
(1977) 12 MAD CK 0020
In the Madras High Court

S. Subramanian

APPELLANT

Vs

V. Vellaikaanu and Others

RESPONDENT

Date of Decision : 23-12-1977

Acts Referred:

Tamil Nadu Panchayats Act, 1958 — Section 149A(1)(a)

Citation : (1978) 1 MLJ 550

Hon'ble Judges : Varadarajan, J

Bench : Division Bench

Judgement

Varadarajan, J.—The writ petition has been filed for the issue of a Writ of certiorari or any other appropriate writ or order quashing the first respondent's order dated 8th April, 1977 made in NKV. 19/209311/76 removing the petitioner from Presidentship of Aralikottai Panchayat, as confirmed by the second respondent's order in G.O. Rt, No. 1371, Rural Development and Local Administration Department, dated 31st May, 1977. The writ appeal has been filed against the order dated 4th October, 1977 of Ramanujan, J., dismissing W.M.P. No. 4985 of 1977, which had been filed by the appellant, a third party, for being impleaded as a party to the writ petition on the ground that he had been asked to take charge from the writ petitioner (hereinafter referred to as the petitioner) as the President of the Aralikottai Panchayat as a stop-gap arrangement. The appellant claimed to have taken charge as the President of the Panchayat on 9th June, 1977. Ramanujam, J., dismissed the Writ Miscellaneous Petition on the ground that the appellant had no interest in the subject-matter of the writ petition upholding the objections of the petitioner that the appellant is not a necessary party and that his presence is not required to enable the Court to effectively and completely adjudicate upon and settle all the questions involved in the writ petition. The petitioner contended in his counter-affidavit filed in the Writ Miscellaneous Petition that he had been legally continuing to discharge his duties as President of the Panchayat till the date of his counter-affidavit, namely, 3rd October, 1977.

2. On a complaint of one K.R. Sevugaperumal, a member of the Aralikottai Panchayat presented to the first respondent, Collector of Romanathapuram, on 21st September, 1976 alleging that the petitioner Vellaikannu had committed Certain irregularities in the administration of the Panchayat, the Divisional Development Officer, Devakottai directed the petitioner, by an order dated 17th November, 1976, to produce all the registers of the Panchayat before him on 23rd November, 1976. The first respondent framed 10 charges against the petitioner and called upon him by a notice dated 8th January, 1971, to show cause within 15 days of receipt of the notice, as to why he should not be removed from the Presidentship of the Panchayat u/s 149-A(1)(a) of the Tamil Nadu Panchayats Act (XXXV of 1958) (hereinafter referred to as the Act) in view of those charges. The petitioner was given further time up to 7th February, 1977 to submit his explanation and he was permitted to inspect the records of the Panchayat in the presence of the Divisional Development Officer, Devakottai. The explanation of the petitioner was submitted with a request that it may be accepted and the charges against him dropped. The first respondent caused the charges to be placed before the Panchayat at a meeting held on 9th March, 1977 presided over by the Tahsildar of Tirupattur and attended by seven members of the Panchayat including the petitioner. In that meeting, five members voted against the first respondent's proposed action to remove the petitioner from the Presidentship of the Panchayat, one member Mookkan stated that he does not know anything about charges 2, 8 and 9 and the other members K.R. Sevugaperumal, who presented the petition before the first respondent on 22nd September, 1976 as stated earlier, alone voted in favour of the proposed action. However, the first respondent stated in his impugned order dated 8th April, 1977 that the petitioner's explanation was not satisfactory and unacceptable, that all the charges except Charge No. 8 were proved, that they all related to serious irregularities and that in the interest of the proper administration of the affairs of the Panchayat, he was not accepting the views of the Panchayat as expressed in the meeting held on 9th March, 1977 and had decided to remove the petitioner from the Presidentship of the Panchayat u/s 149-A(11) of the Act. He, therefore, ordered the removal of the petitioner from the office with effect from 1st May, 1977. The petitioner filed 2 revision petition before the second respondent, the Government of Tamil Nadu, against the first respondent's order. The second respondent rejected that petition by an order dated 31st May, 1977 saying that they examined the revision petition with reference to the connected records and that there is no case for interference with the order of the first respondent. It is further stated in that order that u/s 149-A(11) of the Act the Collector, as Inspector, may, after considering the views of the Panchayat, in his discretion, either remove the President from office by notification with effect from a date to be specified therein or drop further action and that the first respondent has reported that the views of the Panchayat and the explanation of the petitioner were duly considered by him and found to be unsatisfactory.

3. The petitioner's case is that all the charges were baseless and he had stated

in the explanation to the charges that he had the necessary records and vouchers in his possession and in the concerned office of the Divisional Development Officer and Revenue Divisional Officer. The further contention of the petitioner is that the first respondent had no jurisdiction to overrule the views of the Panchayat and remove him from the office and that he had overruled the view of the Panchayat without assigning any reason for doing so and had not exercised his discretion judiciously. The petitioner stated that the first respondent had not called upon him to produce the records to prove his contention in the explanation submitted by him and acted arbitrarily and with partiality without giving him a proper hearing, at the instigation of the member K.R. Sevugaperumal, who belongs to a different political party and whose brother-in-law was the person who opposed the petitioner in the election for the Presidentship of the Panchayat. So far as the second respondent is concerned, the case of the petitioner is that the second respondent has not properly appreciated all the facts and circumstances and has passed the order dated 31st May, 1977 in a perfunctory and summary manner.

4. In the counter affidavit the second respondent admits that the majority of the members of the Panchayat presided over by the Tahsildar resolved to permit the petitioner to continue as President of the Panchayat and contends that as the views of the Panchayat duly considered by the first respondent were found to be not satisfactory, the first respondent removed the petitioner from Presidentship in his order dated 8th April, 1977 in exercise of the powers vested in him u/s 149-A(11) of the Act. The second respondent further denies that the charges framed against the petitioner were baseless and contends that all the accounts and books were properly scrutinised and verified and they established the guilt of the petitioner. According to the second respondent, the first respondent has properly exercised his discretion vested in him and in any event his order is not a quasi judicial order and it can be issued by a mere notification. The second respondent further contends that the petitioner was given proper hearing and the charges were proved beyond doubt and that the second respondent has passed the order dated 31st May, 1977 only after fully examining the entire records.

5. In the additional grounds filed in the writ petition it is stated that Section 149-A(11) conferring an unguided power on the Collector to pick and choose the President if he does not like, is ultra vires Article 14 of the Constitution of India and that is also liable to be struck down on the ground that it does not lay down in clear terms the guidelines to be followed by the Collector in exercising his judicial discretion when he differs from the views of the majority of the members of the Panchayat against the removal of the President, and is also violative of Article 19 of the Constitution in that it places unreasonable restrictions on the rights guaranteed by that Article.

6. The additional grounds, which have not been urged before any of the respondents and have been put forward only in the writ petition at a later stage, could be considered by the Court in view of the decision in Sri-La-Sri Subramania

7. The contention of the second respondent that all the charges framed against the petitioner have been proved is not in consonance with the first respondent's impugned order dated 8th April, 1977, where it is stated that the eighth charge relating to the petitioner incurring an expenditure of Rs. 4,322 under the shramdan or man power scheme and misusing his powers, even though there was no such separate road as Aralikottai-Ammachi Road, is not proved.

8. "Inspector", according to Section 2(15) of the Act means any officer who is appointed by the Government to exercise or perform any of the powers or duties of the Inspector under the Act. There is no dispute that the Collector of Ramanathapuram District, the first respondent, is the Inspector in the present case. Section 149-A(1) lays down that "the Inspector of his own motion or on a representation in writing signed by not less than two-thirds of the sanctioned strength of the Panchayat containing a statement of charges against the President and presented in person to the Inspector by any two of the members of the Panchayat, if satisfied that the President wilfully omits or refuses to carry out or disobeys any provision of the Act, or any rule, by law, regulation, or lawful order made or issued under the Act or abuses any power vested in him, shall, by notice in writing, require the President to offer, within a specified date, his explanation with respect to his acts of omission or commission mentioned in the notice". Under Sub-section(2), if his explanation is received within the specified date and the Inspector considers that the explanation is satisfactory, he may drop further action with respect to the notice, and if no explanation is received within the specified date or if the explanation received is in his opinion not satisfactory, he shall forward to the Tahsildar of the taluk a copy of the notice referred to in Sub-section (1) and the explanation of the President, if received within the specified date with a proposal for the removal of the President, for ascertaining the views of the Panchayat. Then the Tahsildar has, under Sub-section (3), to convene a meeting for the consideration of the notice and the explanation, if any, and the proposal for the removal of the President, at the office of the Panchayat at a time appointed by him. After delivering a copy of the notice to the President and to all the members of the Panchayat at least seven days before the date of the meeting as required by Sub-section (4), the Tahsildar shall preside at the meeting convened under Sub-section (5). Under Sub-section (8), as soon as the meeting convened is commenced, the Tahsildar shall read to the Panchayat the notice and the explanation and he is not entitled to vote. The views of the Panchayat have to be duly recorded in the minutes of the meeting as per Sub-section (10) and a copy of the minutes has to be forthwith forwarded by the Tahsildar to the Inspector. Under Sub-section (11), the Inspector may, after considering the views of the Panchayat in this regard, in his discretion either remove the President from office by notification with effect from a date to be specified therein or drop further action. The Government has been given power, under Sub-section (12), to cancel any notification issued under Sub-section (11) and may, pending a decision on such cancellation, postpone the date

specified in such notification.

9. In the present case, the first respondent had issued the show cause notice dated 8th January, 1977 containing 10 charges and called upon the petitioner to explain why he should not be removed from the Presidentship of the Panchayat in view of those charges. The Revenue Divisional Officer had, by his proceedings dated 29th January, 1977, extended the time for the petitioner to peruse the records, from the office of the Divisional Development Officer and to submit his explanation for the memo. of charges till 7th February, 1977. The petitioner submitted his explanation to the first respondent denying all the charges and requesting that his explanation may be accepted and the charges dropped. In the meeting of the Panchayat held on 9th March, 1977, a majority of the members of the Panchayat who participated in that meeting expressed their view against the proposal of the first respondent to remove the petitioner from the office of President. The first respondent, however, declined to accept that view of the Panchayat. In his impugned order dated 8th April, 1977 he repeated all the 10 charges and stated what happened after the petitioner submitted his explanation and added that the view of the Panchayat and the belated explanation of the petitioner were examined, that the petitioner's explanation was neither satisfactory nor acceptable and all the charges except charge No. 8 were proved and they were all charges of serious irregularities and that in the interest of the proper administration of the Panchayat he had decided not to accept the view of the Panchayat but to remove the petitioner from the office of the President u/s 149-A(11) of the Act and accordingly he has removed him from the office with effect from 1st May, 1977. It is not clear from the impugned order of the first respondent that he had taken any material into consideration after he had framed the charges, apart from considering the explanation offered by the petitioner and the view of the Panchayat as expressed in the meeting held on 9th March, 1977, for holding that all the charges, except Charge No. 8, have been proved. No other material could have been available for the second respondent who claims to have fully examined the entire records before rejecting the petitioner's revision petition.

10. The learned Counsel for the petitioner submitted that the requirement of Section 149-A(1)(b) of the Act has not been satisfied as the show cause notice had been issued by the first respondent on the complaint received from only one member of the Panchayat, namely, K.R. Sevugaperumal, while Section 149-A(1)(b) lays down that the Inspector shall, on a representation in writing signed by not less than two-thirds of the sanctioned strength of the Panchayat containing a statement of charges against the President and presented in person to the Inspector by any two of the members of the Panchayat, if satisfied that the President wilfully omits or refuses to carry out or disobeys any provision of the Act or any rule, bye-law, regulation, or lawful order made or issued under the Act or abuses any power vested in him, by notice in writing require the President to offer within a specified date, his explanation. It is, therefore, clear that the requirement of Section 149-A(1)(b) is not satisfied. But the Inspector has the

power to call upon the President to explain even on his own motion. Therefore, the first respondent's act in calling upon the petitioner to show cause may be traced to the power available to him u/s 149-A(1)(a) of the Act. We are satisfied that there is no irregularity in this regard.

11. Mr. K.K. Venugopal, the learned Counsel for the appellant in the Writ Appeal relied upon the decision of a Bench of this Court in *N.P. Guruswamy Vs. The Collector and Inspector of Panchayat and Another*, and contended that what has been done by the first respondent in exercise of the powers conferred by Section 149-A(11) of the Act is an administrative act and that it is, therefore, not necessary for him to give any reasons in his order for his conclusion that all the charges except charge No. 8 are proved. In that case, the Panchayat, by a majority resolved to accept the Inspector's proposal to remove the President u/s 149-A of the Act and this Court held that the rights and privileges of the President flow from the statutory provisions and he could not claim any right which was not secured to him under the enactment and that the exercise of the discretion u/s 149-A could not be said to be judicial or quasi judicial and there was no justification for the President insisting that the Collector should give reasons for his accepting the views of the Panchayat. That was a case where the view of the Panchayat agreeing with the proposal of the Inspector to remove the President from his office was accepted by the Inspector unlike in the present case where the first respondent had chosen to differ from the majority of the Panchayat and come to the conclusion that the charges framed against the petitioner except Charge No. 8 were proved and that it was necessary in the interest of the proper administration of the Panchayat that the petitioner should be removed from his office u/s 149-A of the Act. We will consider the question presently whether, in such a case, it is necessary for the Inspector to give his reasons for coming to the conclusion that the charges have been proved.

12. Mr. Venugopal next relied upon the decision in *The Swadeshi Cotton Mills Co. Limited Vs. The State of U.P. and Others*, where the Court was concerned with Section 3 of the U.P. Industrial Disputes Act, which states:

If, in the opinion of the State Government, it is necessary or expedient so to do for securing the public safety or convenience or the maintenance of public order or supplies and services essential to the life of the community, or for maintaining employment, it may, by general or special order, make provision....

(c) for appointing industrial Courts;

(d) for referring any industrial dispute for conciliation or adjudication in the manner provided in the order

(g) for any incidental or supplementary matters which appear to the State Government necessary or expedient for the purposes of the order.

The learned Judges of the Supreme Court observed in that judgment thus:

The power to pass an order u/s 3 arises as soon as the necessary opinion

required thereunder is formed. This opinion is naturally formed before the order is made. If, therefore, such an opinion was formed and an order was passed thereafter, the subsequent order would be a valid exercise of the power conferred by the section. The fact that in the notification which is made thereafter to publish the order, the formation of the opinion is not recited will not take away the power to make the order which had already arisen and led to the making of the order. The validity of the order therefore does not depend upon the recital of the formation of the opinion in the order but upon the actual formation of the opinion and the making of the order in consequence. It would therefore follow that if by inadvertance or otherwise the recital of the formation of the opinion is not mentioned in the preamble to the order the defect can be remedied by showing by other evidence in proceedings where challenge is made to the validity of the order, that in fact the order was made after such opinion had been formed and was thus a valid exercise of the power conferred by the law. The only exception to this course would be where the statute requires that there should be a recital in the order itself before it can be validly made.

There is an observation to the same effect in the decision in *Bhagat Ram Patanga Vs. The State of Punjab*, which also was relied upon by Mr. Venugopal. In that case, an order removing a person from the membership of a committee had been passed by the State Government. A Full Bench of the Punjab and Haryana High Court in *The State of Punjab Vs. Bhagat Ram Patanga*, which came up for consideration before the Supreme Court, in their judgment held that the order of the State Government removing a municipal committee member was a quasi-judicial order and as such the State was bound to give its reasons for arriving at the decision. After a thorough examination of the note file provided by the State Government, the Full Bench held that the State had considered the explanation offered by the member and after applying its mind to the materials placed before it was justified in passing the order removing him from the membership of the committee and also disqualifying him for a period of three years. The learned Judges of the Supreme Court have observed:

In the particular circumstances of the case, we are in agreement with the High Court that the file produced by the Government does disclose that the State has considered the appellant's representations as also the other relevant materials before it when passing the order dated 11th September, 1962.

These two decisions do not help the respondents, for, as already stated, there is nothing in the impugned order of the first respondent to show that any material, apart from the memo, of charges issued to the petitioner and the explanation offered by him, was looked into by the first respondent before the first respondent decided not to accept the view of the Panchayat and held that all the charges except Charge No. 8 framed against the petitioner were proved. No record such as any note file had been produced before the Court in the present case to show that there were materials disproving the petitioner's innocence and substantiating the charges levelled against him except Charge No. 8 for the

Court to be satisfied that there were materials, though not set out in any of the impugned orders, from which it could be held that the guilt of the petitioner is proved.

13. The learned Counsel for the petitioner invited our attention to a number of decisions and contended that even if the impugned order of the first respondent is an administrative order, reasons must have been given by the first respondent to come to the conclusion that the guilt of the petitioner in respect of the nine charges has been proved. We will deal with those decisions one by one. In *D. Rajiah Vs. Inspector of Municipal Councils and Local Boards, Madras*, , the President of a Panchayat was removed from the office by the Inspector under the provisions of Section 47 of the Madras Village Panchayats Act (X of 1950) which provided that the Inspector may, by notification, and with effect from a date to be specified therein, remove any President or Vice-President who, in his opinion, wilfully omits or refuses to carry out or disobeys the provisions of the Act or any rules, bye-laws, regulations or lawful orders issued thereunder or abuses the powers vested in him. The President was given a show cause notice by the Inspector setting out seven items of misconduct. He sent his reply answering seriatim those charges. Subsequently, he was informed that the District Panchayat Officer would visit his office for the verification of the records in connection with the show cause notice already issued. The inspection took place. But the President was not informed of anything that had been noted against him. Subsequently he received an order from the Inspector saying that he had been removed from the office of President with effect from a particular date and a notification was published in the official gazette setting out that fact. The learned Judges of the Division Bench who heard the case held that the appellant before them has not had a reasonable opportunity of presenting his case and in fact there was no enquiry after the charges were framed, as in the present case, and it was a violation of Section 47(3) which stated that the notification shall contain a statement of the reasons for the action taken. They held that the following observation of Swift, J., in *Denby (William) and Sons, Limited v. Minister of Health* L.R. (1936) 1 K.B. 337, was applicable to the facts of the case before them:

His enquiry must be an enquiry which is fair to all parties interested. He must hear everything which any of them desire to say and should not hear anything without giving an opportunity to the other parties interested to answer that which is said; he should not receive anything from one behind the back of the other, and although he is not bound in any sense by the rules of evidence or procedure which apply to an ordinary Court of law, he must, before making his report, comply with the ordinary dictates of natural justice as to the obtaining and consideration of the matters which go to form the opinions or conclusions which he presses in his report.

14. The Supreme Court was concerned in *Radeshyam Khare and Another Vs. The State of Madhya Pradesh and Others*, . with Section 53-A of the C.P. and Berar

Municipalities Act, 1922, according to which, if a committee is not competent to perform the duties imposed on it or undertaken by it by or under the provisions of that Act or any other enactment and the State Government considers that a general improvement in the administration of the municipality is likely to be secured by the appointment of a servant of the Government as the Executive Officer of the Committee, the State Government, may by an order stating the reasons therefore published in the Gazette, appoint such servant as the Executive Officer of the Committee for such period not exceeding eighteen months. u/s 57 of that Act, if the Committee is not competent to perform or persistently makes default in the performance of the duties imposed on it or undertaken by it under that Act or any other enactment or exceeds or abuses its powers to a grave extent, the State Government, may by an order stating the reasons thereafter published in the Official Gazette declare the committee to be incompetent and supersede it for a period to be specified in the order. In that case the learned Chief Justice formulated the principle deducible from the various judicial decisions considered by the Supreme Court in *Province of Bombay Vs. Kusaldas S. Advani and Others*, , thus:

(i) that if a state empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a lis, and prima facie and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and

(ii) that if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not, two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially.

S.R. Das, C.J., has observed in that decision that to say that action to be taken u/s 53-A is an administrative action is not to say that the State Government has not to observe the ordinary rules of fair play. However, the learned Chief Justice preferred not to express any opinion on the question whether the act performed by the State Government was quasi-judicial or administrative in character. But S.K. Das, J., held that it was administrative in nature and not amenable to a writ of certiorari. Subba Rao, J., as he then was, who differed from the majority, has observed:

The committee is comprised of elected representatives of the respective constituencies, they are presumably competent men in whom the electorate has confidence. The Government has to arrive at the finding of their incompetency on the basis of objective facts to be ascertained and to give reasons for its finding. It is against all canons of natural justice that a Tribunal should arrive at a finding of far-reaching consequence without giving an opportunity to explain to the

persons who would be affected by such a finding. For the aforesaid reasons I have no doubt that the section imposes a duty on the Government to act judicially in ascertaining the objective and jurisdictional fact, namely, whether the committee is incompetent. It is a necessary condition of such a duty to give an opportunity to the committee to explain the grave charges levelled against it.

The Court in that case upheld the order of the Government superseding the committee.

15. This Court in *State of Madras v. Tirunelveli Municipal Council* (1967) 1 M.L.J. 47, had to deal with Section 41(1) of the Madras District Municipalities Act, according to which, if in the opinion of the State Government a council is not competent to perform or persistently makes default in performing the duties imposed on it by law or exceeds or abuses its powers, the State Government may, by notification, direct that the council be dissolved and reconstituted on such dates as the State Government may fix in that behalf or, they may, if they think necessary, supersede the council for a specified period not exceeding two years and the notification shall be placed before both Houses of the State Legislature. Anantanarayanan, C.J., with whom Ramakrishnan, J., agreed except for giving some more reasons, held that the exercise of the power conferred by Section 41 of the Madras District Municipalities Act is essentially an administrative power, in which the exercise of the power depends on the subjective satisfaction of Government and that the decision is subject to the quasi-judicial process made, obligatory by Section 41(1-A) and to principles of natural justice. The learned Chief Justice further observed that if the quasi-judicial character of the process has not been adhered to or any principle of natural justice has been violated, the Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India, will not hesitate to strike down the order, but the adequacy of the material, provided it is relevant, and the wisdom or otherwise of the actual exercise of that power do not concern the Court. The learned Judges have thus held that even in the exercise of administrative power, quasi-judicial character of the process has to be adhered to and principles of natural justice should not be violated and that if there is any such violation, the Court will exercise its powers under Article 226 and strike down the order.

16. The Supreme Court has observed in *Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others*, :

The order passed by the District Magistrate cancelling the licences was quasi-judicial; it could be made only on a consideration of the charges and the explanation given by the appellants. That necessarily implied that the District Magistrate has to give some reasons why he held the charges proved, and the explanation unacceptable.... 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 and 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 present case also, the petitioner had disputed that he was guilty of any of the 10 charges framed against him by the first respondent. The first respondent has not heard the petitioner and does not appear to have had any material before him for rejecting the explanation of the petitioner as unsatisfactory or unacceptable for coming to the conclusion that 9 out of the 10 charges are proved. The petitioner has not been informed of the grounds on which the first respondent has rejected his claim that he was not guilty of the charges. In these circumstances, it could not be stated that the decision of the first respondent that the petitioner was guilty of 9 out of the 10 charges is either supported by reasons or is just and that principles of natural justice have been complied with.

17. In Seervai's Commentary on the Constitutional Law of India, Second Edition, at page 881 it is stated thus:

Broadly speaking, the development of the law of certiorari particularly with reference to natural justice has passed through the following stages:

A. The first stage.-In this stage, Province of Bombay Vs. Kusaldas S. Advani and Others, with its approval of Nakkuda Ali's case" was the leading authority, and the Courts adopted the tests laid down by Kania, C.J., or by Das, J., or by both in Advani's case or distinguishing judicial from administrative action.

B. The second stage.-This stage began with Associated Cement Companies Ltd. Vs. P.N. Sharma and Another, , in which Gajendragadkar, C.J., said that "the test prescribed by Lord Reid in his judgment (in Ridge v. Baldwin (1964) A.C. 40 may afford considerable assistance in deciding whether a particular law requires a quasi-judicial approach. This stage came to an end with Binapani's case which marked the beginning of the third stage.

C. The third stage.-This stage is dominated by the Binapani case in which without any discussion of earlier authorities, and without any express reference to Ridge v. Baldwin (1964) A.C. 40, but obviously, with the majority judgments in that case in mind, Shah, J., laid down the wide general proposition about the duty to act judicially....

D. The fourth stage.--The fourth stage began with A.K. Kraipak and Others Vs. Union of India (UOI) and Others, . (Kraipak's case). This case reflects the great

changes which have taken place in England about the scope and ambit of certiorari, with special reference to natural justice, which we have considered in Section I.- decisions, which have gone far to blur the distinction between judicial and administrative action and in which the concept of the duty to act fairly began to play an important part. That stage is still with us.

18. The last decision relied upon by the learned Counsel for the petitioner is that of the Full Bench of the Kerala High Court in Mayer Simon Parur Vs. Advocate General of Kerala and Others, . In that case, the learned Chief Justice, who spoke for the majority, extracted the following observation of Lord Denning in *Brem v. Amalgamated Engineering Union* (1971) 1 All E.R. 1148.

It is now well settled that a statutory body, which is entrusted by statute with a discretion, must act fairly. It does not matter whether its functions are described as judicial or quasi-judicial on the one hand, or as administrative on the other hand or what you will. Still, it must act fairly. It must in a proper case, give a party a chance to be heard, and Edmund Davies, L.J. adopted those "powerful observations

and observed:

The decisions referred to above in this paragraph are the re-statement of the law in the light of the famous decision of the House of Lords in *Ridge v. Baldwin* (1963) 2 All E.R. 66. wherein the House of Lords disagreed with the view taken by the Court of Appeal relying on *Nakkuda Ali's* case 3. (1951) A.C. 66, that the committee was acting only in an administrative capacity. The House of Lords reversed the decision on the ground that the committee had not, as found by the Court, observed the rules of natural justice.

The development of the law in India has been on similar lines. In *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, , the Supreme Court had to consider whether the declaration by the State Government of Orissa that Dr. Binapani Dei, should be deemed to have retired on April, 1962 subject to extension of service granted from 16th April, 1962 till the afternoon of 15th July, 1963, was liable to be interfered with in proceedings under Article 226 of the Constitution. Notwithstanding the finding that the order passed by the State Government was administrative in character, it upheld the decision of the High Court getting aside the order of the State.

The reasons are stated thus:

It is true that some preliminary enquiry was made by Dr. S. Mitra. But the report of that enquiry office was never disclosed to the first respondent. Thereafter the first respondent was required to show cause why 16th April, 1907 should not be accepted as the date of birth and without recording any evidence the order was passed. We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is an administrative order which involves civil consequences, as already stated, it must

be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken. The High Court was, in our judgment, right in setting aside the order of the State.

19. In *Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd.*, , the same principle was again applied. The question was whether the petitioner under Article 226 of the Constitution had obtained import entitlement up to the value of the goods exported. The Textile Commissioner acted upon the report of the committee appointed by him and before the committee the respondents had no opportunity to present their case. He collected the evidence ex parte and did not disclose it to the respondents and without giving an opportunity to them to represent their case reduced the import entitlement. In dealing with the representations made by the respondents, the Government of India also declined either to make available the evidence on which the Textile Commissioner had acted or to give a hearing to the respondents; It was held:

But the authority vested in the Textile. Commissioner by the rules even though executive in character was from its nature an authority to deal with the matter in manner consonant with the basic concept of justice and fair play, if he made an order which was not consonant with the basic concept of justice and fair play his proceeding was open to scrutiny and rectification by the Courts.

20. In *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, , the principle of natural justice was applied. It should be applied, the Court said:

even in the administrative enquiries as well. The inclusion of Naquishbund in the Selection Board when he was himself one of the persons to be considered for selection, was held to vitiate the proceeding as violative of one of the basic principles of natural justice.

The Court observed:

Till very recently it was the opinion of the Courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is not questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries.

Even an order administrative in nature affecting property will have to be made in a manner consonant with the rules of natural justice was reiterated in *The D.F.O., South Kheri and Others Vs. Ram Sanahi Singh*, , though the right to the relief arose out of an alleged breach of contract. The action was that of a public authority invested with statutory powers. That the principle of natural justice applied to administrative orders was again restated in *The Keshav Mills Co. Ltd. and Another Vs. Union of India (UOI) and Others*, . The essential point ruled their

Lordships:

What has to be kept in mind in all cases is that the person concerned should have a reasonable opportunity of presenting his case and that the administrative authority concerned should act fairly, impartially and reasonably. Where administrative officers are concerned, the duty is not so much to act judicially as to act fairly.

The principles above stated do not appear really to be a new development of the law for it was so laid down as early as in 1863 in *Cooper v. Wandsworth Board of Works* (1863) 14 C.B.N.S.180. This decision was noticed and a passage therefrom had been quoted by Chief Justice M.S. Menon in paragraph 9 of the judgment in *Kochunni Nayar v. District Collector, Alleppy* (1957) K.L.T. 1041. This decision seems to have been under an eclipse, or, as a recent writer has put it, "seems almost to have perished for lack of support, but in recent years as we shall see, has been given the kiss of life." It is remarkable that the law had been laid down so early and if we may say so with great respect so lucidly. The facts were these. The Board of Works had power to demolish the plaintiff's house if the building had been erected without previous notice being given to the Board and the Board exercised the power and demolished the plaintiff's house. It was argued that while the words of the statute taken literally justified the Board's Act, its power was subject to the qualification that no man is to be deprived of his property without having an opportunity of being heard. The argument was accepted. In the words of Byles, J.

Although there are no positive words in a statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the Legislature.

Erle, C.J., rested his judgment not solely on the ground that the Board's act was judicial:

But the law has been applied to many exercises which in common understanding would not be at all more a judicial proceeding; that would be the act of the district board in ordering a house to be pulled down.

For a long time now Courts have been claiming the right to interfere with the exercise of an administrative discretion. The 1891 dictum of Lord Halsbury in *Sharp v. Wakefield* (1891) A.C. 172, was characteristic of this:

...when it is said that something is to be done within the discretion of the authorities...that something is to be done according to the rules of reason and justice, not according to private opinion...according to law and not humour. It is to be not arbitrary, vague fanciful, but legal and regular.

21. In the light of the decisions relied upon by the learned Counsel for the petitioner and referred to above, we are of the opinion that what is done by the Inspector u/s 149-A(11) of the Act to the prejudice of the President without accepting the view of the Panchayat expressed in favour of the President, is a

quasi-judicial act, for which reasons have necessarily to be given and that even if it is administrative in character, reasons must have been given by the Inspector for coming to the conclusion that the petitioner was guilty of 9 out of the 10 charges, as had been held by the first respondent, so that the petitioner may be aware for what reasons or on what grounds his explanations had been rejected and he had been found guilty of the 9 charges, and that since no reason could be found in the impugned orders, and no material could be placed before the Court, this Court is entitled to interfere by exercising the powers conferred under Article 226 of the Constitution and set aside the orders. In this view, we are of opinion that it is not necessary to place the additional grounds raised in the writ petition before a Bench of five Judges. We allow the writ petition and quash the impugned orders of the respondents with costs. Advocate's fee Rs. 300.

22. We agree with Ramanujam, J., the presence of the appellant as a party in the writ petition is not necessary to enable the Court to effectively and completely adjudicate upon and decide the questions involved in the writ petition and that the appellant has not acquired any right to be added as a party by the stop-gap arrangement made by the first respondent requesting the appellant to act as President of the Panchayat until another President is elected in accordance with the provisions of the Act. We dismiss the writ appeal, but under the circumstances of the case, without costs.