

(1979) 02 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 148 of 1978

Rana Natwar Singh

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 05-02-1979

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Municipalities Act, 1961 — Section 41, 41(1), 41(2)

Citation : AIR 1980 MP 129 : (1980) JLJ 69 : (1980) MPLJ 729

Hon'ble Judges : R.K. Vijayvargiya, J;G.L. Oza, J;G.G. Sohani, J

Bench : Full Bench

Advocate : R.G. Waghmare, for the Appellant; S.R. Joshi, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sohani, J.

This petition under Article 226 of the Constitution of India is directed against the order dated 27th April, 1978 passed by the State Government u/s 41 (1) (a) of the M.P. Municipalities Act, 1961, hereinafter referred to as the Act, removing the petitioner from the office of the Councillor of Municipal Council, Susner, with effect from the date of the order and further directing under Sub-section (4) of Section 41 of the Act that the petitioner shall be disqualified for further election, selection or reappointment to the office of the councillor for a period of four years from the date of his removal from the membership of the Council.

This petition initially came up for hearing before a Division Bench of this Court which, by its order dated 21st September, 1978, held that the decision reported in Laxminarayan Vs. State of Madhya Pradesh, Bhopal and Others, holding that the State Government, while passing an order of removal u/s 41 (2) of the Act, was not required to state reasons, required reconsideration and hence the matter deserved to be considered by a larger Bench. That is how, this petition came up for hearing before this Full Bench constituted by Hon'ble the Chief Justice.

The material facts giving rise to this petition briefly are as follows : The petitioner is an Advocate and was at the material time a member and also the President of the Municipal Council, Susner, hereinafter referred to as the Council. He held the office of President of the Council from 15th April, 1965 to 27th April, 1978 excluding the period from 12th October, 1973 to 5th April, 1975 when the Council had been dissolved under the provisions of Section 36 (3) of the Act. On 18th March, 1978, the respondent State served a notice on the petitioner under the provisions of Section 41 (3) of the Act calling upon the petitioner to show cause, within fifteen days of the receipt of notice, as to why he should not be removed from the membership of the Council u/s 41 (1) of the Act, the said notice charged the petitioner as follows :--[Matter in Hindi omitted.--ED]. The petitioner did not ask for copies of any documents or any further particulars to enable him to effectively reply to the various allegations made against him in the aforesaid notice. A detailed explanation (annexure A-2), running into ten typed pages, was submitted by the petitioner on 1st April, 1978 denying the allegations made against him and further alleging that the aforesaid charges were levelled against him on account of his being a member of a rival political party. Along with his explanation, petitioner submitted twenty-eight documents relied upon by him for his defence. On the same day, the petitioner submitted an application praying that he be granted a personal hearing and as he was a very busy advocate, he should be given intimation of the date of hearing fifteen days in advance. Another application was made by him praying that in case he was not granted personal hearing, the documents referred to by him in the application should be sent for and looked into. No personal hearing was given to the petitioner and on 27th April, 1978 the State Government passed the impugned order stating that after taking into consideration the explanation furnished by the petitioner, the State Government was of the opinion that the continuance of the petitioner as a Councillor was not desirable in the interest of the public and the Council. Aggrieved by that order, the petitioner has filed this petition.

On behalf of the petitioner, the impugned order was assailed on the ground that the said order was not a speaking order and hence it deserved to be quashed on that ground alone. It was further urged that some of the allegations mentioned in the charge-sheet were admitted to be factually incorrect, and hence it was not possible to infer on what charges the State Government had passed the impugned order and the said order, therefore, deserved to be quashed. It was also contended that no reasonable opportunity was afforded to the petitioner to furnish his explanation as required by the provisions of the Act and as the petitioner was not given a personal hearing, the principles of natural justice were violated and the order deserved to be quashed on that ground also. It was further urged that the impugned order was mala fide and was the outcome of political rivalry between the petitioner and the Minister concerned. In reply, it was urged on behalf of the respondents that the impugned order was not liable to be quashed on the ground that it was not a speaking order or that some of the allegations made in the charge-sheet were found to be incorrect. It was

contended that reasonable opportunity, as required by the provisions of the Act and the circumstances of the case, was afforded to the petitioner to furnish his explanation, that there was no violation of the principles of natural justice, and that the order in question was not actuated by any ulterior motive but was passed after taking into consideration the explanation furnished by the petitioner. An affidavit by Shri H.M. Joshi, the Minister concerned, was filed denying the allegations of mala fides alleged by the petitioner.

In view of the aforesaid contentions urged on behalf of the petitioner, the first question that arises for consideration is whether the impugned order deserves to be quashed on the ground that it is a non-speaking order. To appreciate this contention, it is necessary to refer to the provisions of Section 41 of the Act and to the impugned order passed thereunder by the State Government. Section 41 of the Act reads as follows :--

"41 Removal of Councillor -

(1) The State Government may, at any time, remove a councillor.

(a) if his continuance as a Councillor is not, in the opinion of the State Government, desirable in the interest of the public or of the Council or

(b) if the Council recommends his removal by a resolution passed at a special meeting convened for the purpose.

(2) The State Government may, at any time, remove a Councillor if he, being a legal practitioner, acts or appears on behalf of any other person against the Council in any legal proceeding or against the State Government in any such proceeding relating to any matter in which the council is or has been concerned or acts or appears on behalf of any person in any criminal proceedings instituted by or on behalf of the Council against such person.

(3) No order under Sub-section (1) or Sub-section (2) shall be passed until reasonable opportunity has been given to the person concerned to furnish an explanation,

(4) Removal from office under Sub-section (1) or Sub-section (2) shall disqualify the person so removed for further election, selection or appointment to the office from which he is removed for such period not exceeding four years as may be specified by the State Government." The conditions for the exercise of the powers u/s 41 (1) (a) are clearly stated in the section. The State Government may, after giving reasonable opportunity to a councillor to furnish an explanation, which necessarily implies that after taking into consideration the explanation, if any, furnished by the Councillor, remove him if his continuance as a councillor is not, in the opinion of the State Government, desirable in the interest of the public or of the council. Now, the order passed by the State Government is as follows:--

ORDER

Bhopal dated 27th April, 1978 No. 2618/ 1/23/75/XVIII/I/78. Whereas the State Government is of the opinion that the continuance of Shri Rana Natwar Singh as Councillor of the Municipal Council, Susner, is not desirable in the interest of the public and the Council.

And whereas Shri Rana Natwar Singh was given opportunities vide this Department Notice No. 1417/XVIII/ 1/78, dated the 3rd March, 1978 to furnish an explanation as required by Sub-section (3) of Section 41 of the Madhya Pradesh Municipalities Act, 1961.

And Whereas the State Govt. has considered the explanation furnished by Shri Rana Natwar Singh. Now, therefore, in exercise of the powers conferred by Clause (a) of Sub-section (1) of Section 41 of the said Act, the State Government hereby removes Shri Rana Natwar Singh from the office of the Councillor of the said Municipal Council with effect from the date of issue of this order and direct, under Sub-section (4) of Section 41 of the said Act that Shri Rana Natwar Singh shall be disqualified for further election, selection or re-appointment to the said office for a period of four years from the date of his removal from the membership of the said Council." From a perusal of the aforesaid order, it is clear that the conditions for the exercise of the power stipulated by Section 41 of the Act are satisfied. It is, however, urged on behalf of the petitioner that though Section 41 of the Act does not lay down that reasons for making the order should be stated therein, yet, as the State Government is required to act quasi-judicially in passing an order u/s 41 of the Act, it is obligatory on the part of the State Government to pass a speaking order, which is a requirement of the principles of natural justice.

Now, the proposition that the State Government while exercising powers u/s 41 of the Act, is required to act judicially was not and could not be disputed before us. It is true that Section 41 (1) of the Act confers power on the State Government to act if "in the opinion of the State Government" the continuance of a councillor as a councillor is not desirable in the interest of the public or of the Council. But as held by the Privy Council in *Durayappah v. Fernando* (1967) 2 AC 337 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 the. . . is satisfied", it cannot be held that a duty to act judicially is excluded. In *Durayappah v. Fernando* (supra), the question for consideration before the Privy Council was whether the Minister, while exercising his power u/s 277 of the Ceylon Municipal Ordinance 1947, of dissolving a Municipal Council, was required to observe the rules of natural justice. The said section did not contain any provision that an opportunity should be given to the Municipal Council to show cause against the proposed action or that the order of the Minister should state the reasons on which it was made- Even in the absence of such provisions, their Lordships of the Privy Council held that the Minister was bound to observe the principle *audi alteram partem*. Judged by the tests laid down in *Durayappah v. Fernando* (supra), the duty to act judicially and to follow

the principles of natural justice must be held to be implicit in exercising powers u/s 41 of the Act. In this connection, the following observations of the Supreme Court in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, are pertinent :--

"The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. In a welfare State like ours it is inevitable that the organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its validity if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are mainly those which facilitate if not ensure a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power."

In *Bhagat Ram Patanga Vs. The State of Punjab*, , while considering a provision under the Punjab Municipal Act, substantially similar to Section 41 of the Act, the Supreme Court approved the decision of the Full Bench of the Punjab and Haryana High Court that proceedings initiated against a councillor for his removal were quasi-judicial in character. In view of the aforesaid decision of the Supreme Court, it must be held that the State Government, while exercising powers u/s 41 of the Act, is required to act judicially.

Now, it is not disputed that the provisions of Section 41 of the Act do not require the State Government to set out reasons while passing an order under that section. No rules framed under the Act having any bearing on the manner in which the State Government has to deal with the matter were brought to our notice. The State Government, no doubt, is required to act judicially which, as observed by Hidayarullah J. (as he then was) in *Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others*, , only means that the State Government is required to follow a standard of conduct and is free from bias or interest. The State Government, therefore, is undoubtedly required to follow the principles of natural justice. The question for consideration then is, whether it is a requirement of natural justice that a statutory authority required to act judicially should give reasons for its decisions and whether failure to give reasons by itself is a sufficient ground for quashing that decision under Article 226 of the Constitution.

Learned counsel for the petitioner referred to the decisions reported in *Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others*, , *Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI)*, , *Bharat Raja Vs. The Union of India (UOI) and Others*, , *Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others*, , *Travancore Rayon Ltd. Vs. Union of India (UOI)*, , *Bhagat Ram Patanga Vs. The State of Punjab*, . *The State of Punjab and Others Vs. Bakhtawar Singh and Others*, and *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another*, . Now, the question as to whether there is an obligation to give reasons may arise in two different contexts; in the context of an appeal under Article 136 of the Constitution and, secondly, in the context of the supervisory jurisdiction of the Supreme Court and the High Courts under Articles 32 and 226 of the Constitution. In *Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjhunwala and Others*, , it was observed that if the Central Government acted as a tribunal exercising judicial powers and the exercise of that powers was subject to the jurisdiction of the Supreme Court under Article 136 of the Constitution, the power of the Supreme Court could not be effectively exercised if reasons were not given by the Central Government in support of its order. When reliance was placed on these observations, in *Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI)*, , *Bachawat J*, speaking for the majority, observed as follows :--

"In that case, it appears that the Central Government acting as an appellate tribunal u/s 111(3) of the Companies Act, 1956, had without giving any reasons for its order, set aside a resolution of the directors of a company refusing to register certain transfers of shares. There was nothing on the record to show that the Central Government was satisfied that the action of the directors in refusing to register the shares was arbitrary and untenable, and, moreover, on the materials on the record it was not possible to decide whether or not the Central Government transgressed the limits of its restricted power under S 111 (3). The Central Government reversed the decision appealed from without giving any reasons, nor did the record disclose any apparent ground for the reversal. In this context, Shah, J. made the observations quoted above, and held that there was no proper trial of the appeals and the appellate order should be quashed."

Learned counsel for the petitioner contended that the decision in *M. P. Industries Ltd. v. Union of India (supra)* has been overruled in *Bharat Raja Vs. The Union of India (UOI) and Others*, as held in *Travancore Rayon Ltd. Vs. Union of India (UOI)*, . In this connection, it would be useful to refer to the following observations in *Tara Chand Khatri Vs. Municipal Corporation of Delhi and Others*, :--

"We would also like to point out that the: observations in *Travancore Rayon Ltd. Vs. Union of India (UOI)*, that in *Bharat Raja Vs. The Union of India (UOI) and Others*, this Court in effect overruled the judgment of the majority in *Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI)*, seem to have crept therein through some oversight. A careful perusal of the decision in *Bhagat Raja*

v. Union of India (supra) would show that this Court did not make any observations therein which can be interpreted as overruling the majority judgment in Madhya Pradesh Industries Ltd. v. Union of India (supra)." In Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others, , the Supreme Court has held that recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law. To the same effect are the observations in Travancore Rayon Ltd. Vs. Union of India (UOI), . It is undoubtedly desirable that an authority required to exercise powers judicially should record reasons in support of its decision. The question for consideration, however, is whether recording of reasons is a requirement of natural justice the violation of which vitiates the order passed by an authority. Learned counsel for the petitioner relied upon the following observations of the Supreme Court in The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another, :--

"The rule requiring reasons to be given in support of in order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law."

Now, the aforesaid observation that the rule requiring reasons to be given in support of an order is a basic principle of natural justice, with great respect it must be stated runs counter to the decision of the Supreme Court in Som Datt Datta Vs. Union of India (UOI) and Others, to which I shall presently refer. Moreover, in The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another, it is significant to note that the impugned order was not set aside on the ground that it was not a speaking order.

In Som Datt Datta Vs. Union of India (UOI) and Others, , the petitioner applied to the Supreme Court for a writ of certiorari to quash the proceedings before a Court Martial, and one of the contentions raised on behalf of the petitioner was that the orders of the Chief of the Army Staff confirming the proceedings of the Court Martial and of the Central Government dismissing the appeal by the petitioner were non-speaking orders and deserved to be quashed on that ground alone. Dealing with that contention, the Supreme Court observed as follows :--

"Apart from any requirement imposed by the statute or statutory rule expressly or by necessary implication, we are unable to accept the contention of Mr. Dutta that there is any general principle or any rule of natural justice that a statutory tribunal should always and in every case give reasons in support of its decision."

The aforesaid decision in Som Datt v. Union of India (supra) is a decision by a larger Bench and, as held in Mattulal Vs. Radhe Lal, , in case of any conflict between two Supreme Court decisions, we are bound to follow that which is delivered by a larger Bench. The decision in Som Datt v. Union of India (supra) is an authority for the propositions that, (i) unless expressly or impliedly required

by a statute or the rules, there is no obligation on a tribunal to give reasons, (ii) the giving of reasons is not a requirement of natural justice, and (iii) a non-speaking order could not be set aside merely on the ground that it was non-speaking.

Learned counsel for the petitioner was unable to point out any decision of the Supreme Court holding that the aforesaid propositions enunciated in *Som Datt Datta Vs. Union of India (UOI) and Others*, did not lay down good law. As already observed, it is no doubt desirable that a tribunal exercising quasi-judicial functions should give reasons in support of its order, but the mere fact that the tribunal has not chosen to give reasons would not in-validate its order in the absence of any specific provision of law in that behalf. In *Tara Chand Khatri Vs. Municipal Corporation of Delhi and Others*, the Supreme Court after referring to the decision in *Som Datt V. Union of India (supra/*, has referred to the following observations in *Judicial Review of Administrative Action*, (second edition) by Prof. S. A. de Smith (at page 418):--"If the record is incomplete (e. g., because reasons or findings of material fact are omitted), has the Court power to order the tribunal to complete its record? It is common ground that the court has no inherent power to compel a tribunal to give reasons for its decisions..... If, of course a tribunal is required by statute to declare its reasons or its findings on the material facts an order of mandamus may be obtained to compel the tribunal to perform its legal duty . . .Where a tribunal that is not expressly obliged to give reasons for its decisions chooses not to give any reason for a particular decision, it is not permissible to infer on that ground alone that its reasons for that decision were bad in law. Even if it gives reasons which are ex facie insufficient in law to support its decision, the court will not necessarily assume that these are the sole reasons on which the tribunal has based its decision." It is thus clear that where a tribunal is not expressly obliged to give reasons for its decision and chooses not to give any reason for any particular decision, it is not permissible to infer on that ground alone that its reasons for that decision were bad in law, In *Bhagat Ram Patanga Vs. The State of Punjab*, on which great reliance was placed on behalf of the petitioner, the Supreme Court, while dealing with the case of a member of municipal committee who was removed by a non-speaking order by the State Government, approved the decision of the Punjab High Court, which had upheld the order of a removal after examination of the note file produced before it by the State. Learned counsel for the petitioner tried to distinguish this decision on the ground that the point that a non-speaking order would by itself invalidate the order of the State Government was not taken in the petition. It is true that that point was not taken in the petition or urged before the single Judge who decided in favour of the petitioner. But in the Letters Patent Appeal that point was allowed to be urged and the matter was, therefore, referred to a larger Bench as would be clear from the following observations in the order of reference, as reported in *The State of Punjab Vs. Bhagat Ram Patanga*, :--

"We are of the opinion that the question whether an order of the State Government u/s 16 of the Punjab Municipal Act is or is not to be struck down

because it does not give reasons for its making by the State Government, even though no other flaw can be pointed out in it, is rather important question which is not only likely to arise in cases under this particular Act, but may well arise under other statutes having similar provisions such as Section 15 of the Punjab Agricultural Produce Markets Act, 1961, and that this question should, therefore, be disposed of by a larger Bench."

The larger Bench, after holding that the proceedings for removal of a councillor were quasi-judicial, upheld the order of removal, which was a non-speaking order. This decision of the larger Bench was approved by the Supreme Court. If the infirmity in the order of the Government that it was a non-speaking order was such as was sufficient by itself to invalidate the order, the decision of the Full Bench would not have been upheld by the Supreme Court. It is thus clear that a non-speaking order passed by an authority required to act in a judicial manner is not liable to be struck down merely on the ground that it is not a speaking order.

Learned counsel for the petitioner referred to the decision reported in *Suresh Seth Vs. The State and Another*, . The decision in that case, is however, distinguishable. The first question for consideration in that case was whether the State Government had to act judicially while passing an order of supersession of the municipal corporation. A Division Bench of this Court held that it was the duty of the State Government to act judicially. The question as to whether giving of reasons is a requirement of natural justice did not arise in that case or in the case reported in *Duryappah v. Fernando* (1967) 2 AC 337 on which reliance was placed by the Division Bench. Section 422 of the M. P. Municipal Corporation Act, 1956 specifically provided for giving reasons, and it was in the light of that provision that it was held that 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 had failed to meet the charges. It was, therefore, held that failure to state reasons as required by law vitiated the order of supersession. This distinguishing feature of the case reported in *Suresh Seth Vs. The State and Another*, was pointed out in *Laxminarayan Vs. State of Madhya Pradesh, Bhopal and Others*, as follows:--

"The second contention of learned counsel for the petitioner is that the State Government was in duty bound u/s 41 (2) to apply its mind before making an order of removal of a councillor. In support of the contention reliance is placed on the decision in *Suresh v. State of Madh Pra* 1969 MPLJ 327 : (AIB 1970 MP 154).

The contention cannot be accepted. The decision in *Suresh v. State of Madh. Pra.* (supra) is distinguishable. There the Court was dealing with Section 422 of the Madhya Pradesh Municipal Corporation Act, 1956, under which the State Government was required to state reasons for the supersession of the municipal corporation. The entire decision turned on the language of Section 422. u/s 41 (2) of the Madhya Pradesh Municipalities Act, 1961, State Government, while ordering the removal of a councillor, is not required to state its reasons."

The aforesaid observations are, however, likely to be construed that the State Government is not bound to apply its mind before making an order of removal u/s 41 (2) of the Act, and to that extent I am free to say, as I was a party to that decision, that they do not correctly lay down the law. The State Government is required to act Judicially while passing an order u/s 41 (1) or Section 41 (2) of the Act and must, therefore, apply its mind before ordering removal of a councillor. But in so far as the aforesaid observations lay down that it is not a requirement of Section 41 (2) that the State Government while ordering the removal of a councillor, should state reasons, I see DO reason to take a view different from that taken in *Laxminarayan v. State of M. P.* (supra).

It must, however, be emphasized that the fact that giving of reasons is not a requirement of an order passed u/s 41 of the Act does not mean that when the order of removal passed by the State Government is challenged in a court of law, the State Government is not required to indicate the reasons for forming the opinion as required by Section 41 (1) of the Act and place before the Court the necessary materials which were taken into consideration in forming its opinion. The following observations in *Bhagat Ram Patanga Vs. The State of Punjab*, are pertinent; :--

"At this stage, we may say that inasmuch as very severe penal consequences result by removing a person from the membership of a committee, to which he has been duly elected and as no appeal is provided under the statute against an order so removing him it is not only desirable but also essential that the State Government should indicate its reasons for forming the opinion as required by Section 16 (1) (a) of the Act. When such an order is challenged, the State must place before the Court the necessary materials which were available before it and which were taken into consideration for forming an opinion to remove the person concerned as a member of the committee."

In this connection, reference may be made to the following observations by H. M. Seervai, the learned author, in his book on "Constitutional Law of India" (Second Edn. at page 959):--

"We have considered the judgments of the Supreme Court at some length, and it is submitted that the propositions emerging from the judgment of *Bachawat J.* in the *Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI)*, and the propositions laid down by *Ramaswamy J.* in *Som Datt Datta Vs. Union of India (UOI) and Others*, correctly lay down the law. The real test to apply in an appeal under Article 136 or to an application under Articles 32 and 226 is this, notwithstanding the unspeaking decision, are there materials before the court to enable it to decide the appeal or application? If yes, the court has the right and the duty to decide the appeal or application. If no, the matter must be remanded for a proper record to be placed before the Court."

The State Government should have, therefore, placed materials, record, before this Court to show that before passing the impugned order the State Government

did take into consideration the explanation furnished by the petitioner and applied its mind to the matter. But as the observations in Laxminarayan Vs. State of Madhya Pradesh, Bhopal and Others, were likely to be construed to mean that the State Government was absolved of its duty to place necessary record before this Court, we directed the State Government to place the proper record before the court to satisfy ourselves as to whether the State Government did take into consideration the explanation furnished by the petitioner. The record was accordingly placed before us. From a perusal of the note-file, it is clear that the explanation furnished by the petitioner was sent by the Government to the Director of Local Authorities for his comment. On receipt of the comments, the matter was proceeded at the Secretariat by the Under Secretary and the Deputy Secretary concerned and thereafter the order of removal was passed by the State Government. It is thus, clear that the explanation of the petitioner was taken into account and considered by the State Government before the impugned order was passed. In these circumstances, the impugned order cannot be quashed on the ground that it is not a speaking order and that there was no application of mind before passing that order.

It was then contended that as some of the allegations mentioned in the charge-sheet were admitted in the return to be factually incorrect, the impugned order deserved to be quashed as it was not possible to infer on what charges the State Government had passed the impugned order. Now, before we appreciate the aforesaid contention and hold that a particular charge was baseless, it is necessary to state material facts emerging from the petition and the return in this behalf with regard to each charge. The first charge against the petitioner was that six cases of embezzlement as mentioned in the charge-sheet, were pointed out in the special audit report but no action according to law was taken by the petitioner in that behalf. In the petition, it was averred that action was taken against one Madanlal in one of the cases- This fact was admitted in the return, but it was contended that though all the cases of embezzlement were put up before the Council presided over by the petitioner, the petitioner, whose duty according to Section 51 of the Act was to watch over the financial and executive administration of the Council, abusing his position as a President, protected the defaulters by not initiating legal proceedings in all the cases. That the petitioner was responsible for financial and executive administration of the council was not disputed before us. Therefore, the fact that in one out of the six cases the petitioner had initiated action does not lead to the inference that the charge against the petitioner was, in view of the admission made in the return that action was taken in one out of the six cases, baseless. The second charge against the petitioner was that he had appointed two persons on the posts of Driver and Cleaner when the posts were not sanctioned by the competent authority before appointment and that both these persons were overage when they were appointed. In the petition, it was averred that appropriate authorities were approached for sanction and on 31st December 1977 the Deputy Director had sanctioned the post of Driver and the appointment of Cleaner was sanctioned by

the Council by its resolution dated 27th September 1976. In the return, it was submitted that the petitioner had appointed Imamkhan as Driver in the year 1971 and Laxminarayan as Cleaner in the year 1973 in contravention of the provisions of the M. P. Municipal Servants Appointment and Service Conditions Rules, 1968, inasmuch as (1) appointments were made before the posts were sanctioned by the competent authority, (2) vacancies were not notified through the Employment Exchange, (3) persons appointed were overage, and (4) the post of cleaner had not been created and sanctioned. Even according to the petitioner as averred in the petition, the post of Driver was sanctioned on 31st December 1977 and the post of Cleaner was not sanctioned. The resolution of the Council, referred to by the petitioner in this behalf, was passed on 27th September 1976 long after the appointment. The charge against the petitioner that he had committed irregularity in appointing persons on the posts of Driver and Cleaner cannot, therefore, be held to be baseless. The third charge against the petitioner was that he had acted in contravention of the proposal made by the District Selection Committee with regard to the integration of two persons who were declared as surplus. It is, significant to note, that the orders of the Government annexures "L" and "M", referred to in the petition, are dated 25th August 1977 and 18th January 1978 respectively. That is why in the return it was contended that the integration of two persons on the posts of peons was proposed by the District Selection Committee in May 1976, that the petitioner committed irregularity in disregarding it, and that the orders of the Government referred to by the petitioner were received subsequent to the action taken by the petitioner. This factual position was not controverted on behalf of the petitioner. In these circumstances, the contention of the petitioner that he had rightly insisted that the recommendation of the Selection Committee should not be acted upon as the compliance would have been against the orders of the Government is misleading. It could not be said that the petitioner was justified in ignoring the recommendations of the District Selection Committee in the light of the Government orders which were not in existence when the action was taken by the petitioner. The charge made against the petitioner in this behalf cannot be said to be baseless. The next charge against the petitioner was that he, as the President, had got the resolution dated 29th November 1975 passed by the Council ratifying the acts of the Standing Committee, which was illegally constituted. With regard to this charge the petitioner averred in the petition that the alleged irregularity in the election of the Standing Committee was of no consequence. In the return, it was contended that as the constitution of the Standing Committee was irregular, the Collector had stayed its operation u/s 323 of the Act and the confirmation of the resolutions of the Standing Committee by the Council was illegal. Nothing was urged on behalf of the petitioner to controvert the facts stated by the respondents in this behalf. In these circumstances, the charge in this behalf cannot be held to be baseless, As regards the fifth charge that the petitioner had not convened the meetings of the Council as required by Section 54 of the Act, the petitioner averred that he had convened the meetings and this fact was admitted in the return. It is also clear

from the note-file that this charge was not found to be proved by the Under Secretary to the Government. In these circumstances, the charge against the petitioner in this behalf must be held to have not been proved. The next charge against the petitioner was that though the Health Officer of the Council had taken twenty one samples of articles of food in August 1976 under the Prevention of Food Adulteration Act, the petitioner got a resolution passed by the Council in August 1977 to seek further instructions before taking any action according to law and had thus prevented action being taken against the persons from whom samples were obtained for analysis and who, on analysis, were found to have contravened the provisions of the Prevention of Food Adulteration Act. In the petition, the fact that the Council, at the instance of the petitioner, passed a resolution in August 1977 to seek direction from the Director was not disputed, but it was averred that on hearing from the Director that action could be taken against the erring persons, the petitioner placed the matter before the Council which passed a resolution on 30th November 1977 to file complaints against the erring persons. With regard to this charge, it was contended in the return as follows:--

"Dr. Alam was Health Officer of the Municipal Council, who took on 4th & 5th August, 1976, samples of food articles and got them tested by Public Health Laboratory. Nine cases of food articles were found adulterated on 8-9-1976. These cases were submitted in the Judicial Court during March 1978. It was too late. The cause for delay in filing the cases before proper court was not genuine. Delay was made knowingly in all the above nine cases by which the accused will be benefited."

The aforesaid facts stated in the return were not controverted on behalf of the petitioner: In these circumstances, it cannot be held that the charge against the petitioner was baseless. The next charge against the petitioner was that in respect of the fairs organized by the Council accounts were not properly maintained, that the expenditure on electricity was excessive as shown in the charge-sheet, that advance contrary to the rules made in that behalf was made by the petitioner to one Bidichand for purchase of one electric motor and that sanction of the Collector for making the advance was not obtained. In the petition it was averred with regard to this charge that the details given in the charge-sheet in respect of electricity expenses for the year 1975-76 were not correct and that instead of a sum of Rs. 4001/-, as shown in the charge-sheet, the actual expenditure was Rs. 9100/-. It was further averred that so far as the charge of excessive expenditure on electricity was concerned, the minimum or the maximum amount was not fixed by any authority. With regard to advance to Bidichand Jain, it was stated that the amount was paid in accordance with the resolution of the Council. In the return, it was admitted that the expenditure on electricity for the 1975-76 fair was Rs. 9100/- and not Rs. 4001/, as stated in the charge-sheet. But it is difficult to appreciate that this admission in the return benefits the petitioner in any manner. It was further contended in the return as follows:--

"It is also submitted that during the financial year 1976-77 three melas (Two Rani Navami Melas and One Kurtik Mela) were held and so the expenses towards electric charges were more in comparison to the past mela expenditure. Regarding this charge it is stated that the provisions of Budget Rules 1962 were not followed. As per Sub-rule (6) of Rule 3 of the Budget Rules the expenditure should be based on the actuals of the past three years, which was overlooked, The expenditure under Mela Head should be clear and amount for each sub-head should be allotted to have a check to extra and unwanted expenditure which was not done. Only a round figure was sanctioned for the whole Mela expenses. The Extra electric expenses were confirmed by the council after making the payments to the parties which was objectionable."

As regards advance to Bidichand, it was admitted that the advance was given to Bidichand in accordance with the resolution of the Council and that the balance of advance was refunded by Bidichand. It was, however, contended that the illegality in the case was to make an advance to a councillor when no such advance could be made according to paragraph 112 of the Account Rules, It was not urged on behalf of the petitioner that the aforesaid illegality pointed out in the return was founded on incorrect facts. In these circumstances, it cannot be said that the charge against the petitioner in this behalf was baseless.

The last charge against the petitioner was that he had issued no-objection certificates to the persons named in the charge-sheet for construction work without directing any inquiry by the Overseer and the Chief Executive Officer and without obtaining information from the Nazul Officer in that behalf. It was stated in the charge-sheet that the petitioner was not, in the circumstances, competent to accord sanction. The petitioner averred in the petition that he was empowered u/s 306 of the Act to take action on the applications to permit construction or repair work. It was further averred that the petitioner sought help from [he Overseer and, after satisfaction, accorded sanction. It was further averred that it was not necessary to verify title or to consult Nazul Authorities. In the return, it was admitted that the powers for granting permission u/s 187 of the Act were delegated to the President u/s 306 of the Act. It was, however, contended that from the record it was clear that before passing orders u/s 187 of the Act, the concerned persons were not asked to produce no-objection certificates from Nazul Department, which was a mandatory provision under Revenue Rook Circulars IV-I. The aforesaid contention was not controverted on behalf of the petitioner and, in these circumstances, it cannot be said that the charge against the petitioner of having committed an irregularity in according sanction for construction work was baseless.

It is thus clear that out of eight charges levelled against the petitioner, only one charge relating to failure to convene meetings of the Council must be held to have been not proved. That was also the opinion of the Under Secretary as is clear from the note-file. As regards other charges, it cannot be said, in the light of the material on record, that they were baseless and non-existent. Now, from

the note-file produced before us, it is clear that the charge relating to failure to convene meetings was not held to be proxed by the Under Secretary who processed the Matter. However, as the impugned order does not disclose the reasons which led the Government to form the requisite opinion as required by Section 41 (1) of the Act, even if it be assumed that the opinion of the State Government that the continuance of the petitioner as a councillor was not desirable in the interest of the public and of the Council was based on all the eighlil charges, one out of which is found to be non-existent, the rest of the charges cannot be held to be non-existent or irrelevant for forming an opinion as required by Section 41 of the Act. It was also not the contention urged before us on behalf of the petitioner that no reasonable person could, on the basis of these charges, pass the impugned order of removal against the petitioner. In this connection, reference may be made to the following observations of the Supreme Court reported in Sawarn Singh and Another Vs. State of Punjab and Others, :--

"There is authority for the proposition that, where the order of a domestic tribunal makes reference to several grounds, some relevant and existent, and others irrelevant and non-existent the order will be sustained if the Court is satisfied that the authority would have passed the order on the basis of the relevant and existing grounds, and the exclusion of irrelevant or non-existing grounds could not have affected the ultimate decision, (see The State of Maharashtra and Another Vs. B.K. Takkamore and Others, , State of Orissa Vs. Bidyabhushan Mohapatra, ."

In these circumstances, the contention advanced on behalf of the petitioner that the impugned order deserved to be quashed as one of the charges levelled against the petitioner was baseless, cannot be upheld.

It was further urged that the petitioner was not given a reasonable opportunity to furnish an explanation as required by Section 41 (3) of the Act and was also not given a personal hearing. Now, in this connection, it is necessary to note that no grievance was made by the petitioner when he received the show cause notice that the allegations made against him were vague. No request was made to the State Government on receipt of the show cause notice to furnish the petitioner any particulars or any material so as to enable him to give an effective answer to the charges levelled against him. Learned counsel for the petitioner was unable to point out any vagueness in the show cause notice which deprived the petitioner of an effective opportunity to furnish an explanation. We have reproduced the show-cause notice in detail to emphasise that it did not suffer from the infirmity of any vagueness as alleged by the petitioner. In fact, the petitioner submitted a very detailed reply running into ten typed pages and submitted twenty-eight documents on which he relied. It was not alleged by the petitioner that he had sought inspection of or copies of relevant record to enable him to submit his explanation and that his request in that behalf was refused prejudicing his defence. In these circumstances, the contention that the petitioner was not given reasonable opportunity to furnish an explanation, as

contemplated by Section 41 (3) of the Act, cannot be upheld.

Now, so far as the question of not granting personal hearing to the petitioner is concerned, the provisions of the Act do not make it obligatory before passing the order of removal. Failure to grant oral hearing would not vitiate an order passed by an authority unless oral hearing is expressly prescribed or unless it is shown that the person against whom the order is passed is unable to present his case adequately in writing in the circumstances of the case. Learned counsel for the petitioner was unable to point out as to how the petitioner was unable to present his case in writing. In point of fact, the petitioner, who is an advocate, filed a detailed reply to the charge-sheet and also filed copies of documents on which he relied for his defence. The charges against the petitioner were based on the record and, in the circumstances of the case, the petitioner was unable to show as to how he was prejudiced by not granting his request for oral hearing. In this connection, the following observations made in *Suresh Seth Vs. The State and Another*, are pertinent:--

"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: *Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI)*, . It was, therefore, open to the Government in the exercise of its discretion to refuse the request of the Corporation for an oral hearing."

We respectfully agree with the aforesaid observation. In these circumstances, the impugned order cannot be set aside on the ground that no oral hearing was granted to the petitioner.

It was then feebly argued on behalf of the petitioner that the impugned order was mala fide and was the outcome of political rivalry between him and Shri Joshi, the Minister for Panchayats. No particulars regarding the allegation of mala fides are set out in the petition and all that was alleged in the petition was that "the charge-sheet was the outcome of political rivalry of a long time in the past between the Minister and the petitioner." The Minister concerned has filed an affidavit denying the allegation made by the petitioner. In this connection, the following observations of the Supreme Court in *Tara Chand Khatri Vs. Municipal Corporation of Delhi and Others*, are pertinent:--

"It has been held time and again by this court that the High Court would be justified in refusing to carry on investigation into the allegations of mala fides if necessary particulars of the charge making out a prima facie case are not given in the writ petition. The contention that the impugned order deserves to be set aside on the ground that it was mala fide, cannot, in the circumstances, be

upheld.

For all these reasons, this petition fails and is accordingly dismissed. In the circumstances of the case, parties shall bear their own costs. The outstanding amount of security deposit shall be refunded to the petitioner.

R.K. Vjjayvargiya, J.

I agree.

Oza, J.

20-21. I had the advantage of going through the learned opinion expressed by my brother Sohani J.

22 The question that arises in the petition is as to whether the State Government while exercising powers u/s 41 of the Madhya Pradesh Municipalities Art, 1961 (hereinafter referred to as "the Act") could remove a municipal councillor without giving any reasons. The provision with which we are concerned is Section 41 (I) (a) which reads:

"41. (1) The State Government may, at any time, remove a Councillor-

(a) if his continuance as a councillor, is not, in the opinion of the State Government desirable in the interest of the public or of the council....." This provision clearly indicates that if in the opinion of the State Government continuance as a councillor is not desirable in the interest of the public or the council, then alone the State Government could it move a councillor, and Sub-section (4) of this section entails the consequence that a person removed under Sub-section (1) is disqualified for further election or appointment, for a period not exceeding four years as may be specified by the Government. In the opinion expressed by my learned brother it has been observed that giving reasons is not obligatory as the provision itself does not require ft, and placing reliance on Som Datt Datta Vs. Union of India (UOI) and Others, , it has been observed that as this is a decision of a Bench of five Judges in view of what has been laid down in Mattulal Vs. Radhe Lal, , my learned brother has chosen to follow this decision in preference to a series of decisions of their Lordships of the Supreme Court taking a contrary view. My learned brother has also accepted the proposition of law enunciated in the Constitutional Law of India by Seervai at page 959 (2nd Edn).

It is no doubt true that in Som Datt Datta Vs. Union of India (UOI) and Others, their Lordships of the Supreme Court held that an order passed by the Chief of Army Staff confirming the proceedings of Court Martial u/s 164 of the Army Act and the Central Government's order u/s 165 of the Army Act dismissing the petitioner's appeal could not be set aside merely because they were not speaking orders. It must be noticed that even before this decision in Som Datt's case, in Bharat Raja Vs. The Union of India (UOI) and Others, it was observed that unspeaking orders passed in appeal and revision must be set aside but in Som Datt Datta Vs. Union of India (UOI) and Others, this case was not referred

to. In Som Dart's case their Lordships examined the scheme of the Army Act at length and after examining the provisions of Sections 164 and 165 thereof their Lordships observed:

"In the present case it is manifest that there is no express obligation imposed by Section 164 or by Section 165 of the Army Act on the confirming authority or upon the Central Government to give reasons in support of its decision to confirm the proceedings of the Court Martial. Mr. Dutta has been unable to point out any other section of the Act or any of the rules made therein from which necessary implication can be drawn that such a duty is cast upon the Central Government or upon the confirming authority. Apart from any requirement imposed by the statute or statutory rule expressly or by necessary implication we are unable to accept the contention of Mr. Dutta that there is any general principle or any rule of natural justice that a statutory tribunal should always and in every case give reasons in support of its decision." It is therefore dear that in this decision the question before their Lordships of the Supreme Court was as to whether the authorities exercising powers u/s 164 or 165 of the Army Act were bound to give reasons and in that context their Lordships observed that there was no express obligation imposed by Section 164 or 165 of the Army Act to give reasons. It was further felt by their Lordships that there was no other provision which by accessary implication indicated that there was a duty cast on the authorities exercising powers under Sections 164 and 165 to give reasons. Thus, their Lordships felt that so long as the law did not require the authorities under the two provisions of the Army Act to give reasons either by express provision or by necessary implication, it was not necessary. And lastly their Lordships observed -

"..... we are unable to accept the contention of Mr. Dutta that there is any general principle or any rule of natural justice that a statutory tribunal should always and in every case give reasons in support of its decision." It is on these observations that my learned brother has placed reliance.

Bharat Raja Vs. The Union of India (UOI) and Others, is another decision of the Supreme Court and is also a decision of a Bench of five Judges in which it was Observed:--

"The decisions of tribunals in India are Subject to the supervisory powers of the High Courts under Article 227 of the Constitution and of appellate powers of this Court under Article 136. It goes without saying that both the High Court and this Court are placed under a great disadvantage if no reasons are given and the revision is dismissed curtly by the use of the single word "rejected", or "dismissed". In such a case, this Court can probably Only exercise its appellate jurisdiction satisfactorily by examining the entire records of the case and after giving a hearing come to its conclusion on the merits of the appeal. This will certainly be a very unsatisfactory method of dealing with the appeal. Ordinarily, in a case like this, if the State Government gives sufficient reasons for accepting the application of one party and rejecting that of the others, as it must and the Central Government adopts the reasoning of the State Government, this Court

may proceed to examine whether the reasons given are sufficient for the purpose of upholding the decision. But, when the reasons given in the order of the State Government are scrappy or nebulous and the Central Government makes no attempt to clarify the same, this Court, in appeal may have to examine the case de novo without anybody being the wiser for the review by the Central Government, If the State Government gives a number of reasons some of which are good and some are not, and the Central Government merely endorses the order of the State Government without specifying those reasons which according to it are sufficient to uphold the order of the State Government, this Court, in appeal may find it difficult to ascertain which are the grounds which weighed with the Central Government in upholding the order of the State Government. In such circumstances what is known as a "speaking order" is called for. But unfortunately, this decision was not considered when their Lordships were considering the case in *Som Datt Datta Vs. Union of India (UOI) and Others*, . It appears that what weighed with their Lordships in *Som Datt Datta Vs. Union of India (UOI) and Others*, was the provisions contained in the Army Act and their Lordships, after examining the provisions contained in Sections 164 and 165 of the Army Act felt that neither there was an obligation to state reasons specifically, nor by necessary implication it could be inferred, and the orders under Sections 164 and 165 which were challenged before their Lordships in that case were cases where the Court martial's verdict was confirmed. It appears, therefore, that the decision in *Som Datt Datta Vs. Union of India (UOI) and Others*, was very much concerned with the provisions in the Army Act and in view of this, even if this Court chooses to follow the decision of a larger Bench, there is no reason why it should not follow *Bharat Raja Vs. The Union of India (UOI) and Others*, .

It is not now in dispute that where an authority is conferred with powers to determine the rights of a party under a State (statute?) there is a duty cast on the authority to act judicially as was observed in *Shri Bhagwan and Another Vs. Ram Chand and Another*, :

"An obligation to act judicially may, in some cases, be inferred from the Scheme of the relevant statute and its material provisions. In such a case it is easy to hold that the authority or body must act in accordance with the principles of natural justice before exercising its jurisdiction and its powers but it is not necessary that the obligation to follow the principles of natural justice must be expressly imposed on such an authority or body. If it appears that the authority or body has been given power to determine questions affecting the rights of citizens, the very nature of the power would inevitably impose the limitation that the power should be exercised in conformity with the principles of natural justice. Whether or not such an authority or body is a tribunal, would depend upon the nature of the power conferred on the authority or body, the nature of the rights of citizens, the decision of which falls within the jurisdiction of the said authority or body, and other of relevant circumstances. This question has been considered by this Court on several occasions. In the *Associated Cement Companies Ltd.*,

Bhupendra Cement Works, Surajpur v. P.N. Sharma, Civil Appeal No. 44 of 1964, dated 9-12-1964, both aspects of this matter have been elaborately examined and it has been held adopting the view expressed by the House of Lords in Ridge v. Baldwin, 1964 AC 40, that the extent of the area where the principles of natural justice have to be followed and judicial approach has to be adopted, must depend primarily on the nature of the jurisdiction and the power conferred on any authority or body by statutory provisions to deal with the questions affecting the rights of citizens."

26 Seervai in his Constitutional Law of India, Vol. II (2nd Edn.) has considered a series of decisions after the decision in Som Datt Datta Vs. Union of India (UOI) and Others, , wherein their Lordships of the Supreme Court have consistently held that the Tribunals, when they are called upon to decide the rights of parties, are expected to give reasons. And after discussing a series of cases, the Learned Author has observed in paragraph 16.277 (page 955),

"The cases discussed in Paras 16.263 to 16.276 above show that Supreme Court decisions on the obligations to give reasons are in an unsatisfactory state. The unanimous judgment of five judges in Som Datt's case has not been referred to in subsequent judgments delivered by benches of two judges, on whom that judgment was binding and which those benches were not competent to overrule. Further, none of the judgments have dealt with considerations which proved decisive in Som Datt's case against the proposition that tribunals were under an obligation to give reasons".

In view of the facts which were before their Lordships in Som Datt's case, in my opinion, the observations made by the learned author do not appear to be justified.

In The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another, , their Lordships of the Supreme Court observed:

"It is now settled law that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons. That has been laid down by a long line of decisions of this Court ending with N. M. Desai v. Testeels Ltd. C. A. No. 245 of 1970 decided on 17-12-1975? (SC)."

Their Lordships considered the scope of the jurisdiction of tribunals, when they are conferred with powers to deal with the rights of citizens, and further observed:--

"..... it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial functions will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule

requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law."

It is no doubt true that this is a judgment of a Bench of three Judges of the Supreme Court, but it is difficult to believe that their Lordships, when they made the observations quoted above, were not aware of the earlier decision. What appears from all the judgments of the Supreme Court, after Som Datt's case, where it has been consistently held that the tribunals are expected to give reasons and it has been more or less held as the settled law, is that Som Datt's case was not considered as it arose out of peculiar circumstances of that case and the interpretation of the provisions contained in Sections 184 and 165 of the Army Act, and that authority was not accepted as laying down a general proposition in the Supreme Court itself. There are some cases where on the particular facts and the law in question a contrary view is expressed.

In Suresh Seth Vs. The State and Another, a Division Bench of this Court while considering the supersession of the Corporation u/s 422 of the M. P. Municipal Corporation Act, considered the decision in Durayappah v. Fernando (1967) 2 AC 537. In that decision their Lordships of the Privy Council held that giving reasons was essential when action was taken u/s 277 of the Municipal Councils Ordinance as amended by Act No. 12 of 1959 although there was nothing in Section 277 which required the Government to give reasons. Following this decision the Division Bench of this Court accepted it as regards the question of giving reasons was concerned. 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, or Natural Justice (Alien Law and Order 3rd Edition p. 242)" This case reaffirmed 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 the 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. 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. 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 worked 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 the ... is satisfied", a duty to act judicially is excluded, it was observed that these various formulae 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 on this point, there is another point of importance decided in that case, which we will take up later."

It appears that after this decision of the Privy Council, the consistent view has been that tribunals are expected to give reasons. In *Travancore Rayon Ltd. Vs. Union of India (UOI)*, , it was observed:

"The orders made by the Central Government are subject to appeal to this Court under Article 136 of the Constitution. It would be impossible for this Court, exercising jurisdiction under Article 136, to decide the dispute without a speaking

order of the authority, setting out the nature of the dispute, the arguments in support thereof raised by the aggrieved party and reasonably disclosing that the matter received due consideration by the authority competent to decide the dispute. Exercise of the right to appeal to this Court would be futile, if the authority chooses not to disclose the reasons in support of the decision reached by it. A party who approaches the Government in exercise of a statutory right, for adjudication of a dispute is entitled to know at least the official designation of the person who has considered the matter, what was considered by him, and the reasons for recording a decision against him. To enable the High Court or this Court to exercise its constitutional powers, not only the decision, but an adequate disclosure of materials justifying an inference that there has been a judicial consideration of the dispute by an authority competent in that behalf in the light of the claim made by the aggrieved party, is necessary. If the Officer acting on behalf of the Government chooses to give no reasons, the right of appeal will be devoid of any substance." In *Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others*, it was observed:

"Opportunity to a party interested in the dispute to present his case on question of law as well as fact, ascertainment of facts from materials before the Tribunal after disclosing the materials to the party against whom it is intended to use them, and adjudication, by a reasoned judgment upon a finding of the facts in controversy and application of the law to the facts found, are attributes of even a quasi-judicial determination. It must appear not merely that the authority entrusted with quasi-judicial authority has reached a conclusion on the problem before him, it must appear that he has reached a conclusion which is according to law and just, and for ensuring that end he must record the ultimate mental process leading from the dispute to its solution. Satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appeal to the authority. Recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim. If the order is subject to appeal, the necessity to record reasons is greater, for without recorded reasons the appellate authority has no material on which it may determine whether the facts were properly ascertained, the relevant law was correctly applied and the decision was just." In *The State of Punjab and Others Vs. Bakhtawar Singh and Others*, , the order was quashed merely because it was not a speaking order. In *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, . it was observed :

"The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds

later brought out. We may here draw attention to the observations of Bose, J. in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, :

Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

These observations clearly indicate that an order has to be judged by the reasons mentioned in the order itself and it would not be justified to find a justification for the order either in the files or records of a subsequent affidavit filed at the time of the hearing.

In Nand Kishore Prasad Vs. State of Bihar and Others, , their Lordships considered the scope of the High Court calling for the record and seeing the material and in this contest their Lord ships observed:

"The desirability of writing a self-contained speaking speaking order in disciplinary proceeding culminating in an order of removal of the delinquent from service, cannot be over emphasised. It is true that the impugned orders do not full) measure up to this devoutly desired standard. Nevertheless, they do contain a held and general allusion to the primary facts, and a cryptic inference therefrom.

There is no specific reference to or discussion of the evidence. The High Court, therefore, examined the record of the disciplinary tribunal, not with a view to make out or reconstruct a new case, but only to see whether there was some evidence of the primary facts relied upon by the domestic tribunal in support of its conclusion. We do not see any impropriety in the course adopted by the High Court." It is no doubt true that this decision ob-serves that there was nothing improper when the High Court examined the record. But it also clearly indicates the purpose for which the record could be perused, i. e. to find out whether there was some evidence of the primary facts relied on by the domestic tribunal. In the present case, the order of the State Government does not disclose on what material they placed reliance and seeing the record to find out a justification for the order passed by the State Government would clearly mean "to make out or reconstruct a new case" which it appears it is not expected of this Court although relying on the observation of Seervai my learned brother has chosen to follow that course.

After the detailed examination of the fads as has been discussed at length by my learned brother in his opinion, it appears that some charges were apparently not proved against the petitioner whereas others were proved. The order of the Government does not disclose any reasons and it is not possible even from the record, which was sent for, to understand what weighed with the State

Government. It also could not be doubted that on examination of the record this Court cannot substitute its own judgment.

Apart from it, there is yet another reason that when the Government passes an order u/s 41 of UK; Act it is expected that reasons must be stated. Section 41 (1) (a) of the Act which has been quoted above clearly indicates that the State Government can take action under this provision only if in the opinion of the State Government continuance of the person as councillor is not desirable in the interest of public or of the council.

When the State Government has to form an opinion as to whether the continuance is not desirable it has further to decide whether the continuance is not desirable in the interest of public or of the council. And for forming this opinion the State Government must base its conclusions on material which would indicate whether continuance is not desirable in the interest of public or of the council. Such an opinion, in my view, itself impliedly required the State Government to give reasons so that it would be apparent from the order as to why in the opinion of the State Government the continuance is not thought desirable either in the interest of public or of the council. Without any reasons, the order will not show as to why the continuance is not desirable, and is not desirable in the interest of public or of the council. In this view of the matter, in my opinion, even if the requirement as indicated by their Lordships of the Supreme Court in *Som Datt's case* (ATR 1969 SC 414) is followed still, by implication the statute required the reasons to be stated.

Consequently, as the order passed by the State Government does not give reasons, the order cannot be maintained, and in my opinion, therefore, the petition deserves to be allowed.

PER FULL BENCH

In accordance with the opinion expressed by the majority this petition fails and is dismissed. In the circumstances of the case parties shall bear their own costs. The security amount be refunded to the petitioner after verification.