municipal Council Ordinance, he directed that the council should be dissolved and superseded. The Mayor took proceedings for quashing the order. Strong reliance is placed on the following passage of the judgment;

"THEIR lordships Therefore are clearly of opinion that the order of the Minister on May 29. 1966, was voidable and not a nullity. Being voidable it was voidable only at the instance of the person against whom the order was made, that is the council: but the council has not complained. The appellant was no doubt mayor at the time of its dissolution, but that does not give him any right to complain independently of the council. He must show that he is representing the council or suing on its behalf or that by reason of certain circumstances- such for example as that the council could not use its seal because it is in the possession of the municipal commissioner, or that for other reasons it has been impracticable for

the members of the council to meet to pass the necessary resolutions- the council cannot be the plaintiff. Had that been shown then there are well known procedures whereby the plaintiff can sue on behalf of himself and the other corporators making the council a defendant, and on pleading and proving the necessary facts may be able to establish in the action that he is entitled to assert the rights of the council. That, however, is not suggested in this case. The appellant sets up the case that as mayor he is entitled to complain, but as such he plainly is not. If the council is dissolved, the office of mayor is dissolved with it and he has no independent right of complaint, because he holds no office that is independent of the council. If the mayor were to be heard individually he could only deal with complaints against the council with which ex hypothesi the council itself did not wish to deal. So accordingly, it seems to their lordships that on this short ground the appellant cannot maintain this action."

We are unable to appreciate the contention raised by the learned counsel. The facts in the above mentioned case are clearly distinguishable wherein the action was brought by the Mayor and it was not shown that the council could not have been the petitioner and in these circumstances the order of Minister was held to be voidable, whereas, in the present case the petitioner himself was aggrieved by pre-mature termination of his tenure, when he was entitled to continue for a fixed period of 3 years without affording him any opportunity to show cause in this regard. Further-more, the petitioner has asserted that the process of supersession has been undertaken with an ulterior purpose to remove him from the Board in view of the fact that most members have been retained and only those members have been removed who had already completed the tenure. This obviously had cast a stigma and he is entitled to the relief, as claimed in the present petition. The principle *audi alteram partem* was, however, reiterated by the Privy Council and it was held that the Minister should have observed the same. The facts in the case of *Durayappah v. Fernando and others* (supra) are of no application and are clearly distinguishable.

(42) Reliance is next placed on the judgment of the Supreme Court in *Om Narain Agarwal and others Vs. Nagar Palika, Shahjahanpur and others*, to support the proposition that nominated members fall in different class and cannot claim equality with the elected members and there is Therefore, no question of any violation of principles of natural justice in not affording any opportunity to the nominated members before their removal nor the removal under the pleasure doctrine contained in the fourth proviso to Section 9 of the United Provinces Municipalities Act, 1916 puts any stigma on the performance and character of the nominated members. The challenge to the constitutionality of pleasure doctrine incorporated under fourth proviso to Section 9 of the Act, as violative of fundamental right of equality as enshrined in Articles 14 and 15(3) of the Constitution was accordingly repelled. The facts of the case as well as the provisions of law do not, in any manner, support the contention of the counsel for the respondents. In this case, the proviso clearly provided that a member nominated under the Section shall hold office during the pleasure of the State

Government but not beyond the term of the Board. The Court came to the conclusion that "such provision neither of funds any Article of the Constitution nor the same is against any public policy or democratic norms enshrined in the Constitution. There is also no question of any violation of principles of natural justice in not affording any opportunity to the nominated members before their removal nor the removal under the pleasure doctrine contained in the fourth Proviso to Section 9 of the Act puts any stigma on the performance or character of the nominated members. It is done purely on political considerations...." If such appointments, made initially by nomination are based on political considerations, the re can be no violation of any provision of the Constitution, in case the Legislature authorised the State Government to terminate such appointment at its pleasure and to nominate new members in their place. Such are not the facts in the present case where the post of the Chairman was advertised and the petitioner was selected on deputation basis for a period of 3 years. The cited case has, Therefore, no application,

(43) We may now again advert back to the facts of the present case. The petitioner was made Chairman of the Central Board after the post was advertised and he was duly selected for the same. The period of his deputation from the Government of Punjab was to commence from the date of his joining and was to continue for a duration of 3 years, as referred to in the letter of appointment dated October 10, 1990. We have also perused the record, which has been produced before us and find from the same that the petitioner subsequently was not considered to be suitable, as his "background, experience and knowledge was not adequate for the new thrust that was proposed to be given to the activities of the Central Pollution Control Board". It has further been stated that large number of members of Parliament scrutinised the working of the Central Board and the State Pollution Control Board and the Hon"ble Minister had stated on the floor of the House that the Central Board would be re-constituted to remedy the situation and, Therefore, early approval of the Appointments Cabinet Committee was sought to prematurely terminate the deputation of the petitioner. The matter was further moved with express speed as everything seemed to be done on December 2, 1991, when the file was processed and the order of supersession of the Board was passed and the same was communicated at the residence of the petitioner. The post-decisional communication was sent by the Minister for Environment and Forests to the Prime Minister on the same date i.e. December 2, 1991, where it has been highlighted that the petitioner "does not have the capacity to organise the work in a manner that reflects the priorities of the Government and cannot also effectively coordinate with the various State Governments; and has infact worked in some instances contrary to Government of India instructions and regulations. The performance of the Board is deteriorating and criticism has been voiced in Parliament. Therefore, it is in the public interest that Shri Tiwana be repatriated to his parent cadre in Punjab, this will be effected by superseding the Central Pollution Control Board." In view of the above, there is no doubt that the Board was infact superseded to get rid of

the petitioner and the power u/s 61(1)(b) was exercised for that purpose. The supersession in these circumstances was in fact used as a cloak to eliminate the petitioner and this power could also be exercised under sub-section 3 to Section 5 of the Act, which vests in the Central Government, as it may, if it thinks fit, remove any member of the Board before the expiry of term of his office, after giving him a reasonable opportunity of showing cause against the same. The Board could also be superseded u/s 61(1)(a), if at any time the Central Government formed an opinion that the said Board persistently made default in the performance of the functions imposed upon it by and under this Act. These provisions were not resorted to and an easier way was found to exercise power u/s 61(1)(b) to highlight that circumstances existed, which rendered it necessary in the public interest so to do, because the provision to Section 5(3) and 61(1)(a) did require a reasonable opportunity to the member or the Board, as the case may be, to show cause before the termination and supersession was effected. The Central Government, Therefore, did something indirectly, as it could not do the same directly by removing the petitioner as Chairman of the Board without affording him a reasonable opportunity in this regard. We may refer to the judgment of the Supreme Court which explains the concept of colourable exercise of power and fraud on the Constitutional provision in *Dr D.C. Wadhwa and Others Vs. State of Bihar and Others*, and the following passage reads as follows:

"IT is settled law that a constitutional authority cannot do indirectly what it is not permitted to do directly. If there is a constitutional provision inhibiting the constitutional authority from doing an act, such provision cannot be allowed to be defeated by adoption of any subterfuge. That would be clearly a fraud on the constitutional provision. This is precisely what was pointed out by Mukherjee, J. speaking for the Court in *K.C. Gajapati Narayan Dco v. State of Orissa*: In other words, it is the substance of the Act that is material and not merely the form or outward appearance, and if the subject matter in substance is something which is beyond the powers of that legislature to legislate upon, the form in which the law is clothed would not save it from condemnation. The legislature cannot violate the constitutional prohibitions by employing an indirect method. So also in *P. Vajravelu Mudaliar v. Special Deputy Collector, Madras* a Constitution Bench of this Court observed that when it is said that legislation is a colourable one, what it means is that the legislature has transgressed its legislative power in a covert or indirect manner, if it adopts a device to out step the limits of its power. When the constitutional provision stipulates that an ordinance promulgated by the Governor to meet an emergent situation shall cease to be in operation at the expiration of six weeks from the reassembly of the legislature and the government if it wishes the provisions of the ordinance to be continued in force beyond the period of six weeks has to go before the legislature which is the constitutional authority entrusted with the law-making function, it would most certainly be a colourable exercise

(44) In *Kumari Shrilekha Vidyarthi etc. v. State of U.P. & ors.* It 1990 (4) S.C.

211 the Supreme Court has further explained the concept that the every State action in order to be valid must not be susceptible to the vice of arbitrariness. Paragraphs 35 and 36 illustrate the proposition , which read as under:

"It is now too well-settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is sine qua non to its validity and in this respect, the State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in the mind. The meaning and true import of arbitrariness is more easily visualized than precisely stated or defined. The question, whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, performance of the act otherwise and in a manner which does not disclose any discernible principle which is reasonable, may itself attract the vice of arbitrariness. Even State action must be informed by reason and it follows that an act uninformed by reason , is arbitrary. Rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance-is entrusted for the time being. It is trite that "be you ever so high the laws are above you". This is what men in power must remember, always."

(45) We may now deal with the last contention of the respondents that no hearing is postulated as the Central Pollution Control Board was superseded in public interest in accordance with the provisions of the Act. It is further argued that even otherwise, in matters involving public interest, no hearing is given and cases of compulsory retirement were cited in this regard. The exclusion of hearing and the principles of natural justice have been duly accepted in various cases, as decided by the Supreme Court of India and the Central Board was, Therefore, superseded in accordance with law and the Act. We may reiterate again that the only ground, which has been raised by the Central Government is that there was a debate in the Parliament for re-Constituting the Board, as the Hon"ble members were not happy with the implementation of Pollution laws and felt that the Board should be strengthened or made more effective. The Hon"ble Minister gave an assurance in Parliament that he will make the Board more effective. Therefore, it has been argued that an opinion formed on the basis of the views expressed by members of Parliament must be held to be in public interest and since the Minister gave an assurance that the needful will be done, there was no other option but to supersede the Board to make it more effective. No stigma, as a consequence, was cast on anybody.

(46) We may refer to the assurance of the Minister in Parliament, as reproduced

at pages 156 and 157 of the paper book as an annexure to the counter affidavit filed on behalf of the Central Government;

"SEVERAL Members have raised the issue of Central and State Pollution Control Boards. Suggestions have been made and rightly so- that eminent scientists be nominated to these Boards. I wish - to inform the Members that already we have several scientists and technocrats on these boards but I shall bear the suggestions of the Members in mind, and if necessary, we shall reconstitute the Central Pollution Control Board to make it more effective in the changed context today in meeting the challenges of the new thrust of Government and implementing the strategy which I have outlined."

(47) We have also perused the record, which was produced by the learned counsel for the Central Government before us. We are unable to find any force in the contention that mere raising of the matter in Parliament involves public interest and the Minister had to supersede the Board to comply with the wishes of the members of Parliament. This argument is clearly out of place and far fetched, as at no stage, it has been suggested that the only way to strengthen the Board is to re-constitute the same by supersession. In fact, the record indicates that no such plea exists on the files, which only shows that the petitioner was not suitable to hold the board and supersession was used as a basis for ousting him from that position. There is no doubt that Section 61(1)(b) vests power in the Central Government to supersede the Board when circumstances exist, which render it necessary in the public interest so to do. The contention that this provision provides no opportunity to the petitioner to show cause and that the principle *audi alteram partem* is excluded, is devoid of force. The position is fairly well settled, particularly in the case of *S.L. Kapoor v. Jagmohan and others* (supra) where it has been clearly held that the silence of Statute has no exclusionary rule except where it flows from necessary implication. The impugned order inevitably casts stigma on the petitioner and entails civil consequences. In this view of the matter, the right of hearing cannot be denied to the petitioner. The Hon'ble Supreme Court also reiterated the proposition that "an administrative body may, in a proper case, be bound to give a person who is affected by a decision, an opportunity of making representation". The decisions in *In Schmidt v. Secretary of State for Home Affairs* (1969) 2 CH. D 149 and *Ridge vs Baldwin* (1964) A.C. 40 have been cited to support the proposition. The concept of the Right to be heard is discussed in *Administrative Law* by H.W.R.Wade with extensive reference to the judgment in *Ridge v. Baldwin*, (supra). The following passages may be cited from *Administrative Law* by H.W.R.Wade, Sixth Edition (Pages 5117-518) which will also give the relevant facts as well as the law on the subject:

"The chief constable of Brighton had been tried and acquitted on a criminal charge of conspiracy to obstruct the course of justice. Two other police officers were convicted, and the Judge twice took opportunities to comment adversely on the chief constable's leadership of the force. Thereupon the Brighton Watch

Committee, without giving any notice or offering any hearing to the chief constable, unanimously dismissed him from office. His solicitor then applied for a hearing and was allowed to appear before a later meeting. The Committee confirmed their previous decision, but by a vote of nine against three. The chief constable exercised his right of appeal to the Home Secretary, but his appeal was dismissed. Finally he turned to the courts of law, claiming a declaration that his dismissal was void since he had been given no notice of any charge against him and no opportunity of making his defense. This was refused by the High Court and by a unanimous Court of Appeal. But it was awarded by the House of Lords by a majority of four to one. The initial dismissal was not only a breach of the principles of natural justice: it was contrary to the express provisions of the statutory regulations governing police discipline, which in cases of misconduct require notice of the charge and an opportunity for self-defense. They apply "where a report or allegation is received", and much intellectual effort was therefore spent on the question whether this piece of loose draftsmanship meant that the safeguards in the regulations (which justice plainly demands in any case) applied only where there was a formal "receiving" of the complaint. A more absurd point on which to decide an important case it would be hard to find. But great benefit flowed from it, since although the dismissal was held void on this ground by the majority of four, three of them felt impelled to consider what the situation might be if the regulations did not apply. Thus they came to the question of principle, and this became the dominant theme in their opinions. A Police authority was, as the law then stood, empowered to dismiss any constable "whom they think negligent in the discharge of his duty, or otherwise unfit for the same." Therefore in the authority's eyes the constable must be convicted of negligence or unfitness before they have power to deprive him of his office. This makes the case considerably stronger than many of the older natural justice cases, and it is certain that the judges who decided those cases would have held that no holder of a public office could be removed from it without notice of the charge and a fair hearing. For how could the committee fairly find negligence or unfitness without hearing the defense? It was on the simple and general ground that the majority upheld the chief constable's rights. Lord Morris said: My Lords, here is something which is basic to our system: the importance of upholding it far transcends the significance of any particular case. The hearing given to the chief constable's solicitor was held to be irrelevant, since even then no notice of any specific charge was given, and natural justice was again violated." The law as laid down in *Ridge v. Baldwin* has held that the right to a fair hearing has "rule of universal application" in the case of administrative act or decision affecting rights and we may quote further from the same book at page 529: "*Ridge v. Baldwin* reinstated the right to a fair hearing as "a rule of universal application" in the case of administrative acts or decisions affecting rights; and, in Lord Loreburn's oft-repeated words, the duty to afford it is "a duty lying upon every one who decides anything". The decision gave the impetus to a surge of litigation over natural justice, in which the courts have been able to consider many of its facets and to build up something like a canon of fair administrative procedure.

For the most part the numerous decisions have served only to show the correctness of the above-quoted words, sweeping though they are. Natural justice has achieved something like the status of a fundamental right."

(48) The Central Board of which the petitioner was selected as a Chairman "assumed certain office and status, is endowed with certain rights burdened with certain responsibilities, all of a nature commanding respectful regard from the public". These observations from the judgment in the case of *S.L. Kapoor v. Jagmohan and others* (supra) will hold good in comparison to the facts of the present case. The following passage is reproduced as under:

"A committee as soon as it is constituted, at once, assumes a certain office and status, is endowed with certain rights and burdened with certain responsibilities, all of a nature commanding respectful regard from the public. To be stripped of the office and status, to be deprived of the rights, to be removed from the responsibilities, in an unceremonious way as to suffer in public esteem, is certainly to visit the Committee with civil consequences. In our opinion the status and office and the rights and responsibilities to which we have referred and the expectation of the Committee to serve its full term of office would certainly create sufficient interest in the Municipal Committee and their loss, if superseded would entail civil consequences so as to justify an insistence upon the observance of the principles of natural justice before an order of supersession is passed."

(49) The supersession must have some factual as well as legal basis, such as the doctrine of necessity and the imminent emergency to act under the provisions of Section 61(l)(b) and in this situation it can be validly argued that natural justice has to give way to ch factors particularly when the obligation to give notice would obstruct "the taking of prompt action of a preventive or remedial nature "There are unfortunately no such facts and considerations, which are evident from the record nor are indicated at the time of arguments except to say that the debate in Parliament on the subject constitutes "public interest". Incidentally, the debates highlight the need to introduce more technocrats in the Board so that there could be more efficient functioning and the Board was strengthened. The supersession brought a Bureaucrat as the Chairman in place of the petitioner, who was an Engineer and had expertise in the field and was a Technocrat.

(50) The Central Government no-doubt is vested with discretionary powers to supersede the Board in public interest but the Courts are also empowered to intervene "not only to prevent the powers being abused but also to prevent them being exercised in an arbitrary and mala fide manner. The justification for an improper purpose or without taking into account all relevant considerations, is regarded as failure to exercise the discretion lawfully. The following passage from *Constitutional and Administrative Law* by E.C.S. Wade and G. Godfrey Phillips (Ninth Edition page 591) will reiterate the proposition that the Central Government has allegedly acted due to excess of zeal to prematurely terminate the tenure of the petitioner from the post of Chairman of the Board:

"IMPROPER purposes. The exercise of power for an improper purpose is invalid. Improper purposes include, but are not restricted to, unalike or personal dishonesty on the part of the officials or Councillors making the decision; examples of this kind are rare. Most instances of improper purpose have arisen out of a mistaken interpretation by a public authority of what it is empowered to do, sometimes contributed to by an excess of zeal in the public interest."

(51) We may also refer to paragraph 76 of Halsbury's Laws of England, Vol 1(1) pages 135-137 {Fourth Edition} which makes an interesting reading on relevant and irrelevant considerations:

"A discretionary power must be exercised for proper purposes which are consistent with the conferring Statute. The exercise of such a power will be quashed where, on a proper construction of the relevant Statute, the decision maker has failed to take account of relevant considerations or has taken into account irrelevant considerations. In some Statutes, some or all of the relevant considerations may be express; where the Statute is silent or the express considerations are not exhaustive, the Courts will determine whether any particular consideration is relevant or irrelevant to the exercise of discretion by reference to the implied objects of the Statute. In practice the scope of judicial review will vary according to the context. If a very wide range of considerations need to be taken determining whether to take certain discretionary action on ground of national policy, the Courts will seldom interfere at the instance of a person claiming to be aggrieved by the action taken unless the act has been vitiated by excess of power in the narrow sense, or non-compliance with procedural requirements, bad faith, or the bonafide pursuit of an unauthorised purpose where the ambit of the power is adequately defined with reference to purpose. Abstention from judicial intervention is all the more likely where a power conferred on the Minister or other public authority is expressed to be exercisable when the authority is satisfied that it is requisite, or satisfied that it is expedient in the national or public interest that a particular course of action be adopted. the Courts will identify the relevant considerations germane to the exercise of a statutory power, and will quash such exercise if those considerations are ignored or irrelevant considerations are taken into account."

The weight to be given to a relevant consideration is a matter for the decision-maker but in certain limited circumstances a decision may be quashed owing to insufficient or excessive weight given to a particular factor. If the decision-maker asks himself the wrong question, his error may lead him to take account of irrelevant matters or to disregard relevant matters so that his decision will be quashed. Similarly, if a body fails to give an affected party a hearing before exercising a discretion, contrary to the rules of natural justice or an obligation to consult that party it may fail to take account of relevant material which could have been put forward by that party. A body empowered to exercise a discretion is under a duty to take reasonable steps to acquaint itself with matters relevant to its decision, but the extent of its obligation to make inquiries and consider

alternative courses of action will vary according to context. Government ministers taking decisions will be assumed to be aware of all relevant information available to their departments. In some circumstances, a failure by one body to take account of relevant considerations may not invalidate the action taken, where that action has been confirmed on an appeal to another body which has taken all relevant matters into consideration. The exercise of a discretion will not be quashed for failure to have regard to a relevant matter or for taking account of an irrelevant matter where the Court is satisfied that the relevant decision would have been the same had there been no error in the decision-making process."

(52) In the light of the above discussion, we are satisfied that the supersession of the Central Pollution Control Board by impugned notification dated December 2, 1991, was based on irrelevant considerations and the exercise of discretion is vitiated for failure to give the petitioner show cause and a hearing before the passing of the order which is contrary to the rule of natural justice. The question now arises to what relief the petitioner is entitled? The term of the petitioner was for a period of three years which is the period prescribed by Section 5 of the Act. The proviso further states that the member shall notwithstanding the expiration of the term shall continue to hold office until his successor enters upon his office. The normal relief ordinarily would be to direct the Central Government to reinstate the earlier Board with liberty to the Government to proceed according to law. However, this may cause some confusion, particularly when the laws are vigorously applied to contain high level of pollution prevailing in the country and various Committees at the Central and State level are already functioning. The learned counsel for the petitioner had in the first instance contended that his client was mainly keen to have the stigma cast upon him removed. The matter was adjourned but regrettably the Government did not rise to the occasion and the learned counsel appearing for them strongly contended that the petition be disposed of on merits. We will, all the same, be not carried away by this attitude of the Central Government as it will be more appropriate to do substantial justice between the parties. Following the judgment of the Supreme Court in S.L.Kapoor's case, we hold that the impugned notification is vitiated for failure to observe the principles of natural justice and we let the matter rest there. The petitioner shall, however, be entitled to all benefits including emoluments which would have accrued to him in case he had completed his tenure of three years, as provided in his letter of appointment. In the circumstances of the case and keeping in view of the unreasonable stand of the respondents, we will burden them with exemplary costs, which we quantify at Rs.20,000.00.