
(1981) 02 DEL CK 0062

In the Delhi High Court

Case No : Civil Writ Appeal No. 435 of 1980

Satish Chandra Khandelwal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 06-02-1981

Acts Referred:

Citation : AIR 1983 Delhi 1 : (1981) ILR Delhi 917

Hon'ble Judges : S.S. Chadha, J;H.L. Anand, J;A.B. Rohtagi, J

Bench : Full Bench

Advocate : Soli J. Sorabjee, P.N. Parikh, Kailash Vasdev, H.N. Salve, Arun K. Sinha, Gopal Subramaniam, M.K. Banerjee, C.L. Choudhry, D.D. Chawla, Maehswar Dayal and N.K. Jain, for the Appellant;

Judgement

Avadh Behari Rohatgi, J. (Concurring)

(1) The facts. This is a case of considerable civic importance. It raises questions of some nicety regarding the municipal government of Delhi.

(2) By an order of the Central Government dated April 11, 1980, made u/s 490(i) of the Delhi Municipal Corporation Act, 1957 (the Act)" the Municipal Corporation of Delhi (the Corporation) was superseded. As a result all the 100 Councillors and aldermen of the Corporation vacated their offices. They became functus officio. During the period of supersession all powers and duties of the Corporation were directed to be exercised and performed by the Commissioner of the Municipal Corporation under sub-section (2) of section 490. All properties of the Corporation at once vested in the Central Government. The petitioner, Satish Chander Khandelwal was elected as a Councillor in the general elections to the Corporation on June 15, 1977, for a period of four years. He too had to vacate his office. He has brought this writ petition challenging the order of supersession by the Government.

(3) The Corporation was constituted under the Act as the municipal authority for Delhi and was entrusted with all the powers and duties of a local authority. To it

is entrusted the municipal government of Delhi". Section 3 of the Act establishes the Municipal Corporation of Delhi. The Corporation is a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property. Section 490 of the Act provides for supersession of the Corporation. It says;

"(1) If, in the opinion of the Central Government, the Corporation is not competent to perform, or persistently makes default in the performance of, the duties imposed on it by or under this Act or any other law or exceeds or abuses its powers the Central Government may by an order published, together with a statement of the reasons Therefore, in the Official Gazette, declare the Corporation to be incompetent or In default or to have exceeded or abused its powers, as the case may be, and supersede it for such period as. may be specified in the order: Provided that before making an order of supersession as aforesaid reasonable opportunity shall be given to the Corporation to show cause why such order of supersession should not be made. (2) "When the corporation is superseded by an order under sub-section (1), , (a) all Councillors and aldermen shall, on such date as may be specified in the order, vacate their offices as such Councillors and aldermen without prejudice to their eligibility of election under clause (d); (b) during the period of supersession of the Corporation, all powers and duties conferred and imposed upon the Corporation by or under this Act or any other law shall be exercised and performed by such officer or authority as the Central Government may appoint in that behalf; (c) all property vested in the Corporation shall, until it is reconstituted, vest in the Central Government; (d) before the expiry of the period of supersession election shall be held for the purpose of reconstituting the Corporation. (3) An order of supersession made under this Section together with a statement of the reasons Therefore shall be laid before "each House of Parliament as soon as maybe after it has been made."

On April 1, 1980, the Central Government issued a notice to the Corporation to show cause within 7 days why on the stated grounds it should not be superseded. The show cause notice contained the following statement at charges

Notice Whereas it has come to the notice of Central Government that the Municipal Corporation of Delhi (hereinafter referred to as the Corporation) - (1) has persistently made defaults in the performance of the duties imposed on it by or under the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as the Act) as detailed in the accompanying Annexure-1(2) has abused its powers as detailed in the accompanying Annexure-II, and (3) has shown incompetency in the performance of its duties under the Act as detailed in the accompanying in Annexure-III.

Now, Therefore, in pursuance of proviso to sub-section (1) of section 490 of the Act, the Central Government hereby calls upon the Corporation to show cause within a period of seven days from the date of receipt of this notice why an order superseding the Corporation under the said subsection (1) should not be made.

DATED 1st April, 1980 New Delhi. By order and in the name of The President of India sd/- S. V. Sharan, Joint Secy. to the Govt. of India Ministry of Home Affairs.

ANNEXURE-The Corporation failed to repay timely the principal and interest on the amounts granted to it by the Central Government. as detailed below, thereby violating mandatory provision of Section 194 of the Act.

(1) Over due Installment of principal and interest Rs. 87,52,806.18 towards repayments of loans and advances to Rs. 415,44,000.00 the (plus) Corporation (General Wing) _____ Total: Rs. 502,96,806.18

_____ (2) Overdue Installments of principal and interest on Government loans payable by the Delhi Rs. 16,91,95,355.00 Water Supply & Sewage Disposal Undertaking. (3) Overdue Installment of principal and interest on Government loans payable by the Delhi Electric Supply Undertaking. Rs. 57,72,24,000.00

2.The Corporation failed to contribute its share to the extent of Rs. 2.25 crores towards the Employees Provident Fund, thereby violating Regulation 33 of Delhi Municipal Corporation Provident Fund Regulations Act, 1962.

3.The Corporation defaulted in deducting/remitting the amounts payable by the Corporation to employees under the Additional Emoluments (Compulsory Deposit) Act, 1974 thereby violating section 6 read with section 3(b) of the said Act.

4.The Corporation failed to fulfill its duties and prudently. managing its finances, including those of its Undertakings by incurring heavy deficits as indicated below:

General wing of the Corporation (Rs. in laths). Year Revenue Expenditure Deficit
1977-78 4921.24 4992.52 71.29 1978-79 5604.53 6377.49 772.96 1979-80(RB)
7725.07 7096.60 628.47@ @This is a manipulated surplus.

Water Supply and Sewage Disposal Undertaking .(Rs .in lakhs) Year Revenue Expenditure Deficit. 1977-78 1149.89 1530.47 330.58 1978-79 1410.42 2071.97 661.55 1979-80(RE) 1584.93 2571.43 986.50

Delhi Electric Supply Undertaking (Rs. in lakhs). 1977-78 1276.79 2473.03 1196.24 1978-79 1379.22 2967.61 1588.39 1979-80 8782.33 9751.17 968.84

The Corporation has been trying to disguise this dismal state of its finances by exhibiting unrealistic and exaggerated estimates to its revenue receipts while adopting the budget estimates.

ANNEXURE-II1. The Corporation abused its powers in that, notwithstanding the financial constraints, it created a large number of posts without making any efforts to lay down any yard-stick/norms for creation of such posts or corresponding provision for raising resources. The Corporation also made ad-hoc appointments, as reported by , P. N. Jain Committee, of 833 category "A" posts, 20 category "B" posts and 9010 category "C" posts, besides several other Class 1,V .posts. These ad-hoc, appointments are continuing even beyond permissible

period in violation Of the instructions of the Government of India. 2. The Corporation abused its powers in deciding to permit the use of Municipal Vehicles by Councillors and Aldermen , for non-duty purposes ignoring the advice of the Solicitor General of India and also sought to regularise the misuse of vehicles by Chairman of the Committee. 3. In violation of provision of Section 105 of the Act, the Corporation placed a sum of Rs. 20,000 per annum as discretionary funds at the disposal of the Chairman, Standing Committee and Rs. 1800 per annum at the disposal of the Chairman of each of the other Committees. 4. The Corporation made several irregular appointments against the recommendations of the U.P.S-C. and without obtaining prior approval/confirmation from the Administrator (Lt. Governor) thereby violating sections 89, 96 and 97 of the D.M.C. Act, 1957. 5. The Corporation, contrary to the recommendations of the Morarka Commission in para 4.10(d) of volume-6 of its report that the practice of contingency fund should be discontinued and that instead the Councillors should draw up proposals for improvements and new works in their respective constituencies in advance and within the financial limits, not only continue this practice in the General Wing but extended it to the Delhi Electric Supply Undertaking and Delhi Water Supply & Sewage Disposal Undertaking also thereby abusing its powers. 6. The Corporation permitted reconstruction without submission of building plans in respect of premises demolished and ignoring the provisions of law and , the advice of the Commissioner passed a resolution causing deviation in the prescribed procedure for proceeding against unauthorised constructions by providing that notices shall carry certain details about the compound ability of the unauthorised constructions and charges Therefore etc. 7. The Corporation abused its powers by approving the placement of order of about Rs. 1.30 crores on M/8. Trading Engineers against the advice of the Commissioner and against normal purchase procedure. 8. The Corporation passed a resolution to sell the staff quarters in Nimri Colony to the occupants/allottees ignoring the fact that the quarters were meant to serve as an amenity to serving staff.

ANNEXURE-III1. In the wake of such a poor resource position, grant to conveyance allowance to as many as 170 categories of employees, irrespective of their job requirements, is an indication of incompetent of Corporation to manage its financial resources. 2. The Corporation has been incompetent in that it failed to discharge the liabilities of private contractors amounting to over Rs. 4 crores and thereby shaking the creditworthiness of the Corporation in the minds of the public. 3. The Corporation has been incompetent in that it diverted the plan allocations to non-plan expenditure."

(4) The Commissioner of the Corporation received this notice. He delivered it to the Mayor of the Corporation. On April 3, 1980, the Mayor made a request to the Central Government to extend the time for reply by 10 days more. The Government by their letter dated April 6, 1980, declined to extend the time. In the meanwhile the Mayor required the Commissioner to furnish detailed information on the charges leveled in the show cause notice.

(5) An urgent meeting of the Corporation was summoned for April 7, 1980 and an "interim" reply was sent to the Government. In the reply a request for personal hearing, disclosure of documents, and extension of time to file a further defense statement, was also made. The Central Government after considering the reply of the Corporation formed the opinion that the Corporation was not competent to perform its functions and had persistently made defaults in the performance of its duties and had abused its powers. So the Central Government by order dated April 11, 1980, superseded the Corporation for a period of one year. It is the validity of this order which is in question in this petition.

(6) We have heard from both sides lengthy arguments and an elaborate citation of authorities. This petition was heard for some time by two learned judges of this court (Prithvi Raj v and H.L. Anand JJ). They differed on most matters argued before them. They referred the case to a larger bench. This is how this full bench of three judges was constituted to hear and decide this writ petition.

(7) The empowering enactment defines the grounds on which Corporation can be superseded. They are three: (1) persistent default, (2) abuse of powers, and (3) incompetency. Though they are distinct these grounds overlap to a great extent and run into one another. All three are addressed to a common subject, namely, the statutory duties of the Corporation and their proper performance. The section deals with the use, misuse and non-use of the powers of the Corporation. They are three closely allied failures. The highest common factor is incompetence. It is the broadest of all three. A Corporation which abused its power might also have been reasonably regarded as incompetent to perform the duties imposed upon it. *Radeshym Khare and Another Vs. The State of Madhya Pradesh and Others*, . For the sake of convenience they will be considered separately. We shall see in each case whether there is supporting evidence, slight or substantial, for reaching the conclusion that the Corporation must be superseded.

(8) Before I do this let me examine the three preliminary points raised by the petitioner. He attacked the order of supersession on three grounds, namely, that (i) no reasonable opportunity was given to the Corporation to show cause against the proposed action, (ii) that supporting documents were not supplied to enable the Corporation to make an effective representation, and (iii) that the impugned order does not state the reasons why the Explanation offered by the Corporation was not acceptable to the Central Government.

(9) Reasonable opportunity: Section 490 says that before making an order of super session reasonable opportunity shall be given to the Corporation to show cause why the order of supersession should not be made. The statute is specific. It uses the expression "reasonable opportunity". This is the principle of natural justice. The term: denotes the minimum standards of fairness in the adjudicatory process embodying the specific requirements that the party affected must be heard and no man can be condemned unheard *audi alteram partem*.

(10) "WHATEVER standard of natural justice is adopted, one essential is that the

person concerned should have a reasonable opportunity of presenting his case." (Russel v. Duke of Norfolk, (1949) 1 All. E.R. 109. What is a reasonable opportunity must depend on the circumstances of each case. There is no cut and dried formula. There are no hard and fast rules. There are no prescriptions which will lay down exactly what must, in various divergent situations, be done. The principles and procedures are to be applied which, in any particular situation or set of circumstances, are right and just and fair. Natural justice has been defined as "fair play in action". It has been called as the "residual duty of fairness."

(11) The petitioner complains that the time of seven days to show cause against the proposed supersession was too short. He says that only an interim reply could be sent which was prepared in post haste in two days because time was expiring on April 8, 1980. It is argued that many things remained unsaid and unshown. It was submitted that the request for extension of time by ten days was reasonable in the facts and circumstances of the case and that its refusal was unreasonable.

(12) I approach the present case by considering whether in all the circumstances the Central Government acted unfairly in refusing to extend the time. In my opinion there was no unfair now Seven days" time to make a reply was enough. A meeting for April 5, 1980 had already been summoned, by notice dated March 28, 1980. This was the first meeting. It was convened for the election of the Mayor and the Deputy Mayor. "The question of drafting a reply could also be considered on that date. There was no bar in doing so. The Mayor had already asked the Commissioner to supply the requisite information. An urgent meeting of the Corporation was summoned for April 7, 1980 to consider the notice. On April 7, 1980 the Corporation met. It was resolved that an interim reply be sent and that a sub-committee be appointed for drafting a fuller reply. Before the sub-committee could draft the reply the Central Government made the order of supersession on April 11, 1980.

(13) The substance of the thing is that a reply was actually sent. There was no substantial prejudice of which the petitioner can justly complain. A fair opportunity was given to the Corporation to answer the charges. They did answer them in a 22 pages written statement. Point by point charges were replied. Everything was answered in substance. The substantial requirements of justice were all observed. A reasonable opportunity was given. This is the essence of justice. All that was required is that the Corporation should have an opportunity of submitting to the authority by whose decision they are to be bound, such considerations and views as in their judgment ought to be brought before it. The Central Government, in my opinion, satisfied the essential requirements of justice and fair play. The Corporation had a fair opportunity for correcting and contradicting the relevant statements prejudicial to their view.

(14) A balance has to be maintained between the need for expedition and the need to give reasonable opportunity to a party to see the material against him. The opportunity need not be an elaborate ritual. In situation of quick dispatch it

maybe minimal. A fair abridgment of opportunity is permissible [Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, . It has been well said:

Fairness, however does not necessarily require a plurality of hearings or representations and counter representations .If there were too much elaboration of procedural safeguards, nothing could be done simply, quickly and cheaply. Administrative or executive efficiency and economy should not be too readily sacrificed. The disadvantage of a plurality of hearings was cogently pointed out in the majority judgments in *Cozens V. North Devon Hospital Management Committee* (1966) 2 Q.D. 330, 343,346-347.

[*Pearlbergv.Varty*,(1972) 1 W.L.R. 534 per Lord Pearson].

(15) The aim of the rule of natural justice is to secure justice or, to put negatively, to prevent miscarriage of justice. The single question which arises is that: Was there miscarriage of justice in this case? I think not. Broad grounds of complaint were supplied. Broad lines of defense were submitted with sufficient clarity. There was no prejudice of any kind. The two basic requirements are : (a) notice of the case to be met; and (b) opportunity to explain. These were fulfilled.The doctrine has to be tailored to the needs of the situation. In some cases the opportunity may be the littlest. In others it may be a full trial type. In still others it may be post decisional. The authority is the master of its own procedure. It need not hold a hearing. It can do everything in writing. It need not put every detail of the case against the man. Suffice it if the broad ground are given. Similarly the party affected can state the defense in substance. It is not necessary to quote chapter and verse. But in the end, the authority itself must come to its own decision after hearing the man.

(16) Fairness itself is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction. It is not a bull in a china shop, nor a bee in one's bonnet. Its essence is good conscience in a given situation; nothing more." (*Mahinder Singh*, supra p. 872).

(17) In *Malloch v. Aberdeen Corporation*, (1971) 1 W.L.R. 1578 Lord Wilberforce said:

A breach of procedure whether called a failure of natural justice or an essential administrative fault, cannot give him a remedy in the courts, unless behind it there is something of substance which has been lost by the failure.

(18) If there is no surprise, if ample opportunity has been given, if the party affected has made all the representations that it could have possibly made against the proposed order, nothing more is required. "The rules of natural justice must not be stretched too far. Only too often the people who have done-wrong seek to invoke the rules of natural justice so as to avoid the consequences." (*R. v. Secy. of State for Home Deptt.* (1974) Q.B. 313 per Lord Denning MR).

(19) It was said that a large number of documents had to be consulted before preparing the reply to show why the defaults mentioned in the notice were not attributable solely to the present Corporation but were largely the legacy of the past. All the documents were available in the municipal archives. No one expects that details should be stored in the archives of one's memory. The minutes, correspondence, reports, resolutions were ready at hand in the institutional records. It was the Commissioner's duty to supply the required information. Section. 36(3) of the Act says:

36. -----

(3) The Mayor shall have full access to all the records of the Corporation and may obtain reports (a) from the Commissioner or any matter connected with the municipal government of Delhi; _____

(20) And he did supply in a 50 page careful note to the Mayor within a record time of three days. Between 5th and 8th of April, 1980 there was sufficient time to prepare the reply. There was time to collect, catalogue and digest the information. It is true that 72 hours notice is required for convening a meeting of the Corporation u/s 74. But on March 28, 1980 the Municipal Secretary had convened a meeting for April 5, 1980. On receipt of the notice on April 1, 1980 this matter too could have been put on the agenda for consideration on April 5, 1980. In any event the matter was considered at the meeting of April 7, 1980 and a reply was sent.

(21) To an oral hearing clearly the Corporation were not entitled. They could only make a written representation. They did so. The requirement of reasonable opportunity means that the person affected should have a right to make a representation against the action proposed. For -this reasonable time was to be allowed. What is reasonable depends on the nature, purpose and circumstances of each case. The term is essentially relative. No universal generalisation can be made. No rigid rule can possibly be laid down. Everything depends on the subject-matter.

(22) The Central Government, in my opinion, gave them a reasonable opportunity of being heard. There is nothing of substance which may have been lost by refusing the extension. A court would be slow to stigmatize as contrary to natural justice proceedings which substantially comply with the requirement of reasonable opportunity. Disclosure of documents:

(23) Closely connected with the complaint of shortness of time is the complaint that relevant documents were not supplied to the Corporation with the notice dated April, 1980. The statute does not require the Central Government to supply all the documents and materials on which it forms the opinion. They are all in the possession of the Corporation. They can be had at a moment's notice from the Commissioner. In fact the Central Government obtains documents and records

from" the Commissioner (s. 485). Section 87 requires the municipal secretary to forward minutes and reports of proceedings to the Administrator of the Union Territory. To ask the Central Government to supply them to the Corporation is to carry coals to New Castle. It was said that the note of the financial adviser dated January 19, 1980 opposing the grant of loan of four crores of rupees ought to have shown to the Corporation. This was internal advice which the Government took. No one discloses what his subordinates have advised him.

(24) A short answer to the objection is that documents could have been obtained from the Commissioner. He is the head of all paid staff. His main function is to provide necessary information and advice to the Corporation and to head a team of senior officials. The Councillors and aldermen represent the amateur control Commissioner's relationship with the Councillors and aldermen is similar to that generally prevailing between the directors of a firm and its managers. He informs them on the work of the Corporation, points out matters requiring their attention or decision, and makes suggestions and recommendations. Like a civil servant he must be able to assist them with all the information required on a matter calling for their decision.

(25) That a large number of documents were referred to in the course of the hearing is not a ground as could invalidate the order of supersession. The question is: Did the Corporation understand the charges brought against it? In my opinion, they are set out with sufficient particularity in the notice. All the relevant documents, resolutions, proceedings, minutes were referred to by the Commissioner in his note which the Corporation had before it at the meeting of April 7, 1980. A copy of this note was placed on record during arguments. That the sub-committee appointed to draft a further reply required more information on April 8, 1980 which the Commissioner was unable to supply earlier than three days does not mean that the opportunity given by the Central Government was not reasonable.

(26) I am of opinion that there was nothing further to say and show in reply to the show cause notice. All that was necessary had been said and done. What we have to see is whether the way in which the minister proposed to act, in the light of the circumstances as they existed on April 11, 1980, was such that no sensible authority acting with due appreciation of its responsibilities under the Act could have decided to adopt. The argument of non-disclosure of documents also fails. Statutory duty to give reasons:

(27) In administrative law civil servants have stubbornly resisted any idea of giving reasons for decisions, though statutes have increasingly imposed a duty to give reasons for certain types of decisions, usually those made after a formal hearing or inquiry.

(28) Section 490 insists upon a statement of reasons for the order of supersession. The order of supersession together with the statement of reasons has to be published in the Official Gazette. They have to be laid before the

Houses of Parliament.

(29) The first question is what is meant by reasons. Reason is an elusive concept. It was argued on the basis of certain decisions that reasons ought to include not only the grounds for decision but should also show why the Explanation offered by the Corporation has been rejected. It must, it is said, include the decision on the Explanation and reasons for its rejection. In my opinion, and I say so with respect, judges in this regard have gone too far. I think all that is required of the authority is to point to the factors which in its view justify the actual decision. .It is not expected to give reasons for its verdict in the same manner as does a court of law. Judges are agreed that the authority has not to write a judgment. Why should we then insist on legal reasoning? It ought to be enough if the authority has given the grounds of action. The legislature does not require it to deal with the Explanation of the Corporation, point by point as it were, to satisfy the electorate of the democratically elected Councillors. This will be too onerous a duty. But the legislature does require the authority to articulate reasons which operated on its mind to take the drastic step. The authority owes it to the Parliament and the people to inform why it formed the opinion it did. What is the good justification. for its action. These reasons may be stated in a general way without any legal reasoning, without any discussion of what was argued for or against the major premises which is the foundation of the decision. It Is not necessary that the public authority should make an elaborate order discussing the arguments in the manner of a court of law [The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another,

(30) Legal reasoning which a, discussion of the Explanation win necessarily involve is a procedure appropriate to the trial of a law suit. But we here are dealing essentially with an administrative act.

(31) In Suresh Seth Vs. The State and Another, (A.P. Sen and G.P. Singh Jj the view was taken that reasons for rejection of the Explanation of the Corporation must also be stated. This was based on Re Poyser and Mills Arbitration (1963) 1 All E.R. 612 and Iveagh v. Minister of Housing (1964) 1 Q.B. 395 and The Collector of Monghyr and Others Vs. Keshav Prasad Goenka and Others, . English cases were concerned with section 12 of the Tribunal and Enquiries Act, 1958. In both these cases Hegaw J. said that proper, adequate reasons must be given. He added that reasons must deal with the substantial points that have been raised before the Tribunal. The object is that the reasons must form part of the order, so that the order will be a "speaking order" for the purposes of certiorari. In my view the present order is "speaking order" because it gives us the grounds on which Central Government decided to dissolve the Corporation. The court can quash the decision if it comes to the conclusion that reasons given are bad because they have no relation to the statutory heads of incompetence, persistent default or abuse of power. The outworn distinction between judicial, quasi-judicial and purely administrative power will not prevent the courts from renewing the

decision of the minister on the reasons stated by him and from setting it aside where they feel strong repugnance to the decision on the material before them.

(32) In *Collector of Monghyr* the Supreme Court has said that the statutory requirement is not satisfied by merely recording conclusions. But it does not lay down that reasons must deal with the points of fact and law raised in the representation as was said in *Suresh v. State*. I think the observation in *Suresh* should be read as confined to the facts of that case whereon two charges nothing was said by the State on the representation made and on which points the State was factually wrong.

(33) *Suresh Seth* was followed in *Municipal Council, Kharsia and Another Vs. State of Madhya Pradesh and Others*, and *The Municipal Council, Malkapur and Another Vs. The State of Maharashtra and Another*, . In the Bombay case some new and grave charges were introduced at the time of the hearing and these weighed with the Government in making the order of supersession. (P. 266).

(34) An analysis of the cases shows that no general rule can be laid down as to what will meet the statutory requirement of reasons in all cases. Reasons are not bad because they are brief and not elaborate. Every case has to be judged in the light of its own facts and circumstances. See *Tara Chand Khatri Vs. Municipal Corporation of Delhi and Others*,

(35) But one thing is certain. Mere reproduction of the words of the section is not enough. Nor a bare conclusion is satisfactory. The requirement must be followed both in letter and spirit. The statement of reasons must inform the public mind and the Parliament as to what are the grounds which impelled the Government to take the drastic action. The statement of reasons is necessary because they are subject to the "surveillance" of the courts as much as to the scrutiny of the Parliament. "Surveillance", to use a phrase of Lord Pearce (*Padfield v. Minister of Agriculture* (1968) AC 997) means that the courts exercise the power of overseeing to judge whether the authority has misdirected itself on facts or law. But the "propriety adequacy or satisfactory character of the reasons may not be open to judicial scrutiny." [*Hochtief Gammon Vs. State of Orissa and Others*,

(36) Applying these principles to this case I find that the Government have stated in great detail the facts and circumstances which in their view are a good justification for the action. The order of supersession sets out all the facts detailed in the Show cause notice. On these facts, which they found established on the material on the record before them" in spite of the Explanation of the Corporation, they made the order. On these facts they formed the opinion that the Corporation was guilty of persistent default, misuse of power and incompetence. They have not merely repeated the words of the section as has been done in some of the decided cases of municipalities. In the present case we find more meat and marrow than in any other case cited to us. There are "objective facts". There is "factual material". On an evaluation of these facts the Government came to the conclusion as a matter of opinion that the Corporation

ought to be superseded. Reasons, as Dua J. aptly put it, are those necessary facts which may have weighed with the Government in arriving at the conclusion that the Corporation is incompetent and a persistent defaulter in the performance of statutory duties. *The Municipal Committee and Others Vs. The State of Punjab and Others*, . To ask for more will be making unreasonable requirements and imposing undue burdens [*Me Innes v- In slow Face* (1978) 3 All E.R. 211 per Meggry VC]. This will be to allow the concept of reasons "to run wild".

(37) I agree that the duty to give reasons under S. 490 is a responsible one and cannot be discharged by the use of vague general words. That the requirement is mandatory is shown by the fact that these reasons are to be published and laid before Parliament.

(38) Reasons are the bases of the action. The courts must know what it is that an authority has determined in order that they may know what to review. Unexplained decisions leave the public in the dark on the reasons which led to them. More important, permitting them is an open invitation to arbitrary action. The statutory obligation to give reasons is a substantial check upon misuse of power.

(39) The requirement of reasons meets the elementary demand of those injured by the authority's decision to be told "the reason why". The role of the reason requirement is to facilitate judicial review; without them a court cannot adequately perform its reviewing functions. We must know what the decision is before the duty becomes ours to say whether it is right or wrong. This is the pragmatic test. Is it impossible for the court to perform its function of review on the facts stated in the order? Plainly the answer is "no"..

(40) The requirement of reasons is mandatory. So is publication. So laying before Parliament. This will show that the reasons must be self-contained. To search for reasons we cannot be asked to dig into the Government files. The statement of reasons has to be tabled in Parliament. The Parliament will not be shown the files. Similarly people have no access to Government records. Where a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. Public orders made by public authorities are meant to have public effect. Public orders publicly made in exercise of statutory authority cannot be construed in the light of Explanation subsequently given. (*Mohinder Singh Gill* p. 858).

(41) As the consequences of supersession are quite serious it is not only desirable but also essential that the Government should indicate the reasons for forming the opinion. When such an order is challenged on the ground of non-application of mind the Government must place before the court all the

necessary materials which were available before it and which were taken into consideration for forming the opinion it actually formed. In this case the Government produced the file of nothings and jottings when the case was being heard by the division bench and the question of non-application of mind was raised. But this plea was abandoned before us. The file shows that the representation of the Corporation was considered before the impugned order was made. The Government files can be seen by the court for satisfying itself that the Government applied its mind and that conditions precedent to the applicability of s. 490 existed. (See Bhagat Ram Patanga Vs. The State of Punjab, . The court's conscience must be satisfied that on the material on which the allegations are based and the reply given to them the Government could entertain the opinion it did. But it is well to remember that the issue of supersession is not to be tried as a law suit with a right of appeal to the High Court. (Ram Lal Lahoti v. Government of Andhra Pradesh, 2nd 1979 Ap 1.

(42) We were also referred to two single bench cases : Lila Kishan v. State of Haryana, 1971 Plr 289 and Town Municipality Council Coondapur v. State of Kamataka, (1977) 2 KLJ 114.

(43) In my opinion, the grounds for supersession are more than a mere statement of conclusion; they do state the salient reasons why it was necessary to supersede the Corporation. In the circumstances of this case I do not think it was necessary in the statement, to make a reference to the pleas raised by the Corporation and the reason for their rejection. A general reference to the reply to show cause notice does appear in the reasons. There certainly was no need to refer to the various matters of detail which must assume, in the absence of evidence to the contrary, had been taken into account when considering whether the Corporation ought to be superseded. It should be understood that this present case does not govern what may be different circumstances in other cases. The grounds stated in the statement of reasons in this case pass the test: the same grounds in another case may fail to do so. In my opinion, the grounds given bring to the mind of the reader a clear understanding of why the Corporation has been superseded [Mount View Court Properties Ltd. v. Davlin, 1970 P&CR 689. Lord Parker CJ has said:

WHAT reasons are sufficient in any particular case must, of course, depend upon facts of the case. I approach the matter in this way : that reasons are not deficient merely because every process of reasoning is not set out. I further think that reasons are not insufficient merely because they fail to deal with every point raised before the committee at the hearing.

[Elliot v. London Borough of Southwark (1976) 2 All. E.R. 781.

(44) The argument that the order is invalid because it does not discuss the Explanation offered by the Corporation is rejected. Section 490 and the limits of reviewability.

(45) Now the law. Section 490 which provides for supersession of the

Corporation appears in Ch. Xxiv which is headed "Control". All told, central control is both wide and deep. Behind the corporate facade stands the Central Government with wide powers to issue directions, order inspection", and compel obedience to its commands. The Central Government exercises a considerable degree of administrative control over the Corporation in the interests of the community as a whole, for what is administered locally is often a national policy. The most effective single agency is the control over finances and borrowings. Some watch must be kept to ensure that spending is economic, for there always exists the possibility that the Corporation may carry its permissive powers too far.

(46) In construing section 490 we have to remember three things. First. We are dealing not with a judicial act but an executive act. This is essentially an administrative power which the legislature has entrusted to the executive branch of the Government. Generally speaking, a quasi-judicial decision is only an administrative decision, some stage or element of which possesses the judicial characteristics. An officer making a quasijudicial decision has, after ascertaining the facts and applying the law to them, to use his discretion whether he will or will not take administrative action and if so, what action.

(47) SECOND. The power of supersession is hedged with conditions and restrictions, both procedural and substantive. The procedural conditions are that before making an order of supersession reasonable opportunity has to be afforded to the Corporation. In the order of supersession the Central Government has to state reasons which are published and laid before Parliament. The substantive grounds on which an order of supersession can be made are three: (i) persistent default in the performance of duties by the Corporation, (ii) excess and abuse of power, (iii) incompetence. All the three expressions have definite legal connotation. Before judgment is reached on these grounds there must be existence of some facts. As a necessary condition precedent to the exercise of a power by the Minister, there must exist, if I may use a phrase, the necessary substratum of fact. The exercise of powers is preconditioned by the existence of a substratum of fact. It is open to the court in this case to consider upon what evidence the minister has acted. It has always been open to the court in the "substratum of fact" class of cases to review the matter and to consider on what material the decision has been reached." I have no doubt that this is what is called a "substratum of fact" class of cases. The decision is of the Central Government. It is taken in the name of the President by a minister responsible to Parliament. Although the evaluation of the facts is for the minister, the court must inquire whether those facts exist and have been made upon a proper self-direction as to those facts, whether the judgment has not been reached upon other facts which ought not to have been taken into account. If conditions precedent to the exercise of power do not exist then the administrative decision, however bona fide it may be, become capable of challenge.

(48) Under the section the court's power to review the exercise of the discretion, though still real, is limited. In these cases. it is said that the courts cannot

substitute their opinion for that of the minister; they can interfere on such grounds as that the minister has acted right outside -his powers or outside the purposes of the Act, unfairly, or upon an incorrect view of the law. As Lord Denning, Mr said:

THE court can interfere with the minister's decision if he has acted on no evidence; or if he has come to a conclusion to which on the evidence he could not reasonably come, or if he has given a wrong interpretation to the words of the statute; or if he has taken into consideration matters which he ought not to have taken into account; vice versa; or has other wise gone wrong in law.

(Ashbridge Investments Limited v. Minister of Housing and Local Government 1965 (3) All ER. 371. The requirement that a person exercising-quasi-judicial functions must base his decision on evidence means no more than that It must be based upon material which tends logically to show the existence or non-existence of facts relevant to the issues to be determined. It means that he must not spin a coin or consult an astrologer. But he will take into account any material which, as a matter of reason, has some probative value, in the sense mentioned above. If it is capable of having any probative value, the weight to be attached to it is a matter for person to whom Parliament has entrusted the responsibility of deciding the issues. The supervisory jurisdiction of the High Court does not entitle it to usurp this responsibility and to substitute its Owe views for his. [See R. v. Deputy Industrial Injuries Commissioner: Ex. Parte Moore, 1965 (2) Wlr 89 per Diplock LJ].

(49) The ultimate question is : Was the Minister acting unreasonably in ordering supersession" of the Corporation? In Public law -and this is a case of public law and not of private rights " "unreasonable" as descriptive of the way in which a public authority has purported to exercise a discretion vested in it by statute has become a term of legal art." To fall within the expression "unreasonable", as Lord Diplock has said,

IT must be conduct which no sensible authority acting with due application of its responsibilities would have decided to adopt.

[Secretary of State for Education and Science v. Tameside Metropolitan Borough Council, (1977) Ac 1014]. This is the test. Our Supreme Court has adopted the same approach. In The State of Maharashtra and Another Vs. B.K. Takkamore and Others, Bachawat J. said:

THE court will not review the facts as an appellate body. But the order is liable to be set aside if no reasonable person on a proper consideration of the materials before the State Government could form the opinion that the Corporation is not competent to performer persistently makes default in the performance of the duties imposed on it by or under this Act or any other law for the time being in "force or exceeds or abuses its powers.

(50) It means this. The statute confers jurisdiction on the administrative body in

certain defined factual situations. If the primary or jurisdictional facts are absent in a particular case, the body will be without jurisdiction. So the opinion formed by the Central Government is subject to objective test. It is not purely subjective and unreviewable by courts. This hands off approach is out of date. Recent cases have braided new vistas of judicial control. There is a decided change in approach. In *Laker Airways v. Deptt. of Trade* (1977) Q.B.643 Lord Denning Mr asserted that the statutory administrative power was to be exercised for the public good and the court was entitled to see that the power was "used properly and not improperly or mistakenly." *Padfield*, *Tameside* and *Laker* have already passed into the folklore of administrative law.

(51) THIRD. The statute provides no appeal from the decision of the Central Government. The Central Government u/s 490 is not merely exercising a discretion : it is reviewing the action of another public body which itself has statutory powers, duties and functions. The Corporation is itself elected and is given specific powers by an Act of the central legislature. Judicial control cannot be a substitute for administrative or political control of the merits or expediency of official decisions. Nor are the judges responsible for the efficiency of the administration. But the courts ensure that the decisions made on political or other grounds conform to the law and that certain basic standards of fair procedure are observed. In many-fields parliament has provided no right of appeal against administrative decisions. Nevertheless the superior courts exercise residual controlling power on such matters as vires, which are relevant to the legality of official decisions. (Wade and Philips Constitutional and Administrative Law 9th ed. p. 580). Therefore, with the merits of the governmental action under review we are not concerned. We are concerned only with its legality. It is expressed sometimes by saying that the courts will-not substitute their opinion for that of the authority entrusted with discretion. Prof. De Smith told us that Judicial review of administrative action is inevitably sporadic and peripheral. He said:

THE administrative process is not, and cannot be, a succession of justiciable controversies. The public authorities are set up to govern and administer, and if their every act or decision were to be reviewable on unrestricted grounds by an independent Judicial body the business of administration could be brought to standstill."

(Judicial Review of Administrative Action, 4th ed. page 3). The adequacy of the material provided that it is relevant and the wisdom and unwisdom of the actual exercise of powers do not concern the court. [See *State of Madras v. Tirunelveli Municipal Council*, 2nd 1967 (1) Mad 492.

(52) The complainer has petitioned for a mandate in the nature of certiorari to quash the order of the Central Government. But certiorari is not an appellate power. It goes to jurisdiction. Certainly the courts will be vigilant to see that such overreaching powers (as of supersession) are kept within the four corners of the statute granting them [*Municipal Committee and Another Vs. State of Madhya*

(53) An order of supersession together with the reasons has to be laid before each House of Parliament as soon as may be after it has been made. This shows the importance of the matter. It emphasises that the decision must be reached with a sense of responsibility. The Central Government is responsible to Parliament. Parliament is the supreme source of local authority. Though the order is made in the name of the President, the decision is of the minister. The minister is responsible. It is he who must answer before Parliament. Parliament is the place where complaint can be made against the order of supersession. This is not to say that it cannot be challenged in courts. What is meant is that not only is the order subject to surveillance of the courts, it is also subject to the scrutiny of Parliament. This is how the processes of democratic consultation, scrutiny and control have been introduced in the Act.

(54) But how effective is this control? A measure of general control is provided by the political responsibility of a minister to Parliament for his department. This responsibility for the order of supersession made may be raised through questions to the minister, and during debates relating to his department. Laying before Parliament is the effective control, unless it is argued that ministerial responsibility is a delusive doctrine and affords no protection to the electorate from the arbitrary action of the executive. Apart from this, publicity is secured by the publication of the order together with reasons in the official gazette. So the people are informed of it. Grounds of Supersession

(55) Now I come to the heart of the matter. Annexure I. In Annexure I there are four complaints. The first is that the Corporation has failed to repay timely principal and interest on the amounts borrowed by it from the Central Government. The amounts due to the Government are not disputed. Section 194 of the Act says : "All payments due from the Corporation for interest on and repayment of loans shall be made in priority to all other payments due from the Corporation." As a statutory creditor the Central Government is entitled to prior payment of its dues. The corporation was incurring huge deficits year after year. Its indebtedness was mounting. It did not pay interest and principal after 1973-74. The elected representatives in their reply-pleaded that; they had inherited the liability from the past and though their performance was "commendable" they were unable to pay because the Government did not agree to their request to convert the huge liability into a grant-in-aid or "loan in perpetuity". It was said that the deficits are not a new thing and that this was a universal feature of all State Governments and the Government of India undertakings, It was added that 35 crores of rupees were due from the Government which it did not pay and this was one of the causes of their failure to pay loans and interest. A statutory creditor, as is the Central Government, is entitled to demand payment in accordance with the terms of the loan and if no payment is made it will amount to persistent default. The underlying idea of section 194 is to secure to the Central Government the repayment of loans and

interest.

(56) The second and third complaints are that the Corporation has failed to deposit employees' provident fund and the additional emoluments under the Act of 1974. This is also a persistent default because Provident fund has to be deposited at the beginning of each month. The default is not disputed by the Corporation. But it is said that its responsibility rested entirely with the Commissioner. In my opinion, the Commissioner cannot be held responsible.

(57) It is necessary to say a few words about the role of the Commissioner in the civic set-up. u/s 54 he is appointed by the Central Government and is removable by the Central Government if a resolution for such removal is passed by a majority of not less than 3/5th of the total number of members. By section 59 the entire executive power for the purpose of carrying out the provisions of the Act or any other Act which confers any power or imposes any duty on the Corporation is vested in the Commissioner. The Commissioner is the chief executive of the Corporation. It is true that he is the keystone of the municipal arch. But the primary responsibility for payment of employees provident fund and additional emoluments is on the Corporation. The Corporation is distinct from the Commissioner, Section 3 of the Act says that "the Corporation shall be composed of Councillors and aldermen". The Corporation is a corporate body and Councillors and the aldermen constitute the deliberative wing of the Corporation. They take decisions on matters of principle and policy. Commissioner is the authority to execute their orders in the same manner as the executive enforces the legislative commands. The Commissioner is one of the municipal authorities under the Corporation (s. 44). His primary loyalty and duty lie to the Corporation. It is to the Corporation that he is answerable for his actions. In the course of advising the Corporation there is clearly no objection to the Commissioner telling that he considers their proposals to be wrong and, if he thinks fit, submitting his views to them in writing. Once his view is known to the Corporation, he should leave them to come to their own decision. It is the duty of the Councillors and the aldermen to formulate the policy for the Corporation and they are primarily answerable for their actions to the people at the polls and in a way to the Central Government also. The Commissioner has plainly said that he "could not deposit provident fund or additional emoluments because of the non-availability of funds. It is unjust to throw blame on the Commissioner.

(58) The fourth complaint is that the Corporation failed to manage its finances prudently and its style of functioning has resulted in heavy deficit. The Commissioner wrote that "the Corporation is in the throes of a financial crisis of an unprecedented magnitude." The Corporation framed unrealistic budgets. There are detailed provisions in the Act on budget making (Sections 109 to 112). The budget is to be framed having regard to all the requirements of the Act in such a way that the estimated cash balance at the close of the year shall not be reduced below the sum of Rs. 1 lakh at least (s. 110). If the cash balance cannot be left at the close of the year, then, it shall be incumbent on the Corporation to

sanction forthwith any measures which if may consider necessary for adjusting the year's income to the expenditure. The Corporation has never been able to adjust "its income to the expenditure. This is the gravamen of the charge. The budget it adopted was based on an expected increase in the realisation of property taxes, expected rural areas grant from the Central Government, and expected permission from the Government to raise terminal tax by about 66 percent. The Commissioner pointed out that such a budget was unrealistic because unless and until the Parliament amends the Act its expectations cannot be realised. His advice was disregarded. He suggested that utmost economy must be effected in the expenditure in order to balance the budget. He recommended that no development work should be undertaken from the municipal revenues. His advice was rejected. Even his competence to make a proposal of this nature was questioned. He was ordered to see that the development work was not stopped under any circumstances.

(59) That the Corporation did not cut the municipal coat according to the cloth is evidenced by a request which it made for a ways and means loan of Rs..4 crores during the correct financial year of 1979-80 to tide over the financial crisis. Though the joint secretary Mr. S. V. Sharan recommended that the loan be granted the matter was referred to the financial adviser to the Government of India who declined to recommend the loan and opined that it was not proper for the Government to "bail out the Corporation". He pointed out that the non-realistic appraisal of receipts and faulty budgeting were the main causes for the Corporation's financial plight. The Corporation, he said, has been spending money without raising the financial resources. It had taken into account a large amount of revenue which it should have known that it could not realise unless the Act is amended and the Government made a Rural Areas Grant. This, was the state of things in January 1980. As there was no hope of improving the financial position the Government decided to supersede it soon after in April. Annexure II

(60) Now I come to Annexure II. The charge is that the Corporation abused its powers, which have been instanced in this annexure. The concept of abuse of power has various properties in the legal universe. Thus, where the enabling statute expresses a purpose that should be achieved in exercising a discretion, and some other purpose is in fact achieved (or sought to be achieved) the abuse of power may-be described as "wrong motive". In some instances the abuse is categorised as amounting to taking improper considerations into account or failing to take proper considerations into account. In yet other cases the deciding authority may be said to have acted "unreasonably" (Garner Administrative Law 6th ed. p. 157).

(61) As Lord Maonaghten said in *Westminster Corporation v. London and North Western Railway* (1905) A.C. 426:

IT is well settled that a public body invested with statutory powers such as those conferred upon the corporation must take care not to exceed or abuse its

powers. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. The last proposition is involved in the second, if not" in the first.

I will refer to two cases illustrative of abuse of power. In *Attorney General v. Fulham Corporation*. (1921) 1 Ch. 440, the Fulham Council arranged to benefit housewives of the borough by installing a municipal laundry with the latest contrivances worked by corporation officials. Under the Baths and Wash-houses Act, 1847, the council had power to establish a wash-house where people could wash their own clothes. A ratepayer sought by an injunction to restrain the corporation from conducting the laundry as a business. It was held that the statutory power was confined to the establishment of a wash-house and that it was ultra virus for the council to establish something different. Thus, were the women of Fulham deprived of the benefit of an up-to-date municipal laundry.

(62) The other example is the classic decision of *Roberts v. Hopwood*, 1925 A.C. 578. The Council was empowered by a statute to pay to their employees "such salaries and wages as" they may think fit." The Council paid to certain workmen rates of wages considerably in excess of the general level of wages prevalent in the district because they considered that the general "level did not amount to a reasonable living wage. The district auditor disallowed these payments and surcharged the consequent deficiencies in the rate fund on those Councillors who had voted for this decision. They appealed to the courts, and the House of Lords upheld the district auditor, because in fixing this high rate of wages the Councillors had done so by reference to something which they ought not to have entertained and to the exclusion of those elements which they ought to have taken into consideration in fixing a sum which could fairly be called a wage.

(63) These cases show that where a power vested in a public authority is exceeded acts done in excess of the power are invalid as being ultra vires. The ultra virus doctrine serves to control those who exceed the administrative discretion which an Act has given. (Wade and Phillips Constitutional and Administrative Law, 9th edition, page 587).

(64) A power that is discretionary is abused or misused if it is exercised for an unauthorised purpose, if relevant considerations are disregarded or irrelevant considerations taken into account. Even where a discretion seems unfettered the courts will interfere where it has been exercised in a way which thwarts or frustrates the objects of the Act conferring the power. See *Bedfield v. Minister of Agriculture*, 1968 A.C. 997. An abuse of power may be either in good faith or in bad faith. An authority acts in bad faith if it acts dishonestly, in order to achieve an object! other than that for which it believe? the power has been given; or maliciously, if acts out of" personal animosity. (O. Hood Phillips Constitutional and Administrative Law, 6th ed., page 599).

(65) It is not suggested that the Councillors and aldermen were corrupt or dishonest. As Scrutton LJ said, "some of the most honest people are the most

unreasonable; and some excesses may be sincerely believed in but yet quite beyond the limits of reasonableness" (R v. Roberts (1924) 2 K. B. 694. But conduct that is unreasonable as to be arbitrary or capricious can well be "mistaken for or assimilated to acts done in bad faith. (Smith Administrative Action (4th edition) p. 347). There are examples of discretionary powers having been unlawfully exercised on irrelevant grounds. There are decisions of improper expenditure of public funds by local authorities (Smith, p. 342).

(66) It is in the light of these principles that we have to see whether the acts enumerated in Annexure Ii are instances of abuse of power. The best illustration of abuse of power seems to me the sale of staff quarters. The Corporation sold quarters in Nimri Colony to the occupants ignoring the fact! that the quarters were meant to serve as an amenity to the staff. Section 43(n) says that one of the discretionary functions of the Corporation is to provide "dwelling houses for municipal officers and other municipal employees". It will be an unauthorised use of its power to transfer the quarters to the occupants, even though it be at market rate.

(67) It is true that the Corporation has the power to transfer a property (s. 200). But in the present case it will be an improper exercise of power for three reasons. Firstly, the stipulation of the Government loan was that 50 per cent of the quarters will be sold and 50 per cent will be retained for the employees. In the second place, the employees had brought a writ petition which is even now pending. Without waiting for the decision of the court the Corporation passed a resolution that the quarters be sold-at market rate. Thirdly, there was an acute shortage of accommodation. The Commissioner was against the transfer. But his advice was not heeded. The reply of the Corporation that there was no impropriety in disposing of the quarters at market rates cannot be accepted because that is not the purpose for which they were built. Power to transfer property exists but its scope has been exceeded.

(68) In the reply it was asserted that the Government of India and the Delhi Administration have themselves sold their own buildings at reduced prices to their employees. This is not a justification for a corporate body, because one of its functions is to provide houses to the employees and not to sell them. It is a service corporation and not a sales corporation. A local authority is a public body discharging functions under statute; its powers and duties are definable in terms of public, not private law.

(69) If we keep the above principles in view it will be quite clear that the acts enumerated in Annexure Ii are clear instances of abuse of power. Items 1 and 4

(70) Nearly a thousand ad hoc appointment's have been continuing in the Corporation. No temporary appointment can continue beyond one year without the sanction of the UPSC. Appointments made without consulting the Commission, unless the post itself is excluded, should be terminated automatically at the end of the year. P. N. Jain Committee observed in its report

in 1967 that "the personnel policy of the Corporation should be reviewed to reduce the number of ad hoc appointments." This shows that the Corporation had no recruitment philosophy and ad hocism was the style of its functioning. The same is true of the appointments of S/Shri J. D. Goel, B. Dayal and S. P. Kapil in the posts of municipal engineer, deputy municipal engineer and superintending engineer respectively. These appointments were made against the recommendations of the Upsc and Without obtaining prior approval or confirmation from the Lt. Governor. This was in plain violation of sections 89, 96, and 97 of the Act. That J. D. Goel was a hard case is not a justification for acting contrary to the provisions of the Act. Item No. 2:

(71) The Deputy Mayor and the Chairman of the Committees were using motor vehicles. The opinion of the Solicitor General of India was taken twice. He opined that the use was contrary to the Act. Inspire of his opinion it was resolved that the members desirous of using Vehicles for non-duty purposes shall be permitted by the Corporation to do so on payment of charge as fixed -by Government of India for use of cars by their officers when on private duty. Secondly, the previous unauthorised use of the cars was condoned without surcharging those who had misused the cars. It is said that the Chairman of the Water, Sewage and Disposals Committee was using the official car contrary to legal advice till the date of supersession. Items 3 and 5:

(72) There is no provision for a "discretionary fund" in the Act. Placing Rs. 20,000 at the disposal of the Chairman Standing Committee and Rs. 1,800 at the disposal of the Chairman of other committees is not sanctioned by section 105 of the Act. Similarly, there is no provision in the Act for a "contingency fund". The Murarka Commission recommended its discontinuance. It is true that the report of the Murarka Commission (1968) was not accepted by the Government. But if the Act makes no provision for a contingency fund the Councillors cannot, use the money by having a fixed sum set apart for their constituency, irrespective of the needs of. development of a particular constituency. In one constituency more money may be required, in another little may be enough. Item 6:

(73) This complaint relates to reconstruction of demolished buildings which were described as emergency excesses. The Corporation permitted re-erection of buildings demolished during emergency in plain disregard of building bye-laws. A whole string of sections beginning from sections 331 to 335 and 343 to 344 deal with building bye-laws which are "required to be observed whenever a building is to be built or reconstructed. The resolutions passed by the Corporation permitted a departure from the building bye-laws if the building to be rebuilt had been demolished during emergency and was on private land.

(74) The Corporation awarded a contract of Rs. 1.30 crores to M/s. Trading Engineers against the advice of the Commissioner and against normal purchase procedure. Tenders were invited for supply and installation of water pump and other "equipments at water pumping stations. Crompton Greaves Ltd. gave an offer of Rs. 1,15,64,690.00. Trading Engineers Private Ltd-'s tender was for Rs.

1,25,19,607.00. Apparently Crompton Greaves" tender was lower. But it was not accepted because Trading Engineers gave an improved design of the motor. The higher efficiency of the product of Trading Engineers was found to be more economical. Trading Engineers improved their product and demonstrated higher efficiency after giving the tender. Business methods required that similar opportunity should have been given to Crompton & Greaves, and they should have been asked if they can also supply an improved motor of higher efficiency. Annexure III: Item No, 3

(75) The Corporation was giving conveyance allowances even to officers who had no field duty to perform. P. N. Jain Committee reported that the grant of conveyance allowance to the officers and staff of the M.C.D. "should be reviewed urgently". Nothing was done. Item No. 2

(76) It is not disputed that the Corporation owes over four crores rupees to private contractors and has not been able to discharge this liability. This is another instance of financial mass. Apart from the fact that this shows that there is no financial stability in the Corporation it shakes its credit worthiness in the mind of the public. item No. 3

(77) The Government makes grants or advances loans for the execution of specific plans. These amounts have to be spent on the execution of those schemes only. What the Corporation did was that it diverted plan funds to non-plan expenditure. This is borne out from the printed budget estimates. The Corporation did not deny in the reply the diversion of plan funds to non plan expenditure. Their case was that plan funds could not be spent on the scheme for one reason or another. This is no justification for using plan funds for non-plan expenditure. The Corporation was trying to meet its huge deficit by diverting the plan funds to other expenditure. Summary and conclusion

(78) How do we sum up? The position that emerges is this. On an examination of the material and the grounds" stated in the show cause notice a body of sensible persons will come to the conclusion that the Corporation is incompetent and in persistent default and has abused its powers. Some of the grounds on which this opinion was entertained cannot be contested. Failure to pay the provident fund and additional emoluments required to be paid under the statutory provisions and regulations is not disputed. It is said that the "responsibility for payment rested entirely on the Commissioner. This is not correct. Failure to deposit provident fund is clearly indicative of mismanagement of municipal finances. The commissioner bluntly said that he can make payments and discharge the obligations of the Corporation only when funds are available. But if wherewithal is not available he cannot be held responsible.

(79) Take the charge of deficit financing. The Corporation failed to pay the Installments of loan and interest it had borrowed from the Central Government. Though it provided for its payment in the budget the hard fact remains that no Installment was paid to the Government since 1974, and none in any case during

1977-80, the years in question. The budget prepared by the Corporation was unrealistic. The responsibility of adopting an annual budget rests on the elected body. (s. 109). Hoping and expecting that the Central Government will amend the Act and increase the taxes the Corporation thought that its receipts will exceed the expenditure. This was a hope and expectation on which the budget was passed. The Commissioner advised hard headed realism. He suggested that the Corporation must keep expenditure within bounds. The elected representatives rejected his advice out of hand, holding that it was none of his business to tell them how they should budget the proposals. The Central Government in pursuance of Section 194, was entitled to "be paid loan and interest first before any other payment was made by the Corporation. As this was not done, the Central Government, as a powerful statutory creditor, decided to dissolve the Corporation, a body which over the years had failed to perform its statutory duty of payment of loans and interest; The creditor was not prepared to wait because financial indebtedness was increasing to astronomical figures. Huge burden of indebtedness was piling up. The Central Government decided to dismantle the corporate apparatus. They took over municipal administration in their hands.

(80) The sanction which the Central Government can impose and indeed, if it is satisfied of the necessary premises, must impose upon the erring Corporation is as complete as could be imagined; it involves the dissolution and supersession of the Council and Therefore, the confiscation of all its properties. This is the power of the Central Government which provides grants-in-aid, block grants/plan funds and other subsidies. It is true that this is a drastic power and can seriously impair Corporation's responsibility to the people and sometimes reduce it to the vanishing point. The Central Government have sput, they have rein, they have pole-axe in their hands. Which one they will use, when and how, is not left to them. The legislature has laid down the statutory criteria in s. 490. This is done to prevent executive onslaught or departmental aggression. When the Corporation is a conspicuous failure in discharging its statutory duties the Government can use the pole-axe to dissolve it.

(81) The subject of municipal finance is of perennial interest. The Corporation wanted to show that the financial defaults mentioned in the notice were not attributable solely to the present Corporation but were mainly due to what the Corporation had inherited from the past. This is what they wanted to say and show. But this antiquarian research, I think, was not necessary, The section does not limit the power of the Central Government to order supersession to this Corporation or that. It speaks only of the Corporation. Corporation, we know has a perpetual succession. It is a flowing stream. In order to facilitate the management of its affairs, the local authority has been made a "body corporate" "an artificial person having continue of life, a continuing identity notwithstanding changes in its component personnel, and the power to hold property as though it were an individual. It can also, sue and be sued in its own name. This shows that even for the faults and defaults of the previous civic administrations the

successor bodies of Councillors and aldermen can be superseded. Future generations will have their own sufficient burdens but they cannot disown legacies of debt from the past. The Act draws no dividing line between the past and the present. It addresses itself to a given situation. There is nothing in the section to suggest that the sins of the past cannot be visited on the present holders of office. The reason, is that Councillors and aldermen have been personified and not this man or that. The Act incorporates a body of individuals who may come and go but all will enjoy corporate personality during the period of their incumbency. Men are mortal, but the Corporation enjoys the attribute of legal immortality". And when it is superseded it remains in a state of suspended animation. Without a habitation and a name.

(82) But it is unjust to blame the Commissioner for the defaults of the Corporation or its incompetency or abuse of power. The office of the Commissioner is an important part of the machinery of the local Government. He may be said to stand between the Corporation and the Central Government. He is there to assist by his advice and action in the conduct of public affairs in the Corporation, and if there is a disposition on the-part of the Corporation to ride roughshod over his opinion, the question must at once arise whether the deliberative wing of the Corporation is not solely to be blamed for the consequence. If the Commissioner is not answerable to the Corporation he is answerable to no one. The Act harmonizes the two principles of municipal home rule with central control. The municipal government of Delhi vests in the Corporation composed of Councillors and aldermen (see sec. 3). It does not vest in the Commissioner. The Commissioner is the chief executive. He owes dual responsibility to the Government and the elected representatives. Placed between universal suffrage and the central power, he is between the anvil and the hammer. This has been said of the French Perfect. It is true of the Municipal Commissioner of Delhi.

(83) But his opinion is entitled to great weight. He represents the official element in the municipal administration which is a happy combination of the elected amateur and the professional administrator. He advised the Corporation that they should not incur excessive expenditure, that they should stop development work, that they should not accept tender of Trading Engineers, that they should not sell Nimri Staff quarters, that they should not pass any resolutions for the regularisation of demolished buildings contrary to law and in the face of express provisions contained in Chapter Xvi on building regulations, whatever be, their sympathy for those who suffered in emergency excesses.

(84) There was no friendly cooperation between the. elected body and the executive. There was little coordination of thought and work between the Commissioner in whom the executive power is concentrated and the elected representatives who are the guardians of public opinion. The Commissioner was operating in a hostile territory. He knew that the terrain was difficult. He knew that the Corporation was passing through troublous times. The Commissioner is

right when he says that "the financial bungling was a result of the Corporation's own defaults and incompetency." As he put it, the fact of the matter is that. the Corporation persistently defaulted in making payments due to "unimaginative and defective budgeting" which resulted in a huge deficit of 70 crores from 1977-78 to 1979-80. Mismanagement of finances is writ large. The Corporation was like a ship of which fuel was running out; and the fuel which keeps the Corporation going is money raised by taxes or borrowed. Provident Fund etc. had not been paid. Creditors of 4 crores of rupees remained unpaid. The Central Government had not been paid. Judge John F. Dillon, a leading authority on municipal corporations says, "In many of its more important aspects a city is not so much a miniature state as it is a business corporation, its business being to wisely administer the local affairs and economically spend the revenue of an incorporated community. As we learn this lesson and apply business methods to business affairs, we are on the road to better and more satisfactory results." In awarding the contract to Trading Engineers the Corporation did not act in a businesslike manner. This instance clearly shows that there was neither efficiency nor excellence nor thrift in this and other fields of utilitarian achievement. The Corporation can by no means be described as a shining example of success.

(85) In the field of municipal service a large number of ad hoc appointments were made without regard to its resources. .The appointment of chief engineer, deputy engineer and superintending engineer from year to year was made against the recommendations of the Upsc and without obtaining any prior approval of the Administrator. The provision of a "discretionary fund" is plainly against the Act. Similarly, the "contingency fund" was created without having regard to the needs of development. All constituencies are not alike in their size, needs or problems.

(86) In my opinion, there was sufficient material before the Central Government on which it could find, as it did, that the Corporation is" incompetent to manage finances in a prudent fashion, that it has persistently defaulted in the performance of its duties, and it has abused its powers. Of the abuse of powers two glaring instances are, as I have said, the sale of Nimri staff quarters and the regularisation of demolitions. Sale of quarters is against the purpose of the Act, even though the Corporation has the power to transfer property. Such a sale cannot be said to be authorised or contemplated by the statute.

(87) As regards demolitions styled as "emergency excesses" the law cannot be altered by passing resolutions. So long as building byelaws are in force they have to be obeyed. It is not a sufficient answer to say, as was said in the -resolution, that "moral and social duty" required assistance to be given" to rehabilitate those who had suffered in an "extraordinary situation" and Therefore cases of demolitions were not covered by "ordinary procedures". That the procedure indicated in the resolution was "in the interests of justice and fairness to all concerned" is not enough sanction to depart from the statutory provisions. In fact no resolution can be passed which has the effect of .giving a go-by to the

legislative command.

(88) Similarly, the misuse of motor vehicles by the Chairman of the Standing Committee and other statutory committees cannot be condoned in the manner it was done. The Councillors and the aldermen stand in a fiduciary obligation to the electors. They are put in charge of public funds with the duty superadded that they will act as trustees or managers of the property which belongs to the whole community they seek to serve.

(89) It is true that the opinion of the Central Government is the determining matter. But the opinion is displaced as a relevant opinion if it could not be formed by any sensible person on the material before him. The courts will not readily deter to the conclusiveness of an executive authority's opinion as to the existence of a matter of law or fact upon which the validity of the exercise of the power is predicated. The courts will find out whether conditions precedent to the formation of the opinion have a factual basis [M.A. Rasheed and Others Vs. The State of Kerala,

(90) If the opinion is "so absurd that no sensible person could ever dream, that it lay within the powers of the authority" it will be acting "unreasonably" Warrington Lj in Short v. Poole Corporation, (1926) Ch. 66 gave the example of the red-haired teacher, dismissed because she had red hair. This is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. In still another sense it is excluding matters which one is bound to consider. Lord Greene M. R. quoted this example with great effect in the leading case of Associated Provincial Picture V. Wednesbury Corp. (1948) 1 K.B. 223 and I find it illuminating.

(91) The expressions incompetence, persistent default, abuse or excess of power limit the authority of the man who wields the power. The question what these expressions mean is a question of law. I cannot read the section as making the Government the arbiter upon the construction of the section and the limits it imposes on its powers. Doubtless the Government must in expressing an opinion for the purposes of the section also entertain a view as to the question of law. But its view on law is not decisive. If in arriving at a conclusion it appears to the court that the Government had given effect to a wrong apprehension of its powers under the section the result would be that the Government has not expressed such an opinion as is referred to in the section.

(92) It is true that on some of the matters which were raised in the show cause notice there can be two opinions. It is true that the present Corporation inherited the goods and evils of the previous administrations and that there were several disputes between the Government and the Corporation on the non-payment of dues which it was claimed the Government and the Government organisations were liable to pay. It is true that the endemic situation was the subject of lament and comment by the Murarka Commission and the Jain Committee. But, the view taken by the Government is not unreasonable. He cannot say to the Government

"You let the Corporation function. Wipe out old debts. Convert them into a loan in perpetuity". Advance a fresh loan of Rs. 4 crores of rupees. Appoint commissions of inquiry and act on their recommendations." "Die Government can well say : "If Councillors and aldermen are accountable to the people, the Central Government has also a responsibility to the electorate for national policy." The truth is that the unsoundness of financial administration is a good ground- for supersession. Without sound finance no sound Government is possible. The central-local financial arrangement is a subject of singular importance but of great complexity. "He who pays the piper calls the tune" and Government makes financial help conditional upon minimum standards of performance.

(93) As Lord Denning Mr pointed out in the Court of Appeal that "two reasonable persons can reasonably come to opposite conclusions" and that "no one can properly be labelled as being unreasonable unless h& is not only wrong but unreasonably wrong, so wrong that no reasonable person could sensibly take that view." [Secretary of State for Education and Science v. Metropolitan Borough of Tameside, 1977 A.C. 101. In my view there was material before the Government for entertain ing the opinion they did. Certainly it was not an unreasonable opinion. (I am aware of the warning given, by the Supreme Court that every error or lapse on the part of the Corporation is not a disqualification meriting supersession within the language of section 490. Defaults to be actionable must be persistent.) (See S.L. Kapoor Vs. Jagmohan and Others,

(94) The requirement that the Government must give reasons for the order it makes does not necessarily require it to record a judgment judicially arrived at. All it has to do is to prepare a "catalogue of the Committees misdeeds" (per Das CJ. p. 114) or enumerate "all the misdeeds and wrongs done by the committee" (per Kapur J. p. 126) (Radhey Shyam Khare. supra;. The authority has to make the order after considering all the Explanations furnished by the Corporation because its order puts an end to the very existence of the Corporation itself and in view of the grave nature of the consequences that ensue. But the statute nowhere requires that the authority must deal with the Explanationin. its order.

(95) PARADOXICALLY" local government in the twentieth century seems to expand the number of functions it performs at the same time that it faces increasing central government supervision and a narrowing of its independence. From local self-government, often described as the best school of democracy, it can, by financial dependence, be reduced to a department of the State. Such are the woes of welfaeism.. Such is the great power of the purse. "Who holds the purse holds the power", wrote James Madison .in the Federalist. He was right.

(96) To summarise, the power to supersede is essentially an administrative power. The approach of

the public authority in the exercise of the power has to be quasi-judicial. There is a judicial element involved in the exercise of power. But with the expediency and

inexpediency, wisdom and unwisdom, of such a measure the court has nothing to do. Balancing the advantages and disadvantages of one possible course of action against another and making a decision is what ministers have to do; it is the very stuff of government and the courts should not interfere save for good reason and disagreeing with the decision is not in itself a good reason. (Ashar v. Secy. of State. (1974) 2 All E.R. 156 per Lawton LJ). In deciding a case a minister works in an environment which is quite different from that of the judge.

(97) On the whole case my conclusion is that the minister correctly applied threefold" statutory criteria to the facts before him and directed his mind in each case to the right question. I am satisfied that he directed himself properly in law. He has not misapprehended the nature of his power. On the material before him he acted in a way a reasonable authority would have acted. "Disagreeing with his decision is not in itself a good" reason" " to interfere. In my judgment there are no valid grounds for holding that the Central Government acted unreasonably within the meaning of section 490.

(98) FOR these reasons I would dismiss the petition but make no order as to costs. S. S. Chadha, J. I agree.

1. The Questions : H. L. Anand, J. This petition under Article 226 of the Constitution by a former Councillor of the Municipal Corporation of Delhi, for short, the Corporation, assails, inter-alia, the validity of the order of the Central Government made on April 12, 1980, in exercise of powers under sub-section (1) of Section 490 of the Delhi Municipal Corporation, Act 1957, for short, the Act, superseding the Corporation for a period of one year on the ground of persistent default and incompetence in the performance of duties imposed on it by the Act and of abuse of powers and raises substantial questions of law of great public importance, as indeed, of considerable difficulty, with regard to the scheme of Chapter XXIV of the Act dealing with the control of the Corporation by the Central Government, the nature of the power of control conferred on the Central Government, the constraints within which and the conditions, circumstances and the manner in which the power ought to be exercised, and the construction of the provisions of Section 490 and certain other provisions of the Act. Was the Corporation denied a reasonable opportunity of showing cause against the proposed order of supersession? Whether the Corporation was justified in asking for extension of time to submit a reply to the show-cause-notice pending supply of large number of documents and information by the Commissioner and examination of the relevant material to draw up an effective reply? Whether the impugned order" was vitiated in that the Central Government did not give reasons why the order was being made in spite of whatever Explanation the Corporation was able to give within the limited time at its disposal? What was the correct interpretation and true construction of the expression "persistently makes default", "abuses its" powers" and duties imposed on it by or under the Act" occurring in Section 490(1) of the Act? If the failure or inability of the Corporation to meet its financial obligations arising out of contracts could be said

to be within the terms of Section 490(1) of the Act? Whether the Central Government was acting unreasonably in superseding the Corporation without prior resort to the provisions of Section 487 of the Act to give appropriate directions to the Corporation? What, if any, are the limits of justifiability of an order of supersession in proceedings under Article 226 of the Constitution and what would be the proper test for the Court to apply in determining the validity of such an order? Whether the order was made in exercise of bona fide executive power or was vitiated because it appeared to- have been made for an extraneous purpose even though based on some material, which could not be altogether brushed aside as being irrelevant or extraneous? These are some of the questions that are posed for decision or otherwise arose in the course of the hearing of the petition. II. The BACKGROUND: 2. The petition, which was filed in the backdrop of rather turbulent circumstances, did not have a smooth course in this Court. The year 1980 marked the end of a phase of unprecedented political changes in India in which the people had voted overwhelmingly to power at the Centre and number of States, a conglomeration of opposition Parties. The process, which was described by the Supreme Court I in the case of State of Rajasthan, as being indicative of a "critical situation" and representing a "total alienation" between the people and the Government then in power, was reversed in early 1980, when the present government in power at the Centre took over. The new government assumed office on January 14, 1980. Consistently, as it were, with what the previous government did, when returned to power at the Centre, the present government ordered on February 17, 1980, the dissolution of nine State Assemblies, which were then under the control of the opposition parties, in exercise of power conferred by Article 356 of the Constitution of India on the ground that the governments in those States could not be carried on in accordance with the provisions of the Constitution but, admittedly for the obvious reason that in view of the mandate of the people at the Centre, the context in which the Assemblies in these States had been elected had drastically changed so as to justify a fresh poll. There has been considerable controversy whether such a decision was essentially a political decision, with major policy content, and was within the provision of the Article and whether it was justiciable and inconsistent with the principles and requirement of Federalism has been subject-matter of considerable debate and has been subjected to harsh criticism at the hands of an eminent author on the Constitutional Law of India, (2) but it is sufficient for our present purpose to say that the validity of the order dissolving the Assemblies in that situation would be beyond constitutional doubt in view of the way in which the Supreme Court considered the question, when the previous government had similarly dissolved State Assemblies following its assumption of power at the Centre. What was then sanctified by the Supreme Court could not possibly be open to challenge, even though the roles of parties were reversed. The fate of the dissolved Assemblies also overtook the Metropolitan Council of Delhi on March 21, 1980. and rightly so. because if the drastic change in the context justified the dissolution of nine State Assemblies, the Metropolitan Council of Delhi could not be treated differently, for. it was after all a mini

legislature for the Union Territory of Delhi audits .dissolution was governed by the conditions which governed the dissolution of the State Assemblies. This decision was, Therefore, to an extent, consistent with the law laid down by the Supreme Court in the case of State of Rajasthan (supra). Before the .dissolution of the Delhi Metropolitan Council, the Lt. Governor of Delhi superseded the New Delhi Municipal Committee, a municipal body nominated under the Punjab Municipal Act, by an order of supersession made on February 27, 1980, in exercise of powers conferred by Section 238(1) of the Punjab Municipal Act, as extended to Delhi, on the ground that the Committee was guilty of persistent default and incompetence in the performance of duties imposed on it under the law and had abused its powers. The Committee was however, not given any opportunity whatever of showing cause against the proposed order of supersession. Soon "thereafter, by a show-cause notice of April 1, 1980, the Central Government called upon the Corporation pursuant to the proviso to sub-section (1) of Section 490 of the Act, to show cause within a period of 7 days from the date of receipt of the notice, why an order superseding it should not be made on the ground .that it had persistently made default in the performance of duties imposed on it by or under the Act, had abused its powers, and had been incompetent in the performance of its duties. The Corporation submitted an interim reply and sought 10 days extension to submit a proper reply. The extension was refused and by an order made on April 11, 1980. the Corporation was superseded for a period of one year. The present petition was filed on April 19, 1980. While issuing rule nisi, this Court, Prithvi Raj and Anand Jj, however, declined to grant a stay of the operation of the order but directed that the matter be heard and disposed of at an early date. This. however, did not happen partly because, meanwhile, the order of supersession of the New Delhi Municipal Committee had been upheld by a Full Bench of this Court, consisting of five Hon"ble Judges, by an order made on May 9. 1980. At the final hearing of the present petition before a Division Bench of this Court, Prithvi Raj- and Anand JJ. the principal contention of the petitioner that the Corporation had been denied a reasonable opportunity of being heard was sought to be dispelled by the way in which the Full Bench had looked at the scope and content of reasonable opportunity of being heard. The Division Bench, however, felt impelled to refer the petition to a larger Bench, which would be entitled to reconsider the Full Bench decision, as the Division Bench felt that the decision deserved reconsideration. Before the larger Bench could be constituted, the order superseding the New Delhi Municipal Committee was voided by the Supreme Court on September 18, 1980, (3) in appeal even though it did not give the relief as the term of the Committee was due to expire on October 3, 1980 but the principle was vindicated when the Supreme Court laid down that the Committee had been denied a reasonable opportunity of being heard. "The present petition was accordingly heard afresh by a Full Bench of three Judges, the reference to a larger Bench having become unnecessary in view of the decision of the Supreme Court. 3. We heard learned counsel for the parties at considerable length on the various questions in controversy but our close and anxious consideration of the

matter failed to produce a unanimous opinion as to the validity of the order, as indeed, on most of the questions debated before us. My learned brother Avadh Behari J. is satisfied with regard to the validity of the order and turned down the various contentions urged on behalf of the petitioner and proposes to dismiss the petition. My brother Chadha J. proposes to concur in the conclusions as well" as the reasons therefore. I have had the benefit of perusing the well-reasoned Judgment prepared by Avadh Behdri J., for whom I have great regards. I, however regret my inability to either concur in the conclusion or subscribe to any of the reasons on which the conclusion purports to be based and propose to accept the petition, to the extent it challenges tile-validity of the impugned order, but dismiss .it to the extent it assails the validity of the show-cause notice and to direct that. while maintaining the status-quo of the administration of the Corporation, the Central Government would reconsider the matter at anappropriate level, after giving to the Corporation or the Executive Councillors, as may be considered feasible, a full, fair and effective hearing. I also propose to direct that the administration of the Corporation would abide the ultimate decision of the Central Government on such a review. III. Reasonable Opportunity To Show Cause 4. The first and the foremost question that is posed for decision is as to whether the Corporation was denied a reasonable opportunity of showing cause against the proposed action. 5. The time-honoured rule of audi alteram partem, an essential component of the principle of natural justice and an integral part of the larger concept of rule of law has been variously described as "substantial Justice", "the essence of Justice". "Fundamental Justice", "universal Justice", "rational Justice", "justice without any epithet" or "fairplay in" action". The rule expresses the close relationship between common law and moral principles, has an impressive ancestry and may be legitimately considered as being of Divine origin. That no man is. to be judged unheard was a precept known to the Greeks, inscribed in ancient .images, where justice was administered, proclaimed in Senoca"s Madea, enshrined in tho scriptures, traced by the Supreme Court (4) to the Arthshastra in India, mentioned by Saint Augustine, embodied in Germanic as well as African proverbs, ascribed in the year Books to the law of nature, asserted by Coke to be principle of divine justice and traced by an eighteenth Century judge to the events in the Garden of Eden, where the Lord himself asked of Adam and Eve if they had eaten of the forbidden fruit before their fall from Heavens to earth. (5) 6. The fundamental maxims of natural justice have now be. come deeply and indelibly engrained in the common consciousness of mankind as pre-eminently necessary to ensure that the law is applied impartially, objectively and fairly. During the last two decades, the concept of natural justice has made great strides in the field of administrative law. The law in India has kept pace with the development of law in England." The epoch making decision of the House of Lords in Ridge V. Baldwin(6) had its parallel in India in the case of Kariapak(7) where the Supreme Court laid down that if the purpose of rules of natural justice was to prevent miscarriage of justice, one failed to see why these rules should be made inapplicable to administrative enquiries, and observed that arriving at a just decision is the aim

of both the quasi-judicial enquiries as well as the administrative enquiries and an unjust decision in an administrative enquiry may have more far-reaching effect than a decision in a quasi-judicial enquiry. It is now well-established that the rule cannot be sacrificed at the altar of administrative convenience or celerity for, convenience and justice, as Lord Atkin(8) felicitously put it "are often not on speaking terms". More recent judicial thinking tends to the application of the rule and to the preservation of its solemnity and core even where there is no express legislative recognition of it or a possible inference of its exclusion, as also in extraordinary and emergent situations even though such extraordinary situation may justify situational modification, timorously or otherwise, of its application. It has also been recognised that like the doctrines of ultra virus and public policy, natural justice is a branch of public law and is a formidable weapon which: can be. wielded to secure justice to the citizen and a distinction has been drawn between its application to situations involving more right to property and those involving fundamental liberties, civil and political rights and judicial thinking favors the further extension of its- frontiers in cases involving fundamental liberties and civil and political rights, including the right to self-government. The decision of the Full Bench of this Court in the case of supersession of the New Delhi Municipal Committee (supra) and the majority opinion of this Court in the case of Swadeshi Cotton Milk(9) had raised some doubts about the scope, content and limits of the rule but the recent decision of the Supreme Court in the cases of Now Delhi Municipal Committee (supra) and Swadeshi Cotton Mills (10) have not only reinforced the rule but also added new dimensions to it. 7. There has been considerable debate with regard to the scope and content of the requirement of a reasonable opportunity of showing cause and the judicial annals are replete with precedents and principles which have determined .the evolution of this requirement. It is, however unnecessary .for us in the present, case to have recourse to these worries of wisdom because Parliament thought it necessary to make the requirement a statutory obligation u/s 490 of the Act. It is an ample measure of the importance that Parliament attached to an order of supersession and the concern it had for a reasonable opportunity of showing cause that the requirement was not left to the general application of the