
(1985) 04 MP CK 0020
In the Madhya Pradesh High Court
Case No : M.P. No. 2465 of 1983

Raj Bahadur Pathak	Vs	APPELLANT
State of Madhya Pradesh and Another		RESPONDENT

Date of Decision : 27-04-1985

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Societies Registrikaran Adhiniyam, 1973 — Section 33

Citation : AIR 1985 MP 238 : (1985) ILR (MP) 575 : (1985) JLJ 563 : (1985) 30 MPLJ 549 : (1985) MPLJ 549

Hon'ble Judges : G.L. Oza, C.J;B.M. Lal, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; A.M. Mathur, General, for the Respondent

Final Decision : Allowed

Judgement

G.L. Oza, C. J.

This is a petition filed by the petitioner seeking a direction to quash the order of supersession of the Governing Body of the M.P. Council of Child Welfare, Bhopal, and also to quash the two notices to show cause, D/- 15-7-83 and 18-8-83 and also for a declaration that provisions contained in Section 33 of the Societies Registrikaran Adhiniyam, 1973 are ultra vires.

According to the petitioner, the M.P. Council of Child Welfare, Bhopal was registered as a society under the Societies Registration Act, 1860 (21 of 1860) on 23-2-59 and the society had its own rules and regulations, copy of which has been filed along with the petition. According to the petitioner, the society is affiliated to the Indian Council of Child Welfare, New Delhi and the objects of the society are contained in the Memorandum of Association. The society mainly was formed as an Association for furtherance of the schemes of child welfare and also to take effective steps by organising, guiding or associating schemes and activities concerning child welfare. The petitioner has also given the names of the

founder members including Late Dr. H. V. Pataskar, the then Governor of M.P. and other leading persons of the State, some of whom are no longer alive.

It is alleged that the society has honorary patrons of different categories and there are founder members, life members, honoray members, corporate members and ex-officio members in the society. It is alleged that the society has a large membership. According to the petitioner, he was inducted in the Council as a life member and was enrolled by the executive committee. He was made life member in 1975 and was also a member of the executive committee of the society. The executive of the society consists of 9 office bearers, 12 representatives from various educational divisions, one representative from each corporate member, 10 elected members, 5 co-opted members and 4 ex-officio members, totalling 283. It is alleged that elections of the office bearers and members of the executive committee were held for a term of 3 years in the general body meeting D/- 27-6-79 and the same was notified by the Returning Officer vide notification D/- 27-6-79. According to this notification, the President was Shri C.M. Punacha, the then Governor of M.P. and the Vice-Presidents were Smt. Vijaya Raje Scindia and Dowager Maimoona Sultana, Senior Begum of Bhopal and Shri Krishnapal Singh. The General Secretary of the Society was Shri G. P. Tiwari and the Joint Secretaries were Smt. Lalita Krishnan, Shri Abhay Kumar Gohil and Shri R.P. Saraf. The Treasurer of the Society was Shri C. R. Pancholia and the petitioner was elected as one of the members of the executive. It is alleged that this Society was governed by the M.P. Societies Registration Act, 1959 which repealed the Societies Registration Act of 1860 so far as the State of M.P. is concerned. Thereafter, the society is continuing to be a society registered under the M.P. Registrikavan Adhiniyam, 1973.

According to the petitioner, Shri Punacha who was the President and also Governor of the State of M.P., was transferred to the State of Orissa in May, 1980 and the, executive committee of the society, in its meeting held on 23-5-80, resolved to send a delegation for requesting Shri Bhagwat Dayal Sharma, the Governor of M.P., to accept the Presidentship of the society. According to the decision, a letter of request was sent to him and the Secretary to the Governor of M.P. by his letter D/- 29-7-80, informed the General Secretary of the Society that the Governor has agreed to be the President of the society. The society had also requested to convene a meeting of the council as early as possible and it is alleged that the Vice President Shri Krishnapal Singh had already discussed the matter with the Governor and in support of this, a copy of the letter has been produced by the petitioner.

Shri C, R. Pancholia, the Treasurer of the society, resigned from the post as he was promoted and transferred to Jabalpur as Additional Sales Tax Commissioner, on 2-11-1980 and his resignation was accepted by the executive committee and Shri U.S. Trivedi was elected by the executive as a Treasurer. Dowager Moimoon Sultana expired on 5-9-82 and her post is vacant. Smt. Lalita Krishnan, consequent on her election as a General Secretary of the Indian Council of Child

Welfare in August, 1982, resigned from the Joint Secretaryship of the Society and that post is also lying vacant.

It is alleged that the executive and the General Body meetings of the society were held on 9-7-83 and 10-7-83 and soon after these meetings, the society received a show cause notice from the State of M.P. in Commerce and Industries Dept., D/- 14-7-83 at 6.30 p.m.. The notice was addressed in the name of M.P. Council for Child Welfare and a copy thereof is also produced by the petitioner. The show cause notice alleged as to why the Governing Body of the society should not be superseded u/s 33(1) of the Registrikaran Adhiniyam for persistently making default in performance of the duties of the society imposed on it under the Adhiniyam. The show cause notice asked the governing body to submit its reply to the charges within 30 days on receipt of the notice. A copy of the charge sheet along with the notice which was sent, is also filed along with the petition. The charge sheet included the following four charges :

- (i) That the Governing Body of the society was found to be invalid,
- (ii) That the society had committed breach of some of its Rules and Regulations;
- (iii) That the office bearers of the society had committed breach of Sections 27 and 28 of Registrikaran Adhiniyam; and
- (iv) The Register of members of the society was not maintained properly u/s 16 of the Registrikaran Adhiniyam.

According to the petitioner, the show cause notice was taken back from the society by Shri K. G. Nagpure, Dy. Registrar, Firms and Societies, at 11 p.m. on 14-7-83 and again the same notice DA 14/15-7-83 was served on the acting President of the society. Rest of the notice remained the same. Along with the notice, the acting President was also informed that the State Government had issued an order u/s 33(8) of the Registrikaran Adhiniyam that the Governing Body of the society would function under the supervision of the officer nominated by the Collector, Bhopal.

The Collector, Bhopal appears to have authorised Shri M. K. Nagrath, S.D.O. as the Authority u/s 33(8) of the Registrikaran Adhiniyam. He, by his letter D/- 16-7-83, copy of which has been filed, informed the society that he had been appointed as a Supervisor u/s 33(8) of the Society Registrikaran Adhiniyam and he informed the society that no resolution or order of the Governing Body of the society would be effective unless it was approved by him. It was also stated therein that no account in bank would be operated without his approval. The General Secretary, of the society was further ordered not to act" without approval and prior consent of the S.D.O. A copy of the order passed by the Collector appointing the S.D.O. Huzur as Supervisor, is also filed along with the petition.

It is alleged that after service of the notice, the Registrar of Firms and Societies, deputed a special audit party vide his order DA 18-7-83 in exercise of the powers

u/s 28(2) of the Registrikaran Adhiniyam and the special audit party consisting of Shri Basant Badnera, Auditor and Shri R. S. Vishwakarma, Junior Auditor, was constituted.

It is alleged that after receipt of the notice, the Secretary, by his noting DA 18-7-83, wrote that the society should engage a lawyer to draft a reply and also to request for personal hearing on the points raised in the charge-sheet. It was also mentioned that the charge-sheet had been issued without conducting proper enquiry as required u/s 32 and, therefore, an urgent meeting of the executive committee was required to be summoned to consider the charges and to draft the replies. It was also stated that as the period of the notice was 30 days, a meeting of the general body could not be convened, but an urgent meeting of the executive could be convened. The matter was placed before the Vice-President Shri Krishnapal Singh and it is alleged that he advised the Secretary to wait. The Secretary also wrote a letter to the President of the Council that a charge-sheet addressed to the Acting President, had been received. He also mentioned that an impression was created that Hon. the Governor had resigned, but no such resignation had been received by the society and it was stated that unless the resignation was received, Hon. the Governor would continue as a President. The Secretary also wrote to the Secretary, Commerce and Industries Dept., Govt. of M.P., on 30-7-83 that the letters with the show cause notice had been sent to the President of the society for passing appropriate orders and as the Governor of M.P. was not the President of the society and his resignation had not been received by the society, the Governor continued to be the President and the reply to the noticesent by the Governor would be sent after receiving appropriate orders from the President. The Acting President Shri Krishnapal Singh wrote to the Secretary of the Society for an emergent meeting of the executive committee to be called as the Acting President was likely to go out of India after 5-8-83. The Secretary, however, wrote to the Govt. on 5-8-83 that the charge-sheet mentioned in the letter DA 14-7-83 made a reference to an enquiry made by the Dy. Registrar, Firms and Societies and his report DA 7-7-83. The Govt. was, therefore, requested to make available a copy of the report on which the charge-sheet was based. A copy of this letter is also filed along with thepetition.

It is alleged that the society did not receive any reply to the letter of the Secretary and a supplementary charge-sheet DA 18-8-83 addressed to the Acting President, was received in the office of the society with a forwarding note D/- 22-8-83 of the Acting President, after his return from foreign trip. This copy of the supplementary charge-sheet is also filed. The society was granted 10 days" time to submit a reply to the supplementary charge-sheet in which allegations were made about the accounts that several lacs of rupees were spent every year beyond the powers conferred by the rules. There was also allegation that accounts were not properly maintained and about embezzlement of fraudulent payments.

According to the petitioner, in accordance with the directions of Shri Krishnapal Singh, the Vice President, an ordinary meeting could only be convened under Rule 18(a) and (b) of the Rules and Regulations of the society. The convening of the meeting needed sanction of funds. The Joint Secretary of the Society, therefore, addressed a letter D/- 10-8-83 to the Secretary to the Govt. in which he explained his attempts to contact the Supervisor for sanction of funds for the meeting and also requested the Govt. to allow reasonable time for holding the meeting. He also applied for extension of time to file a reply, but the Govt. did not respond to this letter, copy of that letter is also filed. It is alleged that the Secretary had already sent a note sheet and the copies of the show cause notice both to the President and Vice President of the Society seeking their directions to reply. The Supervisor Shri Nagrath was also transferred in the first week of August and in his place, Shri D. K. Tiwari, Sub-divisional Magistrate, Huzur, took over the charge. The new supervisor took a week's time to look to the affairs of the society.

According to the petitioner, as he was an active member of the executive, he filed a petition No. 2105/83 in this Court claiming the relief of direction to the Secretary of the society to call a meeting of the executive committee for consideration of the important matters including reply to the show cause notice given to the society u/s 33 of the Registrikaran Adhinyam. According to the petitioner, this Court, by order D/- 12-8-83, held that in the absence of President and Vice President, the Secretary could call a meeting. Copy of the order of this Court has also been filed. After this order, the Secretary of the society wrote to the State Govt. and the Supervisor that he was convening an extraordinary general meeting in accordance with Rule 18(a) of the Memorandum of Association to consider the urgent matters including reply to show cause notice issued to the society u/s 33(1) of the Registrikaran Adhinyam. It was said in this letter that usual meeting expenses would be about Rs. 12,000.00 which may be sanctioned for despatch, transport and travelling allowance etc. A copy of this letter has been filed along with the petition and it is alleged that the Secretary of the society was informed by letter D/- 19-8-83 that correspondence of such a nature should be done with the Supervisor, and such a sanction was not desirable at the State level. Copy of this letter from the State Government is filed along with the petition and the Supervisor, by his letter DA 19-8-83, wrote to the Secretary of the society that he could convene a meeting if he so desired and he wrote that so far as sanction of T.A. and payment of other expenses was concerned, that could be done after the decision of the Supervisor. Later, the Supervisor wrote another letter D/- 22-8-83 to the Secretary of the society that he should intimate the place of the meeting, the date and time immediately so that he could issue necessary orders immediately. Accordingly a notice of extraordinary meeting D/- 22-8-83, was sent to the members, a copy of which has been enclosed and the date of the meeting was fixed on 6-9-83 in Jawaharlal Nehru Stadium, Indore. The agenda of this meeting was very important in which the society wanted to reply both to the Govt. as well as to the public in respect of

the charge-sheet and the notice to show cause.

It is also alleged that the Registrar of Firms and Societies, by his order D/- 6-8-83, had ordered u/s 28(2) of the Registrikaran Adhiniyam for a special audit and authorised Shri P.O. Verma, Additional Registrar, Shri N. K. Dixit, Inspector and Shri A. M. Saxena, Inspector for doing the work. Copy of this letter is filed. This Special Audit Party, under the orders of the Registrar of Firms and Societies, came to the office of the Society on 18-7-83 and remained there till 28-7-83. The audit party wanted information which was supplied to them: The audit party, however, did not supply the notings made by them to the society and the report which is said to have been submitted, was neither discussed with the office bearers of the society, nor a copy thereof was supplied to the society.

It is alleged that on 2-8-83, the Registrar had asked the Accounts Officer of the Society to see him in his office. The Accounts Officer visited the Office of the Registrar immediately. The Registrar asked the Accounts Officer of the Society about the balance with the Cashier and the purchases from Indore. Next day, on 3-8-83, without any notice or intimation, the party, headed by the Assistant Director Shri P. D. Verma, with Shri Vjjay Pamecha, Chartered Accountant, assisted by Shri Vadnere and Shri Vishwakarma, came to the Office of the Society and asked for verification of cash and stock. The verification of cash was completed and the cash verification was done on 4-8-83 and 5-8-83. The Accounts Officer of the Society asked for the authority letter for audit from Shri Pamecha and Shri P.D. Verma. Shri Verma told the Accounts Officer that the letter was sent by post. However, on repeated persuasions, Shri Pamecha showed the copy of the order, but did not permit the Accounts Officer or any Officer of the Society to have a copy of it. The two Inspectors assisted the party and the Registrar himself came to the office of the society in the evening on 5-8-83 and Shri Verma took away the records for detailed study to his Office and gave a receipt to the Accounts Officer of the Society. No written order of the Registrar was handed over to the society for taking away such records.

The next audit came on 10-8-83 and the audit party gave some memo in the form of queries and said that the replies should be collected by 11-8-83 at 3 p.m.. The accounts branch of the society prepared the replies, but the party did not turn up. It was further stated that it would be collected on any date and on 17-8-83, the society received a letter from the Registrar, D/- 6-8-83, copy of which has been filed along with the envelope. This order was posted on 12-8-83 from Bhopal by which Shri P.O. Verma, Shri Dixit and Shri Saxena were appointed for audit. No letter from the Registrar authorising Shri Pamecha to do audit was received in the Office of the Society.

The supplementary charge-sheet was received by the Acting President on 22-8-83 after he returned from Moscow. When the General Secretary of the Society was handed over a copy of the charge-sheet, he wrote to the Registrar on that very day requesting him to supply the necessary documents to enable the society to reply to the charges. It was also requested that several

documents, a list of which was sent with the Accounts Officer of the society, may be returned per bearer and a copy of this letter was also sent to the Secretary to the Govt., Commerce and Industries Dept. It was also mentioned that no audit report was sent by the Registrar. It was also stated that unless the documents were supplied, it would not be possible to examine the documents thoroughly and submit the replies. It was also stated that the replies would also need the consideration of the executive body and an application for convening the meeting of the executive body had already been made by the society, but no reply had been received till then. Copy of this letter is also filed. The Secretary of the society again wrote to the Registrar on 25-8-83 asking him to supply a copy of the audit report which would be necessary for consideration of the executive body and it would also be necessary for drafting replies to the allegations. It was also stated that copy of the audit report could also be got done at the cost of the society, but the society wanted an authenticated copy to facilitate consideration by the executive committee. It was also stated that unless those papers were given, reply to the charge-sheet would be delayed.

It is alleged that the Registrar sent a letter on 26-8-83 to the General Secretary of the society asking him to inspect the accounts and documents in his office, i.e. Office of the Registrar. It was also mentioned that the Accounts Officer never gave any information about return of the documents. It was also mentioned by a separate letter that the factual position of the audit had already been intimated. Copy of this letter has also been filed. It is alleged that so far as special audit was concerned, Shri Badnere? had lodged a report on 5-8-83 to the Station Officer, Bhopal, copy of which has been filed. The society needed a copy of the audit report for drafting the replies. The society also made a complaint about the seizure of documents and the society also sent copies of the entire correspondence which took place between the society and the Registrar, to the Govt. The Govt. was requested to make available the audit report to expedite the reply and also make an order directing the Officer concerned to return the documents to the society. It was also stated that in case the documents were not made available within 3 days, the society would be free to take recourse to any Court of law. This letter was sent on 29-8-83.

It is alleged that without giving the copies of the papers so demanded and without giving any opportunity to the society, the State Govt. made an order Dt. 29-8-83 u/s 33(i) of the Registrikaran Adhiniyam 1973 removing the governing body of the society. Copy of this order is filed in which it was mentioned that the society did not submit any reply to the show cause notices dt. 15-7-83 and 18-8-83 within 30 days from 15-7-83 and within 10 days from 18-8-83, Thereafter, the charges which were mentioned in the two notices, were reproduced in the order and it was said that the society did not submit the reply within the time fixed and in the absence of reply, the charges should be deemed to be proved. About the supplementary charge-sheet, it was stated that the society did not submit any explanation within the time fixed and, therefore, the charges could be deemed to have been proved.

It was further stated that the society did not make any application to the State Govt. requesting for extension of time to file a reply. According to the petitioner, this statement was incorrect inasmuch as on 10-8-83, an application was directly made by the Joint Secretary of the Society to the State Govt. Copy of it has been filed. It was stated that the request could have been made to the Department directly. It was further stated that the Supervisor was not appointed for approving the reply. It was said that the meeting of the executive body was convened on 6-9-83 and the society should have, under the circumstances, approached the State Govt. It was also stated that the society should not have relied upon the delays which generally take place in office. It was stated that the steps taken by the society could not be said to have been taken in good faith and the secretary could have submitted an explanation within the time. According to the petitioner, under those orders, the executive body was superseded, though a meeting of the executive body was convened on 6-9-83 at Indore. It was cancelled on 2-9-83 by the Administrator according to the telegram, a copy of which is filed by the petitioner.

It is alleged that earlier, the society had already convened a meeting of the Indian Council of Child Welfare at Indore between 3rd and 5th Sept. 1983 according to the resolution of the executive body dt. 9-7-83 and invitations had already been sent to all the members of the Indian Council for Child Welfare requesting them to attend the meeting on 3rd, 4th and 5th Sept. 1983 at Indore. The arrangements were also made for lodging the representatives in the hotels at Indore. Suddenly, due to supersession of the governing body, the secretary and other members of the governing body were disabled from making arrangements for the convention of the All India body.

On 3rd and 4th Sept. 1983, delegates and representatives of Indian Council of Child Welfare assembled at Indore. Reservations for them made by the society in various hotels were cancelled by somebody with the result that the delegates and representatives of the All India Body faced severe difficulties of accommodation. There was also curfew in the town. They were also humiliated. It is alleged that the President of the All India Body had already intimated the Governor of the State that he should make appropriate arrangement and extend full cooperation for the All India Body scheduled to be held between 3rd and 5th Sept. 1983. A copy of that letter has also been filed.

It is alleged that the members of the Indian Council of Child Welfare met at Indore in adverse circumstances between 3rd and 5th September 1983 and the All India Body passed some resolution condemning the supersession of the governing body. Copy of this resolution has been filed. Earlier also, the Indian Council for Child Welfare had written a letter dt. 1-8-83 to the Governor and Acting President about the development of the M. P. Society. It is also alleged that one of the letters written by the Indian Council of Child Welfare to Shri Bhagwatdayal Sharma, President and Governor of the State, was that the standing committee had resolved to take possession of all the assets given to the

M. P. Society and that the Indian Council of Child Welfare had also authorised Smt. Vidyaben Shah, former President of Indian Council of Child Welfare and Shri B. D. Garg, member of the Executive Committee of the Indian Council of Child Welfare to enquire into the matter and submit a report about the proposed supersession of the governing body of the society. The two members submitted their report dt. 2-8-83 and it is alleged that from the report, it appears that a decision to supersede the society had already been taken before the notices were issued and the issuance of notice was merely a formality. It is alleged that Smt. Vidyaben Shah and Shri Garg had declared on 2-8-83 itself at Bhopal that the Governor had taken the decision to supersede the governing body and appoint Smt. Nirmala Buch as an Administrator of the Society.

It is alleged that the general body of the society, in its meeting dt. 29-7-83, had already decided to hold the elections of the Office Bearers of the Society on 10-12-83 and 11-12-83. A copy of this resolution has also been filed.

It is alleged that the General Secretary of the Society had also drafted a reply to the two charge-sheets for consideration of the executive body and also of the Supervisor and a copy of this reply has also been filed. It is alleged that the Secretary could not have sent the reply without getting it approved by the executive body and the Supervisor. The petitioner, therefore, has alleged that the governing body of the Society has been superseded without being afforded an opportunity to show cause. It is also alleged that the governing body of the society was not given copies of the audit report and the report of enquiry made by an officer of the Registrar which was submitted u/s 32 of the Registrarian Adhiniyam. It is also alleged that the society had also not given copies of the relevant documents in spite of repeated requests and the time for filing reply was also not extended. It is also alleged that the Supervisor did not permit the Secretary to convene the meeting of the executive body till 22-8-83 and the permission which was granted, was also meaningless as the Supervisor did not sanction the funds. The notices of the meeting of the executive body were despatched on 22-8-83. The State Govt. did not wait till the executive body meet and submit a reply and it is alleged by the petitioner that it was already decided to supersede the governing body and, therefore, the request of the Secretary for supply of copies, extension of time and permission to convene a meeting was either neglected or rejected. It is also alleged by the petitioner that the manner in which the members of the Indian Council of Child Welfare were humiliated, show the attitude of the State Govt. in its decision to supersede the body. It is alleged that this attitude was vindictive and unreasonable and the order was, therefore, made without affording an opportunity to the society. It is also alleged that there is no material to hold the charges proved and the order of supersession also does not disclose any material. It is alleged that merely because reply has not been filed, it could not be held that the charges are proved except when they are substantiated on the basis of some material collected. In this respect, it is stated that the order has been passed without affording reasonable opportunity and deserves to be quashed.

It is also alleged that provisions of Section 33(8) of the Registrarian Adhiniyam are ultra vires of Article 19(1)(c) of the Constitution inasmuch as an outsider is imposed as a Supervisor on the society even before passing an order of supersession of the governing body. An outsider cannot be imposed on a voluntary association and to this extent, it runs contrary to Article 19(1)(c) of the Constitution.

It is also contended that as Section 33 of the Society Registrarian Adhiniyam 1973 authorises the State Govt. to supersede the governing body of a society and appoint an Administrator who is not a member of the society, this runs contrary to the provisions contained in Article 19(1)(c) and it is because of this also, it is contended, that Section 33 of the Adhiniyam is ultra vires as it runs contrary to Article 19(1)(c) of the Constitution. It is on these grounds that the order of supersession has been challenged by the petitioner.

The petitioner has also alleged mala fides and alleged that the action proposed against the governing body was a consequence of bias and was a pre-determined action which is demonstrated by the publicity and campaign carried out against the Council for Child Welfare. It is also alleged that in fact the State Government was bent upon taking action which is demonstrated from the order passed by the Under Secretary, Commerce and Industries Department, on 25th June 1983 which has been filed along with the additional return as annexure-AR-I. By this order the Under Secretary has directed the Registrar to submit the report immediately and in this order, he has referred to some order and it was alleged by the learned counsel for the petitioner that this order, if produced, will clearly demonstrate that for reasons best known, it was decided to supersede the Council and accordingly this order of the Under Secretary discloses that the Registrar was asked to submit the report and it is here that the proceedings started. It was prayed by the petitioner that this order which is referred to in this order dt. 25th June 1983 of the Under Secretary be got produced.

Learned Advocate General, who appeared for the respondents was asked as to whether the State is prepared to produce the order which is referred to in the annexure AR-1 dt. 25th June 1983. This order of the Under Secretary reads :

^^mijksDr fo"k; esa vkns"kkuqlkj vuqjks/k gS fd lferh ?gsM DokVIZ gksVy ua- " fiiykuh] Hkksiky ?"2?2?? dh fjiksVZ rqjUr gh Hkstus dh ?i;k O;oLFkk djsA**

It was contended that the order based on which this order by the Under Secretary was passed in which he has referred to ^^vkns"kkuqlkj** should be got produced as it will show that this order was passed by the head of the administration with the predetermined purpose to supersede the governing body. Learned Advocate General frankly conceded that he has no instructions to produce this order and on the basis of this statement made by the learned Advocate General, it was contended by the learned counsel for the petitioner that either this Court should direct the Advocate General to produce this document or an adverse inference may be drawn from the statement of the learned Advocate

General.

It will be worthwhile first to consider as to whether the petitioner had an adequate opportunity to show cause as is even contemplated in the scheme of Section 33 of the M. P. Society Registrickaran Adhiniyam, 1973. Section 33 reads :

"33. Supersession of governing body. -- (1) If, in the opinion of the Government, governing body of any State aided society--

(a) persistently makes default or is negligent in the performance of the duties imposed on it by or under this Act, regulations or bye-laws of the society or by any lawful order passed by the State Government or Registrar, or is unwilling to perform such duties, or

(b) commits acts which are prejudicial to the interest of society or its members, or

(c) is otherwise not functioning properly, the State Government may, by order in writing, remove the governing body and appoint a person or persons to manage the affairs of the society for a specified period not exceeding two years in the first instance.

Provided that where it is proposed to remove the governing body of the society exclusively on the ground that election to the governing body were not held in accordance with the provisions of this Act or the regulations or bye-taws made thereunder, no action shall be taken under this sub-section unless the Registrar or an officer authorised by him in this behalf has convened a meeting of the General body for conducting the election thereto in accordance with the provisions of this Act, or the Regulations or bye-laws made thereunder but has failed to get the new governing body elected.

Provided further that the Registrar or the Officer authorised by him shall, for the purpose of conducting election, have all the necessary powers under the Act or the Regulations or bye-laws made thereunder.

(2) No order under Sub-section (1) shall be made unless the governing body has been given a reasonable opportunity of showing cause against the proposed order and representation, if any, made by it, is considered.

(3) The period specified in the order under Sub-section (1) may, at the discretion of the State Government, be extended from time to time :

Provided that no such order shall remain in force for more than three years in the aggregate.

(4) The person or persons so appointed shall, subject to the control of the Registrar and to such instructions as he may from time to time give, have power to exercise all or any of the functions of the governing body or of any officer of the society, and to take all such actions as may be required in the interest of the society.

(5) The State Government may fix the remuneration payable to the person or persons so appointed. The amount of such remuneration and other costs, if any, incurred in the management of the society shall be payable from its funds.

(6) The person or persons so appointed shall at the expiry of the period of his or their" appointment, arrange for the constitution of a new governing body in accordance with the

regulations of the society.

(7) If there is a difference of opinion, between the general body of the society and person or persons appointed under Sub-section (1) in respect of any matter, it shall be referred to the Registrar for decision and his decision thereon shall be final.

(8) During the period between the issuance of notice and the passing of an order removing the governing body may be required by the State Government to function under the supervision and with the approval of such authority as the State Government may specify in this behalf and no order made or resolution passed or any other act performed by the governing body, shall be effectual unless it is approved by such specified authority."

Sub-section (2) of this section clearly indicates that no order shall be passed under Sub-section (1) unless the governing body has been given a reasonable opportunity to show cause against the proposed order and representations, if any, made by it. is considered. The show cause notice which was issued is dt. 14-7-83 and 15-7-83, which was served on the acting President and in this show cause notice the charges which have been alleged have been quoted. These charges clearly indicate that there was nothing specific and it appears that there was no material on the basis of which these charges could be levelled. It was alleged that there was an enquiry conducted by the Deputy Registrar based on which this charge-sheet was issued to the governing body of the society. Along with this charge-sheet, there is also a statement of case which has been described as ^v^fHkdFku i=d** and this refers to the report of die Deputy Registrar dt. 7th July 1983. It was contended by the petitioner that a copy of this report was not given to the governing body in spite of repeated requests. It is not disputed that the copy of the report was not given but what was contended on behalf of the respondents was that the enquiry conducted by the Deputy Registrar was under the provisions of Section 32 of the Adhiniyam and, therefore, it was not necessary for the Registrar to furnish a copy thereof to the governing body of the society.

It appears that the nature of charges levelled in this notice clearly indicates that it may not be possible to pass the order of supersession against the society on the basis of this charge-sheet and, therefore, a further order was passed for special audit of the society. It is significant that even after the audit of the society, the audit report on the basis of which the additional notice was served on the governing body of the society was also not furnished to the Secretary in

spite of his repeated requests as has been discussed above. It is also clear from the facts stated above that the Secretary moved for holding of a meeting of the governing body so that reply to the charge-sheet could be filed. It is peculiar that the Secretary had been writing to the Supervisor, appointed by the State Government under Sub-section (8) of Section 33, for holding of the meeting of the governing body but even after repeated requests, the Supervisor had no time and then he was transferred and ultimately it was only on 19th Aug. 1983 that the Supervisor wrote to the Secretary that he could convene the meeting and so far as the expenditure on the meeting was concerned, it was stated that it could be done "after the decision of the Supervisor. On 22nd Aug. 1983, the Supervisor again wrote to the Secretary that he should intimate the place and time of the meeting and it is then that the Secretary immediately on 22nd Aug. 1983 itself issued notice of the extra -- ordinary meeting to be held on 6th Sept 1983. It is also not disputed that delay had occurred in allowing the Secretary to call the meeting of the governing body but it is stated that such delays are usual in the offices but it is interesting that on 22nd Aug. 1983 the Secretary was permitted to convene the meeting and the order of supersession itself was passed on 29th Aug. 1983. It is still interesting that the Secretary had been asking the Registrar to give a copy of the audit report and return the account-books which were taken away by the Audit Party but the Registrar sent a letter to the Secretary on 26th Aug. 1983 asking him to inspect the accounts and other documents in his office but did not grant him the copies. The petitioner's contention is that 27th Aug. 1983 was Saturday and 28th Aug. was Sunday and apparently, therefore, there was no time to inspect the documents and accounts and on 29th Aug. itself the order was passed superseding the governing body of the society. All these facts clearly establish that the report, on the basis of which initial charge-sheet and notice to show cause was issued on 15th July 1983, was never furnished to the petitioner whether it was a preliminary enquiry u/s 32 on the basis of which charges were framed is immaterial. There is no other report on the basis of which the show cause notice is alleged to have been passed. It is, therefore, clear that the preliminary enquiry report on the basis of which show cause notice was issued was not furnished. If notice to show cause is issued on the basis of a report u/s 32, even then the principles of natural justice require that the copy of the report should have been furnished to the governing body or the Secretary. It is also apparent that the additional charge-sheet was given on the basis of audit report and the manner in which the audit was conducted is also very strange and the facts have already been stated above.

It is plain that even the report was not given to the Secretary nor the accounts and other papers were allowed to be sent on the basis of which the governing body was expected to submit its reply to the charge-sheet which was based on the audit report and the books of accounts. When ultimately on 26th Aug. 1983 the Registrar asked the Secretary to inspect the documents, it is apparent that it could not have been done before 29th Aug. 1983 because 28th Aug. 1983 was Sunday and on 29th Aug. 1983 itself, when the office reopened, before the

inspection could be done, the orders for supersession were already passed. It is also strange that the Supervisor appointed under Sub-section (8) of Section 33 did not permit the Secretary to convene the meeting by delaying the matters and it was only on 22nd Aug. 1983 that the permission was given to the Secretary to convene the meeting and before the meeting could be convened and reply could be prepared, the orders for supersession were passed.

It is clear that the principles of natural justice require that before an order is passed opportunity should be given to the governing body to submit its reply and opportunity should be given to explain the circumstances alleged in the charge-sheet. This Court in *Suresh Seth Vs. The State and Another*, considered this question at length in the context of Section 422 of the Madhya Pradesh Municipal Corporation Act and it was observed that such a power of supersession is not an administrative power of supersession but is a quasi-judicial in nature. In this decision, it was observed :

"In considering the question whether the State Government's power u/s 422 of the Corporation Act is quasi-judicial in nature, we need not go back to older cases in search for principles. We can begin with a recent land mark *Ridge v. Baldwin* 1964 AC 40 which has been acclaimed as "the Magna Carta of natural justice": (Alien. Law and Order 3rd Edition P. 242). This case re-affirmed that when an authority or body is given power by statute to determine questions affecting rights of individuals, the very nature of the power implies a duty to act judicially requiring it to observe the rules of natural justice, and that duty to act judicially need not be separately imposed by the statute. This case also demonstrated that the contrary dicta of Hewart C. J. in *Rex v. Legislative Committee of the Church Assembly*. (1928) 1 KB 411 which was applied with approval by the Privy Council in *Nakkuda Ali v. M. F. de S. Jayaratne* 1951 AC 66 was erroneous. The principles laid down in *Ridge v. Baldwin* have been accepted as correct by the Supreme Court in *Associated Cement Companies Ltd. Vs. P.N. Sharma and Another*, and *Shri Bhagwan and Another Vs. Ram Chand and Another*, . These principles have also been applied where the right dealt with by the statute is not right of individuals but the right of a public authority. A case directly in point is a recent decision of the Privy Council in *Durayappah v. Fernando*, (1967) 2 AC 337. In this case one of the questions before the Judicial Committee was whether the Minister of Local Government Ceylon while exercising his power u/s 277 of the Ceylon Municipal Ordinance of dissolving a Municipal Council was to observe the rules of natural justice. Section 277 of the Ceylon Municipal Ordinance is worded in similar language as Section 422 of the Madhya Pradesh Municipal Corporation Act, except this that the former does neither contain any express provision that an opportunity will be given to the Municipal Council to show cause against proposed action of dissolution nor does it contain any provision that the order of the Minister shall state the reasons on which it is made. Even in the absence of such provisions, which find place in Section 422 of the Madhya Pradesh Act, the Judicial Committee held that the Minister before passing an order of dissolution u/s 277 of the Ceylon Ordinance

was bound to observe the principle audi alteram partem. Their Lordships negated the argument that when a statutory provision opens with the words such as "where it appears to" or "if it appears to the satisfaction of....." or "if the.....considers it expedient...." or " if theis satisfied", a duty to act judicially is excluded; it was observed that these various formulas are introductory of the matter to be considered and are given little guidance upon the question of audi alteram partem. Outside the well-known classes of cases, their Lordships said :

"There are three matters which must always be borne in mind when considering whether the principle should be applied or not. These three matters are : first, what is the nature of the property, the office held, status enjoyed or services to be performed by the complainant of injustice. Secondly, in what circumstances or upon what occasions is the person claiming to be entitled to exercise the measure of control entitled to intervene. Thirdly, when a right to intervene is proved, what sanctions in fact is the latter entitled to impose upon the other. It is only upon a consideration of all these matters that the question of the application of the principle can properly be determined." On a consideration of these matters it was pointed out that no one would consider that the activities of a Municipal Council should be lightly interfered with, that the grounds on which Minister could take action (which are similar to those contained in Section 422 of the Madhya Pradesh Municipal Corporation Act) implied a duty to act judicially and that the consequences of dissolution were so drastic that they pointed in the same direction. Their Lordships, therefore, held that the Minister was bound to observe the rule audi alteram partem before dissolving the Municipal Council. We fully accept the decision in Durayappah's case of this point: there is another point of importance decided in that case, which we will take up later."

Their Lordships further considered the principles of natural justice in Suresh Seth Vs. The State and Another, and considered the question of report, which is the basis of charge sheet and held: "The question then is whether there was violation of the rules of natural justice or in terms of the section denial of opportunity to the Corporation to show cause in making the order of supersession. The first complaint of the petitioner in this connection is that inquiry report on which the Government formulated the charges, was not made available to the Corporation. It appears from para 19 of the return filed by the State Government that a preliminary inquiry against the Corporation was held by the Commissioner Indore Division and the inquiry report submitted by him was against the Corporation. This report led to the formulation of charges and issue of show cause notice. After the explanation of the Corporation was received, there was no further inquiry and the case was only re-examined resulting in the order of supersession. On these facts it cannot be disputed that the inquiry report made by the Commissioner was an important material which was taken into account by the Government in taking action against the Corporation, in fairness, therefore, the Corporation should have been furnished with a copy of that report. If there is a fresh inquiry after the show cause notice and receipt of representation and

inquiry report of the preliminary inquiry is not considered in the second inquiry or in taking the final action, withholding of the report of preliminary inquiry may not result in the infraction of the rules of natural justice or denial of opportunity to show cause. But in cases where there is no fresh inquiry after the show cause notice, the explanation furnished is bound to be judged in the light of the earlier inquiry report on which the charges were based. Therefore, when the charges are based on an inquiry report not shown to the Corporation, and there is no further inquiry after submission of representation, the non-disclosure of the adverse inquiry report which is an important material taken into account in making the final order, must necessarily result in denial of adequate opportunity to show cause. It cannot be disputed that the "opportunity to show cause" contemplated by Section 422 of the Act must be a reasonable opportunity and not a bare formality and all adverse material to be used against the Corporation must be disclosed. Principle of fairness is implicit in the statutory protection that the Corporation shall be given an opportunity to show cause. That is also the requirement of natural justice. In our opinion, the Government should have disclosed to the Corporation the Commissioner's report. The second objection of the petitioner in this respect is that the Corporation had requested for an oral hearing to explain the charges and this opportunity was denied. Oral hearing is not an essential attribute of natural justice; *Local Government Board v. Arlidge* 1915 AC 120 and *A.K. Gopalan Vs. The State of Madras*, . Whether the opportunity to show cause should be by written representation or by personal hearing depends on the facts of each case and ordinarily it will be in the discretion of the tribunal or authority passing the final order; *Rohtas Sugar Ltd. and Others Vs. Their Workmen*, :.1966 M P L J 256 It was. therefore, open to the Government in the exercise of its discretion to refuse the request of the Corporation for an oral hearing. The learned counsel for the petitioner has failed to satisfy us that in the circumstances of the case the discretion to refuse oral hearing was improperly exercised. However, we have already held by accepting the first objection raised in this connection that the non disclosure of the inquiry report has led to the denial of opportunity to show cause within the meaning of Section 422 of (he Corporation Act."

In this decision reference has already been made to the earlier decisions of this Court and it is not necessary for us to refer to the earlier decisions of this Court on this aspect of the matter. In *S.L. Kapoor Vs. Jagmohan and Others*, in respect of the principles of natural justice. Their Lordships observed :

"Thus on a consideration of the entire material placed before us we do not have any doubt that the New Delhi Municipal Committee was never put on notice of any action proposed to be taken u/s 238 of the Punjab Municipal Act and no opportunity was given to the Municipal Committee to explain any fact or circumstance on the basis (of which) that action was proposed. If there was any correspondence between the New Delhi Municipal Committee and any other authority about the subject matter or any of the allegations, if information was given and gathered it was for entirely different purposes. In our view, the

requirements of natural justice are met only if opportunity to represent is given in view of proposed action. The demands of natural justice are not met even if the very person proceeded against has furnished the information on which the action is based, if it is furnished in a casual way or for some other purpose. We do not suggest that the opportunity need be a "double, opportunity" that is, one opportunity on the factual allegations and another on the proposed penalty. Both may be rolled into one. But the person proceeded against must know that he is being required to meet the allegations which might lead to a certain action being taken against him. If that is made known the requirements are met. We disagree with the finding of the High Court that the Committee had the opportunity to meet the allegations contained in the order of supersession."

It is, therefore, plain that before passing the order of supersession, no opportunity was furnished to the Governing body to file the reply and explain the circumstances alleged against it.

The next contention advanced by the learned counsel for the petitioner was that the order of supersession does not disclose the application of mind as it does not disclose the reasons on the basis of which the order has been passed but the order only says that these were the charges levelled against the governing body and as no reply has been filed by it, the charges are held to be proved. There is neither any consideration of the matter on the basis of which the authority came to the conclusion that charges are proved nor there are any reasons mentioned for the same, it, therefore, clearly indicates that the order in substance is only that as there is no reply to the charges levelled against the governing body, therefore, the charges are held to be proved. Such an order could not be said to be an order with reasons which discloses application of mind. Section 33 of the Adhiniyam, as quoted above, requires that the State Government has to form an opinion about the governing body in respect of Clauses (a), (b) and (c) and it is only on these findings arrived at by the State Government that the order superseding the governing body could be passed u/s 33(1). In *Suresh v. State of M. P.* 1969 M P L J 327 : (AIR 1970 MP 1541 this Court considered the question of giving reasons in the context of the explanation submitted by the Corporation and held : "The Statutory requirement of stating the reasons is not satisfied simply by narrating the charges and the opinion of the Government that the explanation of the Corporation has filed to meet the charges. It is also necessary that reasons for that opinion should be stated." In this decision, reliance has been placed on *In Re Povsar and Mills Arbitration* (1963) 1 All ER 612 and *The Collector of Monghyr and Others Vs. Keshav Prasad Goenka and Others*, . In the present case. the situation is still worse as has been discussed earlier. The governing body was not permitted to submit its reply and the only reason stated in the order is that as there is no reply, the charges are held to be proved. Such an order u/s 33(1) could not be maintained. This Court in *Municipal Committee and Another Vs. State of Madhya Pradesh*, considered this aspect of the matter in the light of Section 57 (2) of the C. P. and Berar Municipalities Act and held that the Court has power to examine the reasons. In this decision, it was observed :

"In a democratic society it is of the essence that democratic institutions are allowed to function and not superseded on trumped-up charges inadequately brought home or unreasonably accepted. The Courts will be vigilant to see that such over-reaching powers are kept within the four corners of the statute granting them. We think that the fact that a reasonable opportunity to show cause has been made a condition precedent to the exercise of (the power and that reasons for the supersession have to be notified to the electorate shows that there is not to be a subjective appraisal but that the reasons must be sufficient under the Act and an objective test is indicated. The requirements of the law are not satisfied by accepting insufficient or inadequate reasons for supersession. We think that the Courts are at liberty to examine the reasons for this limited purpose in addition to the purposes which the learned Judges of the earlier Division Bench (Mangalmurti and-Mudholkar JJ.) have already indicated in their order."

So far as the case in hand is concerned, there is hardly any mention of reasons as there are no reasons at all and it is in this view of the matter, it appears that what is alleged by the petitioner that there was prejudice and pre-determined decision to" supersede the governing body finds support from the order of the Under Secretary. Commerce and Industries Deptt., dt. 25th June 1985 which refers to ^v^kns"kkuklkj** It appears that it is for this reason that this order, in accordance with which the Under Secretary asked the Registrar to submit his report, has not been produced in this Court.

It is, therefore, plain that the manner in which the first charge sheet, the second charge sheet and the audit which was conducted; and the manner in which the Supervisor appointed under Sub-section (8) of Section 33 delayed the matters for permission to convene the meeting of the governing body; the manner in which the copies of the enquiry report, audit report, the account books and other papers were not given to the Secretary for preparing the reply go to indicate that the allegation made by the petitioner that it was pre-determined effort to supersede the governing body appears to be justified.

The learned Advocate General, at the time of arguments, contended that as the period of governing body has already elapsed and even if the order of supersession is quashed the only course open is to hold fresh elections so that the newly elected body takes up the charge and, therefore, in the circumstances the Administrator appointed u/s 33 should be directed to conduct the elections within a reasonable time. The learned counsel for the petitioner on the other hand contended that the bye-laws of the society no doubt fix the time for members of the governing body but they clearly provide that a member shall hold the office till the newly elected body takes charge. So in this view of the matter and the manner in which the governing body was superseded, it was contended that the order of supersession be quashed and the governing body should be permitted to hold the elections within a reasonable time as it was stated that even before this action was taken, a resolution was already passed to

hold the election for the new governing body.

In view of our findings that no adequate opportunity was furnished to the governing body to reply and also in view of our findings that the order of supersession does not disclose reasons and application of mind, the order of supersession could not be maintained as it is earlier held that the circumstances stated above indicate that the order is not only bad in law but it is a result of bias and prejudice which is demonstrated by the facts discussed above, although the petitioner has not been able to establish the circumstances to indicate that efforts were made to see that the governing body does not get the opportunity to file any adequate reply on the question of charges levelled against it. It is therefore, clear that the order of supersession could not be maintained.

It is no doubt true that the term of the governing body has already come to an end the only course open is that fresh elections should be held. There are two courses open; as to whether fresh elections should be held by the governing body itself or by the Administrator. In view of our findings about the action taken by the Government in superseding the governing body, we have no hesitation in saying that it would be fair and just not to allow the Administrator to function any longer and hold the elections. In our opinion, as the order of supersession could not be maintained, it will only be appropriate that the governing body is reinstated and it may be further directed that the governing body shall hold the elections within a reasonable time.

In view of our decision on the first question about the order of supersession, in our opinion, it is not necessary for us to go, into the question of vires of Section 33(1) in the context of Article 19(1)(c) of the Constitution.

In the light of the discussions aforesaid, the petition succeeds and is hereby allowed. The order, dt. 29th Aug. 1983, superseding the governing body is hereby quashed. It is further directed that the governing body, after its reinstatement, shall hold the elections for the new body in accordance with the bye-laws within six months from the date of its reinstatement. The petitioner shall also be entitled to costs of this petition. Counsel's fee Rs. 350/-, if certified. The security amount, if deposited, shall be refunded to the petitioner.