

(1972) 09 GUJ CK 0009
In the Gujarat High Court

Sandhi Mamad Kala

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 14-09-1972

Acts Referred:

Bombay Police Act, 1951 — Section 56, 56

Citation : (1973) 14 GLR 384

Hon'ble Judges : P.N. Bhagwati, C.J.;T.U. Mehta, J;D.A. Desai, J

Bench : Full Bench

Judgement

P.N. Bhagwati, C.J.—This reference raises a question of considerable importance in the field of administrative law. The question is whether an authority passing an order of externment u/s 56 of the Bombay Police Act, 1951, (hereinafter referred to as "the Act") and the State Government disposing of an appeal against an externment order u/s 60 of the Act are bound to give reasons in support of the orders respectively made by them, or, in other words, whether there is any Obligation on them to make speaking orders. The facts giving rise to the petition are a little material to the determination of the controversy between the parties and they may be briefly stated as follows. The Sub-Divisional Magistrate, Rajkot Sub-Division, issued a show cause notice dated 15th October 1970 u/s 59 of the Act stating that the following allegations were made against the petitioner, namely:

You are a dangerous and desperate man and you are engaged in committing offences such as extortion of money by force and criminal assault which are punishable under Chapters XVI and XVII of the Indian Penal Code and such acts of yours have engendered a feeling of apprehension and fear amongst the residents of Rajkot City and this type of activity of yours is going on since March 1970. You have committed the following acts at the place and time indicated there

and the show cause notice then proceeded to set out eight acts alleged to have been committed by the petitioner which formed the basis of allegations against

him and after stating that the victims of those acts as also the Other witnesses were not willing to come forward to give evidence in public against the petitioner by reason of apprehension on their part as regards the safety of their person or property, called upon the petitioner to show cause why he should not be externed from Rajkot District for a period of two years u/s 56 of the Act. It is not necessary for the purpose of the present petition to enumerate the acts which were set out in the show cause notice but suffice it to state that those acts were described in general terms without giving any detailed particulars. The petitioner filed a written statement giving his explanation in regard to the allegations contained in the show cause notice and he Inter alia contended that the show cause notice was vague and indefinite and the Sub-Divisional Magistrate had no jurisdiction to initiate proceedings u/s 56 and denied the various allegations made against him Including the allegation that the victims of the acts attributed to him as also other witnesses were not willing to come forward in public to give evidence on account of fear as regards the safety of their person or property. The petitioner also produced and examined as many as 27 witnesses who deposed inter alia to the good character of the petitioner. The Sub-Divisional Magistrate, however, passed an order of externment against the petitioner u/s 56 on 25th November 1971. The order of externment contained the following recitals:

Whereas materials have been placed before me, the Sub-Divisional Magistrate, Rajkot against Sri Mamad Kala Sandhi, Resident of Rajkot City, to the effect that:

xx xx xx

And whereas I have considered the explanation tendered by him and the evidence produced on his behalf in defence.

And whereas after considering the entire materials placed before me, and after carefully considering the defence produced on his behalf, I am satisfied that the said Sri Mamad Kala is a desperate and dangerous man and is engaged in the commission of acts involving force and violence and acts punishable under Chapter XVI and XVII of the Indian Penal Code and he commits such acts within the localities known as City Railway Station, Rajkot, Bhagwatipara Gate, Mahatma Gandhi Harijan Was, Bedipara Harijan was, Bhagwatipara Area, Triangular Park, Bedipara under the limits of Rajkot City Municipality and "B" Division Police Station, Rajkot, and there are reliable materials to prove the allegations contained in paragraphs (1) to (8) above.

And Whereas I am satisfied that the time and areas of his above activities are correctly stated in the show cause notice given to him u/s 59(1) of the Bombay Police Act;

And Whereas upon consideration of the materials placed before me I am also of the opinion that the witnesses to the above incidents are not willing to come forward to give evidence in public against him by reason of apprehension on their part as regards the safety of their person and property.

And the operative part which followed these recitals directed the petitioner to remove himself outside the District of Rajkot by rail route via Wankaner within two days from the date of service of the order and not to return to or enter in the District of Rajkot for a period of two years from the date of the order without the permission in writing from the competent authority. The petitioner being aggrieved by the order of externment preferred an appeal to the State Government u/s 60 Sub-section (1). The State Government after giving an opportunity to the petitioner to be heard as required by Section 60 Sub-section (3) passed an order dated 30th December 1971 rejecting the appeal on the ground that the State Government did not see any reason to interfere with the order of externment. The petitioner thereupon filed the present petition challenging the validity of the order of externment passed by the Sub-Divisional Magistrate as also the order passed in appeal by the State Government.

2. The petition originally came up for hearing before a Division Bench of this Court consisting of A. D. Desai and S.N. Patel JJ. Though several grounds were taken in the petition for challenging the validity of the impugned orders, only one ground was pressed on behalf of the petitioner at the hearing of the petition and the rest were given up. The ground that was urged on behalf of the petitioner was that both the Sub-Divisional Magistrate passing the order of externment as also the State Government disposing of the appeal against the order of externment were bound to give reasons in support of the respective orders passed by them and in the absence of reasons, the orders made by them were invalid and were liable to be set aside. Now, there were two decisions of this Court, one reported in *Vrajlal Mohanlal v. District Magistrate, Rajkot* (1962) 3 G.L.R. 807 and the other, yet unreported, given on 29th January 1971 in Special Civil Application No. 1 of 1971, *Mohad Adam Patel v. State of Gujarat*, where the view had been taken that neither the Sub-Divisional Magistrate passing an order of externment nor the State Government disposing of an appeal against the order of externment is bound to give reasons in support of the order made by it. Each of these two decisions was a decision of a Division Bench of this Court and decisions were, therefore, binding on A. D. Desai and S.N. Patel JJ. But the learned Judges felt that these two decisions did not lay down the correct law on the point and they found themselves unable to agree with the reasoning of these two decisions. Hence they made the present reference and referred the following three questions for determination by a Full Bench:

(1) Whether the authority u/s 56 of the Bombay Police Act, 1951, while passing an order of externment is bound to give and disclose reasons in support of its order ?

(2) Whether the authority u/s 56 of the Bombay Police Act, 1951, while giving a direction externing a person from the contiguous area (irrespective of its size) is bound to give and disclose reasons in support of such direction ?

(3) Whether the State Government exercising its power in appeal against an order of externment u/s 60 of the Act is bound to give and disclose reasons in

support of its order ?

The second question became necessary to be referred because the order of externment impugned in the petition sought to extern the petitioner not merely from the Rajkot Sub-Division over which the Sub-Divisional Magistrate had jurisdiction but from the entire Rajkot District. The Rajkot District consists of three Sub-Divisions, namely, Rajkot, Gondal and Morvi. The Gondal and Morvi Sub-Divisions are contiguous to the Rajkot Sub-Division and, therefore, the effect of the order of externment was to extern the petitioner not only from Rajkot Sub-Division but also from the two Sub-Divisions of Gondal and Morvi contiguous to the Rajkot Sub-Division. It was for this reason that the question arose whether u/s 56 the externing authority while giving a direction externing a person from a contiguous area is bound to give reasons in support of such direction.

3. There were two main grounds on which the petitioner contended that the Sub-Divisional Magistrate was bound to give reasons in support of the order of externment made by him. The first ground was that the power of externment conferred on the Sub-Divisional Magistrate u/s 56 was a quasi-judicial power and since it is a concomitant of every quasi-judicial order that it must disclose ex facie reasons in support of it, the Sub-Divisional Magistrate was bound to make a speaking order, or, in other words, give reasons in support of the order of externment made by him. The other ground urged on behalf of the petitioner was that even if the power of externment exercisable by the Sub-Divisional Magistrate was an administrative power, Section 60 conferred a right of appeal against the order of externment and unless reasons were required to be furnished by the Sub-Divisional Magistrate while passing the order Of externment, it would not be possible for the externee to effectively exercise the right of appeal conferred upon him and the right of appeal would, for all practical purposes, be rendered illusory. It was also contended on behalf of the petitioner that, in any event, even if the order of externment was an administrative order and the conferment of a right of appeal against it could not be construed as importing the necessity of giving reasons in support of it, the Sub-Divisional Magistrate was yet bound to give reasons in support of the order made by him. The petitioner also urged that, irrespective of what may be the character of the order of externment, whether it be quasi-judicial or administrative, an appeal against it was clearly a quasi-judicial proceeding and the State Government Was under a duty to act judicially in disposing of the appeal. The power of the State Government in disposing of the appeal was a quasi-judicial power and the State Government was, therefore, like any other statutory authority exercising quasi-judicial functions, bound to give reasons in support of the order made by it disposing of the appeal. These were broadly the contentions urged on behalf of the petitioner and we shall now proceed to examine them.

4. The first contention which requires to be considered is whether the power of externment conferred on the Sub-Divisional Magistrate by Section 56 is a quasi-

judicial power or an administrative power. Is his function an administrative function or a quasi-judicial function ? There can be no doubt, in view of the decisions of the Supreme Court in *Sardar Govindrao and Others Vs. State of Madhya Pradesh*, , *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)*, and the Full Bench decision of Court in *Testeels Ltd. Vs. Desai (N.M.) (Conciliation Officer) and Another*, that if the function of the Sub-Divisional Magistrate in making an order of externment u/s 56 is a quasi-judicial function, the order of externment must disclose reasons in support of it. It is now well-settled as a result of these decisions that every statutory authority exercising quasi-judicial functions must make a speaking order : the order must ex facie disclose the reasons in support of it. It, therefore; becomes material to examine the true nature of the power exercised by the Sub-Divisional Magistrate in making an order of externment u/s 56. Is it a quasi-judicial power or an administrative power ? Now the classic definition of what is a quasi-judicial power is to be found in the famous words of Atkin L. J., in *Rex v. Electricity Commissioners, Ex parte London Electricity Joint Committee Co. (1924) 1 K.B. 171*, where the learned Lord Justice said, describing the extent of the certiorari jurisdiction of the King's Bench:

Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs.

Lord Hewart C.J., put a gloss on this definition in *Rex v. Legislative Committee of the Church Assembly, Ex parte Havnes-Smith (1928) 1 K.B. 411* by interpreting it to mean that : "In order that a body may satisfy the required test it is not enough that it should have legal authority to determine questions affecting the rights of subjects; there must be superadded to that characteristic, the further characteristic that the body has the duty to act judicially" or, in other words, there must always be something more to impose on it a duty to act judicially before it could be found to observe the principles of natural justice. This gloss of Lord Hewart C. J., continued to obsess the Courts until the case of *Ridge v. Baldwin (1964) A.C. 40* went to the House of Lords when Lord Reid boldly cast it aside and extirpated the confusion caused by it. Lord Reid pointed out that wherever a statutory authority is given power to determine questions affecting the rights of subjects, the duty to act judicially need not be expressly superimposed on the statutory authority. It may be implied from the nature of the power conferred or the nature of the decision to be reached by the statutory authority. This view taken by Lord Reid found quick approval from our Supreme Court in the well-known case of *Associated Cement Companies Ltd. Vs. P.N. Sharma and Another*, and it was reiterated and reaffirmed in *Shri Bhagwan and Another Vs. Ram Chand and Another*, . The Supreme Court also pointed out in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, that in order to determine whether a power is an administrative power or a quasi-judicial power,

one must look to the nature of the power conferred, the 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. The same proposition was again reiterated by the Supreme Court in *The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others*, where the Supreme Court, after referring to its earlier decision in *Board of High School and Intermediate Education, U.P., Allahabad Vs. Ghanshyam Das Gupta and Others*, pointed out that "where the statute in question is silent as to the manner in which the power conferred should be exercised by the authority acting under it, the exercise of power will depend on the express provisions of the statute read along with the nature of rights affected, the manner of disposal provided, the objective criteria, if any, to be adopted, the effect of the decision on the persons affected and other indicia afforded by the statute." It would, therefore, be seen that where a statutory authority is given power to make a decision or perform an act which effects the rights of individuals or imposes obligations on them, the duty to act judicially need not be expressly superimposed on the statutory authority : it may be inferred from the nature of the power conferred, its impact on the rights of citizens and such other relevant circumstances.

5. But the question still remains what is the distinguishing characteristic of this duty to act judicially ? How is it to be recognised ? The problem is not free from difficulty. There are a large number of decisions given in England over the last over 200 years where the courts have wrestled with the concept of quasi-judicial function. They have tried to formulate and reformulate tests for the purpose of distinguishing a quasi-judicial function from an administrative function but the concept has always remained elusive and if we look at the decisions, it will be found that the question whether in a particular case the function exercised by a statutory authority is quasi-judicial or not has been approached by the courts in a pragmatic fashion and the decision has been dictated more by consideration of what would be fair and just in a given case and whether it is expedient that court should take to itself the power of judicial review or not than by any logical test of universal application. It is not possible to construct from judicial materials a single set of reasonable unambiguous criteria for calling a procedure quasi-judicial. We find that many of the tests historically enunciated by the courts are now insufficiently precise to discriminate within a large penumbra of doubtful cases and too great an element of chance has often entered the question of classification when there is no specific guidance provided by the Legislature. But even so, an attempt has to be made, as has been done by courts before, to distinguish between a quasi-judicial power and an administrative power. It is clear from the decision of the Supreme Court in *Jaswant Sugar Mills Ltd. v. Lakshmi Chand and Ors.* AIR 1968 S.C. 677 as also from the Full Bench decision in *Testeels Ltd. v. N.M. Desai*, (supra) that a quasi-judicial decision involves the following three elements:

(1) It is in substance a determination, upon investigation, of a question by the

application of objective standards to facts found in the light of pre-existing legal rules;

(2) it declares rights or imposes upon parties obligations affecting their civil right; and

(3) the investigation is subject to certain procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of facts by means of material if a dispute be on question of fact, and if the dispute be on question of law, on the presentation of legal argument, and a decision resulting in the disposal of the matter on findings based upon those questions of law and fact.

It is doubtful how far the second element can be said to be necessary element in a quasi-judicial process in view of the recent decision of the court of Appeal in England in *Regina v. Criminal Injuries Compensation Board, Ex Parte Lain* (1967) 2 Q. B. 864, where a strong Divisional Court held that certiorari might issue to quash a decision of the Board which merely rejected a claim for ex gratia payment and did not determine any right or liability of the claimant. But one thing is clear that a statutory authority having a duty to act judicially must decide "solely on the facts of the particular case, solely on the material before them and apart from any extraneous considerations" by applying "pre-existing legal norms to factual situations". The ultimate decision of such a statutory authority must be determined by application of legal principles to ascertained facts and not by considerations of policy or expediency. This is also pointed out by De Smith in his well-known book on *Judicial Review of Administrative Action*, (Second Edition), at page 72 where the learned author says that a statutory authority would be "likely to be held to be acting in a judicial capacity when, after investigation and deliberation, it determines an issue conclusively by the application of a pre-existing legal rule or any objective standard to the facts found by it". Where, however, a decision is not based solely and exclusively on the application of objective standards to ascertained facts but is founded on the subjective satisfaction of the statutory authority, the duty to act judicially would be clearly excluded and the decision would be an administrative decision as opposed to a quasi-judicial decision. Vide paragraph 139 of the judgement of S.R. Das J., at page 253 of the report in *Province of Bombay Vs. Kusaldas S. Advani and Others*, . This would be the position where considerations of policy or expediency enter into the determination, for these are considerations which are not capable of being assessed by objective standards and they must necessarily be matters of subjective satisfaction of the statutory authority. The basic test, therefore, for distinguishing between an administrative decision and a quasi-judicial decision is whether the decision of the statutory authority is based solely and exclusively on the application of legal principles or objective standards to the facts found on the material placed before it without any extraneous considerations or it is guided by considerations of policy or expediency and is based on the subjective satisfaction of the statutory authority.

6. Then there is also one other test which may be applied for ascertaining

whether a function discharged by a statutory authority is quasi-judicial or administrative. That test is set out by De Smith at page 66 of his book where he says that a "second test...for ascertaining whether the statutory functions are judicial in character turns primarily on the presence or absence of certain procedural attributes". Where a function is quasi-judicial, it requires as a minimum observance of some rules of natural justice. Exactly what these are will vary with the circumstances of the case, as Tucker L. J. said in *Russell v. Duke of Norfolk* (1949) 1 All E. R. 109 in a passage which has several times been quoted with approval. But one essential which must always be present in a quasi-judicial function is that the person concerned should have a fair opportunity of putting forward his point of view and correcting or contradicting any statement prejudicial to him. Lord Loreburn L.C., sneaking of the duties of the Board of Education pointed out in *Board of Education v. Rice* (1911) A.C. 179 that the Board of Education can "obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting anything prejudicial to their view". So also in *De Verteuil v. Knaggs* (1918) A.C. 557, a case arising under the Immigration Ordinance, No. 161 of the Colony of Trinidad and Tobago, Lord Parmoor said that in making an inquiry for the purpose of taking action u/s 203 of that Ordinance "there is, apart from special circumstances, a duty of giving to any person against whom the complaint is made a fair opportunity to make any relevant statement which he may desire to bring forward and a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice". It is this characteristic procedure which is an essential attribute of a quasi judicial function, though, of course, as we shall presently point out, it may also exist in case of an administrative function. It is for this reason that it has been held in cases like *Johnson (B) & Co. (Builders) Ltd. v. Minister of Health* (1947) 2 All E.R. 395, that a Minister acting as confirming authority must act judicially in accordance with the rules of natural justice from the moment when objections are lodged against the local authority's order, although his functions have been characterised as "purely administrative" before objections have been lodged or if he himself is the initiating authority. The function of a statutory authority is in such cases, as pointed out by S.A. De Smith in his book at page 75, regarded as judicial because the statutory authority is "endowed with a limited range of "judicial" procedural attributes". It would, therefore, be a fair inference to make that a function is administrative and not quasi-judicial, if this essential procedural attribute is found lacking in the exercise of that function.

7. It is in the light of these tests that we must now proceed to examine the nature of the function which an externing authority discharges when it makes an externment order u/s 56. We may first look at the provision enacted in Section 56 and the context and setting in which it occurs. Section 56 is to be found in Chapter V of the Act which is headed "Special Measures for Maintenance of public order and safety of State". Chapter V consists of four Parts. We are concerned with the second part which has the sub-heading "Dispersal of Gangs and

Removal of Persons convicted of certain offences". This part contains inter alia Sections 56 to 61 which embody what are essentially preventive measures. Section 56 is in the following terms:

56. Whenever it shall appear in areas for which a Commissioner has been appointed u/s 7 to the Commissioner and in other area or areas to which the State Government may, by notification in the Official Gazette, extend the provisions of this section, to the District Magistrate, or the Sub-Divisional Magistrate specially empowered by the State Government in that behalf (a) that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property, or (b) that there are reasonable grounds for believing that, such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapter XII, XVI or XVII of the Indian Penal Code, or in the abetment of any such offence, and when in the opinion of such officer witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property, or (c) that an outbreak of epidemic disease is likely to result from the continued residence of an immigrant, the said officer may, by an order in writing duly served on him or by beat of drum or otherwise as he thinks fit, direct such person or immigrant so to conduct himself as shall seem necessary in order to prevent violence and alarm or the out break or spread of such disease or to remove himself outside the area within the local limits of his jurisdiction or such area and any district or districts, or any part thereof, contiguous thereto by such route and within such time as the said officer may prescribe and not to enter or return to the said area or the area and such contiguous districts, or part thereof, as the case may be, from which he was directed to remove himself.

Section 57 is a provision in the same strain calculated to bring about removal of persons convicted of certain offences but we are not concerned with that section in the present petition and it is, therefore, not necessary to refer to it in detail. Section 58 provides that a direction given inter alia u/s 56 not to enter any particular area shall be for such period as may be specified therein and shall in no case exceed a period of two years from the date on which it is made. Then comes Section 59 which is a very important section in that, it lays down the procedure to be followed before making an order inter alia u/s 56. The material part of this section is that set out in Sub-section (1) which reads:

59. (1) Before an order u/s 55, 56 or 57 h passed against any person the officer acting under any of the said sections or any officer above the rank of an Inspector authorised by that officer shall inform the person in writing of the general nature of the material allegations against him and give him a reasonable opportunity of tendering an explanation regarding them. If such person makes an application for the examination of any witness produced by him, the authority or officer concerned shall grant such application; and examine such witness, unless for reasons to be recorded in writing, the authority or officer is of opinion

that such application is made for the purpose of vexation or delay. Any written statement put in by such person shall be filed with record of the case. Such person shall be entitled to appear before the officer proceeding under this section by an advocate or attorney for the purpose of tendering his explanation and examining the witness produced by him.

There is a right of appeal given by Section 60 Sub-section (1) against an order made inter alia u/s 56. The appeal lies to the State Government and has to be preferred within thirty days from the date of the order appealed against. Sub-section (3) of Section 60 lays down the procedure to be followed by the State Government in disposing of the appeal. It says:

60. (3) On receipt of such appeal, the State Government may, after giving a reasonable opportunity to the appellant to be heard either personally or by a pleader advocate or attorney and after such further inquiry, if any, as it may deem necessary, confirm, vary or cancel or set aside the order appealed against, and make its order accordingly :

Section 61 invests an order passed inter alia u/s 56 or by the State Government u/s 60 with finality and provides that it shall not be called in question in any court except on certain limited grounds which do not touch the merits of the order.

8. Now before we proceed to analyses the scheme of these provisions; it would be convenient to refer to one argument advanced on behalf of the state Government based on the use of the words "whenever it shall appear" and "when in the opinion of such officer" in Section 56. The State Government contended that these words clearly indicated that the subjective satisfaction of the Sub-Divisional Magistrate in regard to the matters set out in Section 56 was the foundation of his jurisdiction to make an order of externment and the power conferred on him by Section 56 was, therefore, an administrative as distinguished from a quasi-judicial power. Now it is true that ordinarily words such as these used by the Legislature in Section 56 do indicate that the matter is intended to be left to the subjective satisfaction of the statutory authority but as pointed out in several decisions, both of the English Courts as well as our own Supreme Court, no undue emphasis should be placed on the use of such words. This was affirmed by the Judicial Committee of the Privy Council in *Durovappah v. Fernando* (1967) 2 All E.R. 152 where Lord Upjohn delivering the opinion of the Privy Council, said, in reference to the decision of the Supreme Court of Ceylon in *Sugathadasa v. Jayasinghe* (1958) 59 N.L.R. 457:

That decision laid down "as a general rule what words such as "where it appears to" or "if it appears to the satisfaction of or "if the...considers it expedient that" or "if the...is satisfied that" standing by themselves without other words or circumstances of qualification, exclude a duty to act judicially." Their Lordships disagree with this approach. These various formulas are introductory of the matter to be considered and give little guidance on the question of *audi alterem*

portent.... The solution to this case is not to be found merely on a consideration of the opening words of Section 277" (which use the words "if at any time...it appears to the Minister"), A deeper investigation is necessary.

We find numerous decisions where the function discharged by a statutory authority has been regarded as quasi-judicial, despite the use of words such as those set out in the quotation from the judgment of Lord Upjohn. The words which came up for consideration in *De Verteuil v. Knaggs* (supra) were "if it appears to the Governor...at any time, on sufficient ground shown to his satisfaction..." and yet, as pointed out by the Supreme Court in *Assistant Collector of Customs Vs. Charan Das Malhotra*, , the English Court construed the power conferred on the Governor as a quasi judicial power. We should not, therefore, allow ourselves to be over persuaded to hold the power of externment conferred u/s 56 to be an administrative power merely because of the words "whenever it shall appear" and "in the opinion of such officer" used in Section 56. We must arrive at the true nature of the power on a comprehensive view of all the relevant aspects.

9. It is clear on a plain reading of Section 56, in the context of the provisions in which it occurs, that it is a preventive measure. It undoubtedly involves restraint or hardship on individuals who are subjected to its drastic rigour but it does not partake in any way of the nature of punishment. It is taken by way of precaution to prevent mischief to the community. The section is, as pointed out by the Supreme Court in *Hari Khemu Gawali Vs. The Deputy Commissioner of Police, Bombay and Another*, , "based on the principle that it is desirable in the larger interests of society that the freedom of movement and residence of a comparatively fewer number of people should be restrained so that the majority of the community may move and live in peace and harmony and carry on their peaceful avocations untrammelled by any fear or threat of violence to their person or property". The measure contemplated by the section is not punitive but preventive and since every preventive measure is based on the principle that a person should be restrained from doing something which, if left free and unfettered, it is reasonably probable he would do, it must necessarily proceed in all cases, to some extent, on suspicion or anticipation as distinct from proof. Patanjali Shastri C.J., pointed out in *State of Madras Vs. V.G. Row*, , "externment of individuals, like preventive detention, is largely precautionary and based on suspicion" and to these observations may be added the following words uttered by the learned Chief Justice in that case with reference to the observations of Lord Finlay in *Rex v. Halliday* (1917) A.C. 260, namely, that "the Court is the least appropriate tribunal to investigate into circumstances of suspicion on which such anticipatory action must be largely based". This being the nature of the proceeding, it is impossible to conceive how it could ever be regarded as quasi judicial. The circumstances to be inquired into by the externing authority would be, if not wholly, at least to some extent, circumstances of suspicion and the question to be considered by the coexisting authority would be whether these circumstances are such as require taking of anticipatory action. These are not

matters which are amenable to judicial approach. They cannot be assessed by any objective standards.

10. We must then proceed to consider the nature of the function discharged by the externing authority u/s 56. Now so far as the portion of that section relevant for our purpose is concerned, it is clear on a plain grammatical construction of its language, that in order to attract its applicability, two conditions must be satisfied. First, the externing authority must be satisfied that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property or that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapters XII, XVI or XVII of the Indian Penal Code or in the abetment of any such offence and secondly, in the opinion of the externing authority, witnesses should not be willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property. Now these matters in respect of which the externing authority is required to be satisfied before an order of externment can be passed by it, are not all matters susceptible of objective determination. The determination of these matters is deliberately left by the Legislature to the subjective satisfaction of the externing authority. The externing authority may be the Commissioner or the District Magistrate or the Sub-Divisional Magistrate, specially authorised in this behalf by the State Government. Each of these officers is charged with the duty of maintaining law and order and preventing commission of offences and for this reason, the power conferred u/s 56 which is a power in aid of this function, is advisedly entrusted to these officers. These officers acting as externing authority would also, by reason of their long experience and special expertise, be best fitted to decide whether the movements or acts of any person are calculated to cause alarm, danger or harm to person or property or there are reasonable grounds for believing that such person is about to be engaged in the commission of offence. Moreover, even after the externing authority is satisfied about these matters, it would still have to consider whether any preventive action should be taken against the person concerned under the section. The externing authority would have to take into account various considerations such as the nature of the activities of the person concerned, the degree of probability of continuance of such activities, the gravity of the apprehended harm, the need for public security or maintenance of law and order and the requirement of public interest. The externing authority would also have to consider what preventive action should be adopted against the person concerned, or, in other words, what is the extent to which his freedom should be curtailed. Section 56 places two alternatives before the externing authority so far as the nature of the action to be taken by it is concerned. The externing authority may direct such person so to conduct himself as shall seem necessary in order to prevent violence and alarm or extern him from the area within the limits of his jurisdiction or such area and any district or districts or any part thereof contiguous to it. The externing authority would have

to choose between these two alternatives and decide what in the circumstances of the case is the better course to adopt in order to mitigate the evil. These are all matters which must necessarily be decided by the externing authority in its subjective satisfaction. They are by their very nature not amenable to objective determination and could not be intended to be judged by objective standards. They are essentially matters which have to be administratively determined for the purpose of taking preventive action. To hold that these matters must be judicially determined would be to introduce an element which would lob the power of externment of much of its efficacy as a preventive measure. Moreover, it is difficult to imagine that the Legislature could have ever intended that the decision of the externing authority on these matters should be liable to be subjected to judicial scrutiny, which it would necessarily be, if it were held to be a quasi-judicial decision. Such a decision in exercise of a power of this kind could hardly be a fit subject-matter for judicial reviewability. The analysis of the function to be discharged by the externing authority also, therefore, clearly suggests that it is an administrative and not a quasi-judicial function.

11. This conclusion becomes almost irrefutable when we turn to the procedure prescribed in Section 59 for making an order of externment u/s 56. Section 59 requires that the externing authority or any officer above the rank of an inspector authorised by that officer shall inform the person in writing of the general nature of the material allegations against him and give him a reasonable opportunity of tendering an explanation regarding them and if such person wants to examine any witnesses on his behalf, he is given a right to do so, provided, of course, this right is not abused by an attempt to examine witnesses only for the purpose of vexation or delay. The person concerned is also given a right to appear before the officer holding the inquiry by an advocate or attorney for the purpose of tendering his explanation and examining the witnesses produced by him. But here the right of audi alterant partem given to him ends. He is not entitled to know the particulars of the material allegations against him nor is he entitled to be told who are the witnesses who have given statements against him or what are the contents of those statements. He is also not entitled to have those witnesses produced before the inquiry officer for the purpose of cross-examination. He is completely left in the dark so far as these matters are concerned and the only thing which is furnished to him is "the general nature of the material allegations against him". This is, of course, necessary, because, otherwise, if the names of the witnesses were to be disclosed and they were to be produced for cross-examination, the object and purpose of Section 56 would be wholly frustrated. It is because witnesses are not prepared to depose in public against the proposed externee and on that account it is not possible to take action against him under the ordinary law of the land, that preventive action is sought to be taken against him u/s 56. The disclosure of the names of the witnesses and their statements or furnishing of particulars of the material allegations against the proposed externee is, therefore, in the very nature of things, impossible. This was pointed out by the Supreme Court in *Hari Gawali v.*

Deputy Commissioner of Police (supra) where it was said:

The grounds available to an examinee had necessarily to be very limited in their scope, because if evidence were available which could be adduced in public, such a person could be dealt with under the preventive sections of the Code of Criminal Procedure, for example, u/s 107 or Section 110. But the special provisions now under examination proceed on the basis that the person dealt with under any of the Sections 55, 56 or 57 is of such a character as not to permit the ordinary laws of the land being put in motion in the ordinary way, namely, for examining witnesses in open court who should be cross-examined by the party against whom they were deposing. The provisions we are now examining are plainly intended to be used in special cases requiring special treatment, that is, cases which cannot be dealt with under the preventive sections of the Code of Criminal Procedure.

If this is the procedure to be followed by the examining authority before making an order of examination, does it not clearly indicate that the function of the examining authority is an administrative function? It is impossible to conceive of any quasi-judicial process in which the basic right to correct or controvert any statement prejudicial to his view is denied to the person against whom the process is adopted. The right to correct or controvert any relevant statement brought forward to the prejudice of a person is an essential procedural attribute of a quasi-judicial function and where this is lacking, the function cannot possibly be regarded as quasi-judicial. The argument of the petitioners was that merely because a certain area out of the principles of natural justice is taken out by the procedure prescribed by Section 59, it does not follow that the function of the examining authority is an administrative function. There are many instances, said the petitioner, where even in cases of exercise of admittedly quasi-judicial function, some one or more of the rules of natural justice may be found to be excluded by statute or statutory rules. What is the extent to which the rules of natural justice apply to exercise of a quasi-judicial power would always depend on the statute which confers such power on the statutory authority or on the rules made under that statute. Therefore, merely because some area out of the rules of natural justice is excluded by the procedure prescribed in Section 59, it should not necessarily lead to the inference that the function of the examining authority is an administrative function. Now it is undoubtedly true that the rules of natural justice are not such as can be reduced to any formula, exclusive or inclusive, which can have universal application to every kind of inquiry. What particular rules of natural justice should apply in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the inquiry is held and the constitution of the statutory authority appointed for that purpose. Vide *Gondalal v. State* (1963) 4 GLR 326 and *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, . If, therefore, an inroad is made into the rules of natural justice by a statutory provision or rules made under a statute, that would not affect the character of the function, if otherwise it is a quasi-judicial function. But the question would always be, what

is the extent of the inroad made by the statutory provision or rules. If the inroad is slight, it might leave the essential character of the function unscathed. But the position would be different if the inroad is large. Where the inroad is such that it destroys the basic and essential procedural attribute of a quasi-judicial function, it would not be possible to characterise the function as quasi-judicial. The question in these cases is always one of degree. The nature of the function has to be determined on a conspectus of all the considerations and there, the absence of a procedural attribute which is basic and essential to a quasi-judicial function would be a very important determinative factor. Here in the present case, there is practically no opportunity afforded to the proposed externee to correct or controvert any statements which might have been made prejudicial to him. What we may call the other side of the case is completely shut out to him. That, in our opinion, is the very negation of a quasi-judicial process. It is indeed difficult to imagine a quasi-judicial process where a whole record is excluded from the scan and scrutiny of a party to the inquiry. If the function of the externing authority were quasi judicial function, the order of externment would be a quasi-judicial order amenable to judicial review and this Court would be entitled to call for the record of the case in order to examine the validity of the order of externment. But how would this Court exercise its power of judicial review, if a substantial part of the record is withheld from it ? It is obvious that the statements of the witnesses who have deposed against the proposed externee cannot be disclosed to this Court because, if the Court were to look at them, they would also have to be given to the proposed externee and that would expose the witnesses and defeat the object and purpose of adopting preventive action u/s 56. It would not, therefore, be open to this Court to require the externing authority to disclose the statements of the witnesses and that would clearly indicate that the order of externment was not intended to be amenable to the power of judicial review. We have, in the circumstances, no doubt that the function discharged by the externing authority u/s 56 is an administrative function as opposed to a quasi-judicial function. This would appear to be clear on principle but, even apart from principle, there are observations of the Supreme Court in *Hari Gawali v. Deputy Commissioner of Police* (supra) which clearly support this conclusion. The Supreme Court, after referring to various matters which may have to be considered by the externing authority while making an order of externment, pointed out in *Hari Gawali v. Deputy Commissioner of Police* "These are all matters which cannot be examined by this Court in an objective way, when the legislature has provided for the subjective satisfaction of the authorities or officer* who have been entrusted with the duty of enforcing those special provisions of the Act". If these matters are left to the subjective satisfaction of the externing authority, then obviously, as pointed out above, the function discharged by the externing authority must be held to be an administrative function. If that be so, the necessity of giving reasons cannot be imported in an order of externment on the basis that it is a quasi-judicial order.

12. The question which then arises for consideration is, whether even if an order

of externment is administrative as distinguished from quasi-judicial, there is any obligation on the externing authority to give reasons in support of it. The petitioner contended that even an administrative order must be supported by reasons and the argument advanced in support of this contention was that furnishing of reasons is a part of the rules of natural justice and since rules of natural justice are now held to be applicable alike to administrative orders as to quasi-judicial orders, the court must import the necessity of giving reasons even in case of an administrative order. We do not think this contention is well-founded. It is based on a misconception that disclosure of reasons is a part of the rules of natural justice. It is no doubt true that in England, Franks Committee has pleaded that the duty to give reasons should be regarded as a rule of natural justice but that plea has not yet found favour with the courts in England and even now, in England, apart from cases covered by the Tribunals and Inquiries Act, 1958, there is no obligation on statutory authorities to give reasons in support of the orders made by them. We have, of course, in this country taken the law a little further by holding that, in case of quasi-judicial orders, reasons must be given, but that is not on the basis that the duty of giving reasons is a rule of natural justice. We have not resorted and indeed we do not have to resort to the expedient of characterising the necessity of giving reasons as a rule of natural justice in order to import it as a necessary ingredient of quasi-judicial orders. We have read the duty to give reasons in case of quasi-judicial orders as a principle of administrative law. But that is where the matter rests and we do not think it expedient or desirable to extend the duty to give reasons to administrative orders.

13. It is undoubtedly true that in recent times the Courts in India as well as England have adopted a bold approach and broken down the judicial administrative dichotomy in so far as the right to a fair hearing is concerned. It was at one time said in England that the rule of *audi alteram partem* applied only to a quasi-judicial proceeding and not to an administrative proceeding. But, as pointed out by Lord Denning in *Reg v. Gaming Board* (1967) 2 W.L.R. 1009, that heresy was scotched in *Ridge v. Baldwin* (1964) A.C. 40 and Lord Parker C. J., also pointed out in *In re H. R. (An Infant)* (1967) 2 Q. B. 617:

...even if an immigration officer is not in a judicial or quasi-judicial capacity, he must at any rate give the immigrant an opportunity of satisfying him of the matters in the sub-section, and for that purpose let the immigrant know what his Immediate impression is so that the immigrant can disabuse him. That is not, as I see it, a question of acting or being required to act judicially, but of being required to act fairly.

The Supreme Court also broke down the distinction between quasi-judicial order and administrative order in this respect and laid down the correct principle in *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, :

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 administrative in

character, but even an administrative order which involves civil consequences, as already stated must be made consistently with the rules of natural justice after informing the first respondent of the case of the State....

This principle was reaffirmed and reiterated by the Supreme Court in *The D.F.O., South Kheri and Others Vs. Ram Sanahi Singh*, . It would, therefore, seem that so far as the rule of audi alteram partem pattern is concerned, there is now no recognizable distinction between quasi-judicial order and administrative order. But, for other purposes, the distinction must still remain, for considerations of policy or expediency would be the major determinate in an administrative decision and, as we have already pointed out, these are not considerations which are capable of assessment by objective standards. So also, in the matter of giving reasons, the distinction must still continue to subsist and we must hold that there is no obligation on a statutory authority to give reasons in support of the order made by him, if the order is an administrative order.

14. We may also point out that in any event, apart altogether from the general question whether an administrative order must be supported by reasons, it is clear that, so far as an order of externment is concerned, the externing authority is not bound to give any reasons in support of it. Even if the duty to give reasons be regarded as a rule of natural justice and, therefore, applicable to an administrative decision, it is excluded in case of an order of externment because of the nature of the power conferred u/s 56 and the procedure for exercising that power prescribed by Section 59. We fail to see how reasons can possibly be given by the externing authority when it is one of the essential ingredients of Section 56 that witnesses are not willing to come forward to give evidence in public against the proposed externee by reason of apprehension on their part as regards the safety of their person or property and according to the procedure prescribed by Section 59 neither the names of the witnesses nor the statements made by them are to be disclosed to the proposed externee and he is not to be given particulars of the material allegations against him. The process of decision-making is an integrated process" of consideration of materials placed before the externing authority both by the witnesses who have given their statements to the police as also by the proposed externee and the witnesses produced by him. It is on a total consideration of this material that the externing authority would come to a decision whether or not to take preventive action against the proposed externee. The process of reasoning would range over the entire material and it would not be possible to compartmentalise it by saying that it should be disclosed in so far as it is based on the material produced by the proposed externee and his witnesses but kept back in so far as it is based on the statements of the witnesses who have deposed in confidence. It is possible that in a decision-making process, one piece of evidence may react on the other and what is a strong piece of evidence may expose the weakness of a contrary piece of evidence and vice versa. We do not think it possible for any statutory authority to give reasons in support of its decision, if it is told that, while giving reasons, it should not make any reference to a substantial part of the record. If any reasons

are attempted to be given by the statutory authority in such a case, they would not truly reflect the decision-making process and would hardly do justice to the statutory authority. They would not in fact be the real reasons which have guided the statutory authority in coming to its decision. What purpose then can they possibly serve in eliminating arbitrariness and ensuring proper consideration of material by the statutory authority ? We are, therefore, of the view that, in any event, so far as an order of externment is concerned, the externing authority is not bound to give reasons in support of the externment order made by it.

15. The petitioner, however, contended that we read in the scheme of the relevant sections an obligation on the part of the externing authority to give reasons in support of externment, because a right of appeal against it is given to the externee. The externee cannot effectively exercise his right of appeal unless reasons are given by the externing authority and, therefore, from the conferment of the right of appeal, we must infer that the externing authority is bound to give reasons in support of the externment order made by it. The petitioner sought to support this contention by reference to the decision of the Supreme Court in *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, . We shall presently examine this decision of the Supreme Court and see what is its true ratio, but on principle and apart from authority, we do not think we can subscribe to the broad proposition that whenever an appeal is provided against an administrative decision, the administrative decision must ex facie disclose reasons in support of it. The question whether the necessity of giving reasons should be spelled out by conferment of a right of appeal against an administrative decision must ultimately depend on the facts and circumstances of each case and the framework of the law under which the administrative decision is made. Here, in the present case, we have already given cogent reasons for saying why the scheme of Sections 56 and 59 makes it utterly impracticable for the externing authority to give reasons in support of the externment order and if that be so, it is difficult to see how mere conferment of a right of appeal against an order of externment can bring in the necessity of giving reasons, overriding various important considerations arising from the scheme of Sections 56 and 59 which have been discussed by us.

16. The decision of the Supreme Court in *Nagendra Nath v. Commissioner of Hills Division* (supra) does seem at first sight to support the contention of the petitioner, but if we examine it closely, it will be apparent that it does not lay down any broad proposition that where an appeal is provided against a decision given by a statutory authority, the decision must be supported by reasons, irrespective whether it is administrative or quasi-judicial. The contention raised on behalf of the Commissioner before the Supreme Court was that the various authorities concerned with the settlement of excise shops under the Eastern Bengal and Assam Excise Act, 1910, were "merely administrative bodies, and, therefore, their orders, whether passed in the first instance or on appeal, should not be amenable to the writ jurisdiction of the High Court." The Supreme Court, while dealing with this contention, incidentally observed: "Though the Act and

the rules do not, in express terms, require reasoned orders to be recorded, yet, in the context of the subject-matter of the rules, it becomes necessary for the several authorities to pass what are called "speaking orders" ". These observations were strongly relied upon on behalf of the petitioner, but, we do not think they lay down any principle of universal application. It is significant to note that it was "in the context of the subject matter of the rules" that the Supreme Court held that the orders of the several authorities were required to be speaking orders. We must, therefore, look at the nature of the power, the manner in which it is intended to be exercised and the provisions of the statute relating to it, in order to ascertain whether the statutory authority is required to make a speaking order in exercise of the power and we cannot hold that merely because a right of appeal is conferred against it, it must be a speaking order.

17. This view which we are taking receives indirect support from the following observations of the Supreme Court in *Hari Gawali v. Dy. Commissioner of Police* (supra):

It was next contended that the provisions relating to hearing any evidence that may be adduced by the police or by the person proceeded against and right of appeal to the State Government conferred by Section 60 of the Act are illusory. We cannot agree that the right of appeal to the State Government granted to the person proceeded against by an order u/s 57 is illusory because it is expected that the State Government which has been charged with the duty of examining the material with a view to being satisfied that circumstances existed justifying a preventive order of that nature, will discharge its functions with due care and caution.

It is no doubt true that these observations were made in the context of an argument that if particulars of the material allegations are not furnished to the proposed externee, it would not be possible for him to effectively exercise his right of appeal and the right of appeal would be rendered illusory, but they are equally applicable to repel a similar argument that if reasons are not given in support of the order of externment, the right of appeal would become illusory. The opportunity which is given to the proposed externee at the time of the original hearing before the externing authority is a limited one and the same limited opportunity can be availed of by the proposed externee when he files an appeal against the order of externment to the State Government. The conferment of a right of appeal does not improve his position by extending the scope of the opportunity available to him.

18. That takes us to the next question whether an appeal against an order of externment is a quasi-judicial proceeding and the State Government is under a duty to act judicially in disposing of the appeal. Now all the reasons which have weighed with us in taking the view that the power exercised by the externing authority in making an order of externment is administrative and not quasi-judicial are wholly applicable to the determination of the question whether the power exercised by the State Government in disposing of the appeal is quasi-

judicial. The State Government as the appellate authority is bound to examine the question before it in the same manner as the externing authority by taking into account various considerations of policy or expediency which are not matters of objective assessment but which rest on the subjective satisfaction of the deciding authority. The nature of the power and the manner of its exercise do not change when the proceeding goes higher from the externing authority to the State Government. Then again the State Government can look at the part of the record consisting of the statements of the witnesses, without disclosing it to the proposed examinee and decide the appeal on the basis of such record. The same objection as regards judicial reviewability by reason of a part of the record being withheld from the proposed examinee would arise also in the case of an appeal as in the case of the proceeding before the externing authority and the same impracticability of giving reasons without disclosing a part of the record to the proposed examinee, which affects the exercise of power by the externing authority, would also affect the disposal of the appeal by the State Government. We are unable to see how the State Government could be regarded as exercising quasi-judicial power while disposing of the appeal. In fact, as pointed out by the Supreme Court in the passage quoted by us from the judgment in *Hari Gawali v. Dy. Commissioner of Police* (supra), the determination of various matters necessary for the purpose of deciding whether, and if so, what preventive action should be taken, is left by the Legislature to the subjective satisfaction of the authorities which include the State Government.

19. The petitioner, however, relied on the decision of the Supreme Court in *Nagendra Nath v. Commissioner of Hills Division*, to which we have already referred in another connection. We have set out the contention which was urged on behalf of the Commissioner before the Supreme Court in that case and we need not reiterate it once again. The Supreme Court while dealing with this contention made the following observations which are strongly relied upon on behalf of the petitioner:

Where there is a right vested in an authority created by statute, be it administrative or quasi-judicial, to hear appeals and revisions it becomes its duty to hear judicially, that is to say, in an objective manner, impartially and after giving reasonable opportunity to the parties concerned in the dispute, to place their respective cases before it.

The Supreme Court also quoted with approval two passages, one of Lord Haldane and the other of Lord Moulton in *Local Government Board v. Arlidge* (1915) A.C. 120 in support of their observations. Now *prima facie* these observations might seem to suggest that wherever an appeal is provided against an order, the appellate authority, whether it be administrative or quasi-judicial, is under a duty to act judicially in disposing of the appeal. But if we look at the judgment of the Supreme Court a little more closely, it will be clear that the Supreme Court never intended to lay down any such absolute proposition. The Supreme Court, as a matter of fact, pointed out in an earlier part of the judgment that if "the matter

had rested only with the provisions of the Act, apart from the rules made u/s 36 of the Act, much could have been said in support of "the contention that the several authorities concerned with the settlement of excise shops which included the appellate authorities were merely administrative bodies, and, therefore, not amenable to the writ jurisdiction of the High Court. But, according to the Supreme Court, the rules made u/s 36 of the Act made a vital difference by approximating the procedure to be followed "by the Appellate Authorities, to the regular procedure observed by courts of justice in entertaining appeals" and the function exercised by the appellate authorities was, therefore, regarded as a quasi judicial function. It will thus be seen that the Supreme Court relied considerably on procedural attributes for the purpose of coming to the conclusion that the appellate authorities were exercising quasi-judicial powers. It cannot, therefore, be laid down as an absolute proposition that whenever there is a right of appeal given against an order made by a statutory authority, the appellate authority would be under a duty to act judicially in disposing of the appeal. The question whether the State Government is exercising a quasi-judicial power or an administrative power in disposing of the appeal would depend on various considerations to which we have already adverted. This decision of the Supreme Court does not compel us to reach a conclusion different from the one we are otherwise inclined to make. We accordingly hold that the State Government disposing of an appeal against an order of externment is not under a duty to act judicially and does not exercise a quasi-judicial power. No obligation to give reasons can, therefore, be imported in the exercise of the power of the State Government in disposing of the appeal.

20. But the question would still remain whether the externing authority can pass an externment order without disclosing even the grounds on which the externment order is based. When we speak of grounds in this context, we mean grounds as distinguished from reasons in support of the grounds. Is it enough for the externing authority to pass an order which merely states that the proposed externnee is directed to be externed from a particular area or is it necessary that he should also state the grounds on which he has given such direction ? Though this question arises before us in relation to an order of externment, it is a general question which must arise in all cases where administrative orders are passed by statutory authorities. Where an administrative order is passed by a statutory authority, should the statutory authority not set out the grounds on which the order is passed. Or can it content itself by merely passing the order and refuse to tell the person affected as to why it has done so ? This is a question of great importance particularly in a welfare State like ours, where necessarily large powers have to be conferred on Government and its officers for the purpose of achieving public good. No democratic society governed by rule of law can be sustained unless the action of the Government and its officers is regulated by standards or norms so that arbitrariness which is destructive of equality before the law is eliminated from State action. The Courts have always been vigilant to see that action of the Government or its officers is not arbitrary

or based on improper or irrelevant grounds but is guided by standards or norms which are in conformity with the constitutional values. This the Courts have tried to do by extending the reach of their jurisdiction even to administrative decisions though, of course, on very narrow and limited grounds. It is now well-settled by several decisions of the Supreme Court of which we may mention only two, namely, *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, and *Rohtas Industries Vs. S.D. Agarwal and Others*, that even where an order is made by a statutory authority which is based on its subjective satisfaction, the Court can examine the validity of the satisfaction by considering whether the statutory authority has misdirected itself in point of law or taken into account some wholly irrelevant or extraneous consideration or omitted to take into account a relevant consideration or whether the satisfaction is based on a misconstruction of a statute or whether there was no material at all before the statutory authority on the basis of which it could have come to a satisfaction so that the satisfaction reached by it is no satisfaction at all or is otherwise colourable. Now, how is the Court going to ensure that the exercise of administrative power involving civil consequences to a person is a legitimate exercise of power not vitiated by any of these infirmities, unless the statutory authority exercising the power discloses the grounds on which the exercise of the power is based ? Suppose an administrative power is exercised to the prejudice of a person on the ground that his hair is white or the colour of his skin is yellow, it would clearly be invalid because the exercise of the power would be based on irrelevant grounds having no relation to the purpose for which the power is conferred. But it would not be possible for the person affected to protect himself by challenging the exercise of the power, unless he knows what is the ground on which the power is exercised. We -are, therefore, of the view that where an administrative power is exercised by a statutory authority and the exercise of such power involves civil consequences to a person, the statutory authority must disclose the grounds on which the exercise of the power is based. We must again make it clear that when we speak of grounds in this context, we mean grounds as distinguished from reasons. We may illustrate what we mean by giving an example. If a quota or licence is refused to a person, it would be sufficient to state that he is not a fit person to be granted quota or licence and, therefore, it has been refused. It would not be necessary to disclose in the order as to why the statutory authority thinks that he is not fit to be granted quota or licence. Similarly, in case of an externment order it would be sufficient to indicate the general nature of the material allegations on which the externing authority has come to a conclusion that the case falls within a particular part of Section 56 and preventive action under that part should be taken by it. Here, in the present case, we find that this requirement is satisfied, save in so far as the order of externment passed by the Sub-Divisional Magistrate and confirmed by the State Government seeks to extern the petitioner from the Sub-Divisions of Gondal and Morvi.

21. The order of externment in so far as it externs the petitioner from the Sub-

Divisions of Gondal and Morvi does not disclose any ground on which the externment of the petitioner from these Sub-Divisions is directed. The show cause notice issued by the Sub-Divisional Magistrate also does not set out the general nature of the material allegations on the basis of which it was sought to extern the petitioner from the Sub-Divisions of Gondal and Morvi. The mere fact that the Sub-Divisions of Gondal and Morvi are physically contiguous to the Sub-Division of Rajkot over which the Sub-Divisional Magistrate had jurisdiction is not sufficient to warrant the externment of the petitioner from these Sub-Divisions. There must be some ground why the Sub-Divisional Magistrate proposes to extern the petitioner not only from the areas within the local limits of his jurisdiction but also from a contiguous area. This power is not to be exercised mechanically or blindly. It can be exercised only if there is some valid ground justifying it. That ground, which would be really nothing else than the general nature of the material allegation, must be set out in the show cause notice and it must also find a place in the order of externment. The ground may be that because of contiguity of the area and easy means of communication, the proposed externee may be able to operate within the limits of the jurisdiction of the Sub-Divisional Magistrate from the contiguous area or there may be any other such ground but that ground must be disclosed to the proposed externee both in the show cause notice as also in the order of externment. We do not agree with the reasoning of the decision in *Lalji Kanji Vs. V.T. Shah, Dy. Commissioner of Police*, where, examining the validity of an order of externment made by the Commissioner of Police externing a person not only from the Ahmedabad city but also from two adjoining districts, the Division Bench said that the Court could take judicial notice of the fact that geographically Ahmedabad City, as a district from which a person could be externed, is a very small area and it is easy to operate in Ahmedabad from the contiguous districts. We do not see any reason why, if an order of externment suffers from a lacuna, the Court should be over anxious to sustain the order by supplying the lacuna. The safety of the citizen in cases of externment depend only on procedural safeguards and if any procedural safeguard has not been complied with, the order of externment must be struck down as invalid. We are, therefore, of the view that in the present case, the order of externment passed by the Sub-Divisional Magistrate and confirmed by the State Government must be held to be bad in so far as it externs the petitioner from the Sub-Divisions of Gondal and Morvi; it is valid in so far as it externs the petitioner from the Sub-Division of Rajkot.

22. We, therefore, allow the petition and make the rule absolute by issuing a writ quashing and setting aside the order of externment in so far as it externs the petitioner from the Sub-Divisions of Gondal and Morvi. There will be no order as to costs of the petition.

23. The Learned Counsel appearing on behalf of the petitioner applies for leave to appeal to the Supreme Court under Article 134(1)(c) of the Constitution. We are satisfied that in view of the great importance of the question decided by us,

this is a fit case for appeal to the Supreme Court. We, therefore, grant certificate to the petitioner for leave to appeal to the Supreme Court under Article 134(1) (c).