
(1980) 05 DEL CK 0024

In the Delhi High Court

Case No : Civil Writ Appeal No. 404 of 1980

S.L. Kapoor

APPELLANT

Vs

Jagmohan, etc.

RESPONDENT

Date of Decision : 09-05-1980

Acts Referred:

Citation : (1980) ILR Delhi 263

Hon'ble Judges : V.S. Deshpande, C.J.;Sultan Singh, J;Prakash Narain, J;Harish Chandra, J;B.N. Kirpal, J

Bench : Full Bench

Advocate : Soli J. Sorabjee, G.S. Vohra, B.B. Singh, R.L. Tandon, Y.K. Sabharwal, Mukul Rohatagi and Harsh Arora, for the Appellant;

Judgement

V.S. Deshpande, C.J.

(1) On 27th February, 1980 the State Government acting u/s 238(1) of the Punjab Municipal Act. 1911, as applied to Delhi, passed the following order superseding the New Delhi Municipal Committee :

"NO.F. 4(68)/77-LSG: Whereas the New Delhi Municipal Committee was constituted vide this Administration's notification of even number dated the 29th September, 1979 and the 25th February, 1980;

And Whereas the said Committee has been incompetent to perform and has made persistent defaults in the performance of, the duties "imposed on it under the law and has abused its powers, resulting into the wastage of Municipal Funds, on many occasions, some of which may be stated as under : (i) The construction of city centres contract was originally awarded to M/s. Mohinder Singh & Co.. at the cost of Rs. 1,80,48,460.00 for completion within a period of 30 months. The clause of mobilisation advance included in the tender submitted by the above party was written after negotiation by the New Delhi Municipal Committee. Since the work could not be completed by M/s. Mohinder Singh & Co., the contract was awarded to M/s. Tarapore & Co., with the condition that he

will be paid a mobilisation advance of Rs. 15 lakhs. The resolution in this regard was passed by the New Delhi Municipal Committee on 14-12-79. This contract was also at the enhanced cost of Rs. 2,02,92,546.00 without getting the prior approval of the Lt. Governor. This resulted in a huge loss to the Municipal fund. It is also significant that the cause of mobilisation advance which was got removed from the contract of M/s. Mohinder Singh & Co., after negotiation, the same was not negotiated in the case of M/s. Tarapore & Co. at the time of awarding the contract; (ii) Shri B. K. Mittal against whom the Central Vigilance Committee had advised the New Delhi Municipal Committee to initiate major penalty proceedings, was employed in spite of the advice of the Central Vigilance Commission, vide their resolution dated 15-10-1979; (iii) The enquiry regarding disproportionate assets against Shri V. P. Gangal was conducted by the Central Vigilance Commission and they had advised the New Delhi Municipal Committee that ends of justice would meet only if he was removed from service but the said Committee resolved on 15-12-1979 to impose a minor penalty to the extent of stoppage of 4 increments which would not have cumulative effect, thereby showing favor to Shri Gangal and (iv) The New Delhi Municipal Committee has created a number of posts, including one of Director (Hort.), by a resolution dated 11-1-1980 and has also appointed Shri Sharma against that post. The creation of the post in this case is against the directive of the Lt. Governor not to create posts unless the staffing pattern is studied by the Administrative Reforms Department. "NOW, Therefore, in exercise of the powers conferred by sub-section (1) of section 238 of the Punjab Municipal Act. 1911, as in force within the local limits of the New Delhi Municipal Committee, read with Government of India, Ministry of Home Affairs Notification No. S.O. 2709, dated 7th September, 1966, the Lt. Governor, hereby supersedes the New Delhi Municipal Committee, with immediate effect ; And the Lt. Governor, in exercise of the powers conferred by clause (b) of sub-section (2) of said section 238, is further pleased to appoint Shri P. N. Pahl as the person by whom all powers and duties of the New Delhi Municipal Committee may be exercised and performed, until the said Committee is reconstituted". As a result of the order, the members of the Committee vacated their office u/s 238(2). Section 238(1) and 238(2) run as below:

"(1)Should a committee be incompetent to perform, or persistently make default in the performance of, the duties imposed on it by or under this or any other Act, or exceed or abuse its powers, the State Government may, by notification, in which the reasons for so doing shall be stated, declare the committee to be superseded.

(2) When a committee is superseded, the following consequences shall ensue :

(A)all members of the committee shall, from the date of the notification, vacate their seats;

(B)all powers and duties of the committee may, until the committee is reconstituted, be exercised and performed by such persons as the" State Government may appoint in that behalf;

(C)all property vested in the committee shall, until the committee is reconstituted, vested in the State Government."

(2) The validity of the order of supersession is challenged by a member of the Committee in this writ petition and by another member in C.W. 282 of 1980. The combined grounds of challenge, as they were argued by Shri Soli Sorabjee and Shri P. N. Lekhi, may be stated as below:

(1)Before believing the primary facts which go to constitute the alleged incompetence, default and abuse or excess of power, opportunity was not given by the Government to the Committee to put up their defense or their version of view point as to the correctness of the facts ;

(2)Even after the primary facts are found by the Government to be established, opportunity was not given to the Committee to show cause why they do not amount to incompetence, default, excess or abuse of power within the meaning of section 238(1) and why the Municipal Committee should not be superseded on those grounds

(3)The reasons as required by section 238(1) are not stated in the impugned order for the supersession and

(4)The requirements of section 27 of the Delhi Administration Act, 1966 were not complied with. The impugned order is also ultra virus and bona fide in law.

(3) The State Government and Shri Jagmohan, Lieutenant Governor, filed counter affidavits, traversing the allegations made in the petitions and the petitioners also filed rejoinders. The defense, as argued by Shri R. L.Tandon, briefly met the grounds of challenge as below: (1) On the correct construction of section 238 in the context of the other relevant provisions of the Act, the Government did not have to give any opportunity to the Committee before passing the order of supersession. Once the facts came into existence, it was for Government to form the opinion about them. (2)The four charges mentioned in the order of supersession were the subject of correspondence and debate between the Government and the Committee from before Shri Jagmohan assumed his office. The primary facts were not disputed by the Committee. (3) The Government, however, gave opportunity to the Committee to show that the actions of the Committee forming these charges were justified, (so that incompetence, default, abuse or excess of power should not be attributed to the Committee on the basis of these facts). The Committee either did not avail itself of this opportunity or offered no justification for their actions. The inevitable inference from the facts was that the actions amounted to incompetence, default, abuse or excess of power justifying the impugned order by the Government. (4) The reasons for the supersession given in the order of supersession do not discuss the Explanation, if any, by the Committee as to the charges because no Explanation was given and the charges stood proved when the facts forming them were admitted. The reasons given in the order, Therefore, comply with section 238(1). (5) Section 27 of the Delhi Administration Act was not mandatory

in respect of matters relating to New Delhi. The orders were neither ultra virus nor bona fide in law. (6) Shri Jagmohan denied the factual allegations as to bona fides and pointed out that in passing the order he acted on material put up before him by the officials of the State Government on the undisputed facts on which the order was based. Most of the facts and actions of the Committee had taken place from before the time Shri Jagmohan assumed his office. (7) A preliminary objection was raised by Shri Tandon that the petitioners had no locus standi to challenge the order which was based on the conduct of the Committee and which was directed only against the Committee. The whole of the Committee consisted only of members nominated by the Government for one year. Some of them were Government officials and other were non-Government officials. The petitioners had no right to hold their posts as their tenure could be terminated earlier than one year by the Government. The Necessity of giving opportunity to the Committee to present its case before supersession :

(4) Statutory provisions enabling the Government to supersede Municipalities in India fall into two groups. On the one hand, s. 238 of the Punjab Municipal Act, as applied to Delhi, section 553 of the Bengal Municipal Act, 1932, and sections 313 and 315 of the Maharashtra Municipalities Act, 1965, do not provide for giving any opportunity to the Municipal Committee to present its case before it is superseded for incompetence, failure to perform duties or excess or abuse of power. On the other hand, the corresponding statutes in Madhya Pradesh and Bihar expressly provide for giving of such opportunity before supersession. Normally, even if the statute is silent, the courts would so interpret it as to imply giving of such opportunity before an order under the statute is passed superseding the Municipal Committee. But in *Radeshym Khare and Another Vs. The State of Madhya Pradesh and Others*, , the provisions of section 53A and section 57 of the C.P. and Berar Municipalities Act, 1922 were contrasted. Appointment of an Administrator under the former for a period not exceeding 18 months on the ground of incompetence of the Municipal Committee was held not to require the giving of such an opportunity before the passing of the order. Even if section 53A were to be so read as to imply the grant of such an opportunity, in fact the Committee was made aware of the allegations of incompetence against it and had the opportunity of explaining them before the Committee was superseded. In section 57, the power to supersede the Committee on the ground of incompetence, persistent default in performance of duties and excess or abuse of power could be exercised only after the giving of such opportunity and sub-section (5) of section 57 expressly requires such opportunity to be given. The Supreme Court found that the absence of such an express provision in section 53A was significant. The difference between the seriousness of the grounds of action and the consequences following the action under the respective sections was also taken into account and the contention that the action u/s 53A was as severe as the action u/s 57 and, Therefore, opportunity should have been given before. action is taken u/s 53A was rejected.

(5) A somewhat similar contrast between the two kinds of statutory provisions

exists in the Punjab Municipal Act, the Bengal Municipal Act and the Maharashtra Municipalities Act. In each of them opportunity has to be given before disciplinary action is taken against an individual member of the Committee (vide sections 16 and 50 of the Punjab Municipal Act, section 62 of the Bengal Municipal Act, and sections 44 and 45 of the Maharashtra Municipalities Act). On the other hand, no opportunity is expressly required to be given when municipalities as corporate bodies are to be superseded under any of these statutes. But the expansion of the right to hearing findings its peak in the recent decisions of the Supreme Court in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, , and *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, . in India, and *Ridge v. Baldwin* (1964) A.C. 40(4), and *Alfred Thangarajah Durayappah v. W.J. Fernando and others* (1967) 2 A.C. 337, in U.K. has meant that the need to act fairly must necessarily be implied in construing administrative powers affecting the rights of a person unless the statute so clearly excludes it that no amount of sympathy with *audi alteram partem* would enable the court to read the right to hearing in the statute. This development is reflected in relation to s. 238 in *Karnail Singh v. State of Punjab* (1966) 68 Plr 890, *The Municipal Committee and Others Vs. The State of Punjab and Others*, , and *Suraj Parkash Vs. State of Punjab and Others*, . What is more, even the Punjab legislature was influenced by this trend and thought it fit to amend section 238 in 1973 to provide for hearing before the Committee can be superseded.

(6) While the hearing should be fair it need not be the full trial-type procedure. It is observed by Professor S. A. de Smith:

"WHERE there is room for manoeuvre because a statute is ambiguously silent on the matter of notice and opportunity to be heard, a court should show circumspection before insisting on the interpolation of judicial-type procedures. Such an interpolation may differ only in degree from law reform effected by a legislative agency. Before introducing a "reform" of this character, a court should be confident not only that the reform is needed in order to ensure fair treatment for individuals but also that it is itself properly informed about the likely practical effects of the reform on the process of decision-making. The point may be put in another way : the courts should be particularly chary of requiring the observance of judicial-type procedures by bodies deciding questions that are not typically justiciable. But even in this type of case it may occasionally be appropriate for the courts to require the body making the decision to invite and entertain written representations and, in the interest of fairness where a person's interest are liable to be seriously prejudiced by a general policy "decision, to permit him to make oral sub-missions, but without the panoply of a full adversary hearing."

(*Judicial Review of Administrative Action*, Third Edition, pages 158, 159 and 160).

(7) It is the substance and not the form which constitutes natural justice. Prof. Smith has, Therefore, devoted the following paragraph to bring this point out :

"WHERE appropriate substitutes for prior notice and opportunity to be heard are available : In some administrative situations, remote from the typical settings of adjudication, the courts have held that failure to give any formal opportunity to be heard is immaterial if the person affected was in fact aware of what was, proposed or knew or ought to have known that he could have made representations had he wished. This may occasionally be a common-sense approach ; it will be appropriate, however, only in cases where there is no difficulty in making informal representations. Doubtless there are also many cases where procedures involving inspection, testing or examination can be regarded as adequate substitute for hearing; for example, a decision to grant or refuse a test certificate in respect of a used motor vehicle is given after an examination, not a hearing"

(8) Professor K. C. Davis ("Discretionary Justice," page 7), also distinguishes between two approaches to the judicial review of administrative action:

"ONE approach to the administrative process much the most common one is to regard it as an instrument for carrying out policies enacted by the legislative body and as an instrument for the proliferation of subordinate policies. Yet quite a different, emphasis may also be a valid one One dominant function other than the formulation of general policy is the administration of justice for individual parties, that is, working out fair dispositions of problems that affect particular parties "

The distinction drawn is between regulation based on policy and regulation based on determination of individual rights.

(9) In determining the content of the opportunity to be given to the person who would be affected by the proposed administrative order, it is not the distinction between the administrative and quasi-judicial functions, which is becoming increasingly difficult to be drawn, but the nature of the function or the nature of the power which is to be decisive. The content may be zero or the minimum when the decision is based on policy. The content may be a full hearing when the decision is based on the adjudication of the rights of the individual J.A.G. Griffith and H. Street. (Principles of Administrative Law, p. 149), have expressed this as follows :

"THERE is a graduated scale of decisions at one end of which the ethical judgment is all important, and at the other end of which is a factual proposition, and all issues between are a blending of the two."

Where does the power exercisable u/s 238(1) of the Punjab Municipal Act lie on this continuum ? On the one hand, the facts from which incompetence, persistent default in the performance of the duties or abuse or excess of power have to exist and to be determined objectively. On the other hand, the opinion as to whether these facts amount to incompetence, persistent failure to perform duties or excess or abuse or power is to be formed by the State Government. This distinction finds its latest expression in the decision of the Supreme Court in

State of Gujarat Vs. Jamnadas G. Pabri and Others, . But the distinction has always existed and was acknowledged even by Lord Reid in Ridge v. Baldwin (supra). In considering the question raised by Lord Radcliffe in Nakkuda Ali v. M.F.De.S. Jayaratne (1951) A.C. 66 , "Can one not act reasonably without acting judicially ? It is a long step in the argument to say that because a man is enjoined that he must not take action unless he has reasonable ground for believing something he can only arrive at that belief by a course of conduct analogous to the judicial process," Lord Reid observed at page 78 of the report as follows:

"I would agree that in this and the other defense Regulation cases the legislature has substituted an obligation not to act without reasonable grounds for the ordinary obligation to afford to the person affected an opportunity to submit his defense."

A similar view expressed by the Supreme Court of Sri Lanka was not approved in Durayappah's case (supra) by the Privy Council. But the disapproval does not mean that the distinction does not exist. All it would mean is that the extent of the opportunity and content of the hearing would vary. The content would be less when the decision is based on expediency and policy. It would be more when the decision is based on the adjudication of the rights of parties. The argument by the appellant in Radeshyam Khare's case before the Supreme Court was that the order of the appointment of an administrator on the ground of incompetency of the Municipal Committee was based on policy and expediency. This argument was expressly accepted by S. K. Das, J. and impliedly by other learned Judges Constituting the majority and hence no hearing at all was read into section 53A of the C.P. and Berar Municipalities Act in that case. We are, however, concerned with section 238(1) of the Punjab Municipal Act in which not only the incompetency, but also the persistent failure to discharge its duties and excess or abuse of power are also the grounds on which the action is to be based.

(10) We are aware, that there are numerous statutes in which action is taken by the Government or the administrative authorities on the objective existence of certain circumstances, but no opportunity is given to the person to be affected by the proposed order of attempting to disprove the existence of circumstances. The existence of circumstances can, however, be challenged before a court of law. When section 237 of the Companies Act, was construed in The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, , and Rohtas Industries Vs. S.D. Agarwal and Others, . it was neither argued nor hinted by the learned Judges that any question of an opportunity being given to the company before taking action arises at all in construing section 237. In Rampur Distillery and Chemical Co. Ltd. and Another Vs. Company Law Board and Another, , section 326(2) of the Companies Act had to be construed. The Central Government there under is not to accord its approval for appointment by a company unless, inter alia, in its opinion the person proposed to be appointed is a fit and proper person to be appointed as such. The Supreme Court held that

the words "in its opinion" do not mean that the subjective satisfaction of the Government is determinative as to the existence of certain objective facts. The court emphasised in this case the necessity of giving a hearing even in a discretionary matter. The transition from Barium Chemicals and Rohtas Industries to Rampur Distillery shows how surely, if slowly, the courts have read the requirement of the grant of a hearing into a statutory provision, the decision under which is based on both kinds of consideration, namely, of policy and of the merits of the individuals. It is only in decisions based on "Pure Policy" (Griffith & Street, p. 150) that a hearing may be totally excluded.

(11) A constant balancing between the need of the administration for swift action unfettered by judicial control and the need of doing justice to the individual is reflected in the leading decisions on judicial review of administrative action. The development of administrative law in the United States of America and in the United Kingdom inevitably comes up for consideration before the Indian courts and the acceptable part is reflected in our decisions. According to Prof. K. G. Davis, the American administrative law has gone through three stages of development during which the scope of judicial review was being constantly widened. He, however, envisages the following change in the near future, when the fourth stage begins:

"THE next stage already seems inevitable and the broad lines of the coming development are discernible: The focus of research will shift from procedural safeguards and from judicial review to the neglected eighty or ninety per cent of the administrative process where procedural safeguards and review are mostly irrelevant. The future lies in better understanding of informal exercise of discretion without review."

(Administrative Law Text, Third Edition, (1973) page 2).

(12) In the United Kingdom, in keeping with the tendency envisaged by Prof. Davis in the United States of America, also the trend is towards substituting fairness of administrative action in place of audi alternant partem. The process of change started with the decision of Lord Parker C.J. in *Re H.K. (An Infant)* (1967) 2 Q.B.D.

"THAT is not, as I see it, a question of acting or being required to act judicially, but of being required to act fairly..... only to that limited extent do the so called rules of natural justice apply, which in a case such as this is merely a duty to act fairly".

(H.W.R. Wade, "Administrative Law", Fourth Edition, page 446). Baily, Cross and Garner, in their book on "Cases and Materials in" Administrative Law", (1977), have observed that "The Modern duty to act fairly is sometimes said to originate in this case", (p. 383).

(13) Previous decisions in which the denial of a hearing did not result in any injustice because the facts on which the decision is based were not in dispute,

helped the formation of the doctrine of fairness (*Byrne v. Kinematograph Renters Society Ltd.* (1958) 1 W.L.R. 762(15). In *Glynn v. Keele University* (1971) 1 W.L.R. 487(16), the Vice Chancellor had satisfied himself that the plaintiff had appeared naked in the area of the University. He was, Therefore, punished. The question before the court was what could have been the outcome if the plaintiff had been afforded a hearing. *Pennycuik V. C.* concluded that he would have been found guilty and would have merited punishment. The decision of the University was intrinsically a perfectly proper one, however unlawfully it had been arrived at. In *Malloch v. Aberdeen Corporation* (1971) 1 W.L.R. 1578(17), the majority judgments of the House of Lords, including Lord Reid, expressed the view that failure to observe the rule of *audi alteram partem* will not make a difference if even its observance would have led to the same decision. Prof. D. H. Clark, while enthusiastically advocating the extension of the scope of judicial review is constrained to admit, "if facts Constituting such state of affairs are not disputed by the party liable to the sanction, denial of a precedent fair hearing to which there is no express entitlement would seem to occasion no prejudice to the party concerned". As Lord Wilberforce observed in *Malloch*, "The court does not act in vain. (Natural Justice: Substance and Shadow (1975) "Public Law", page 53). Clark further observes that "this vital rule of natural justice requires not that a party should be heard before a decision to his detriment is arrived at, but that an opportunity must be afforded for the party to present his side of the matter in question." (ibid, page 54).

(14) In *Selvarajan v. Race Relations Board* (1976) 1 All E.R. 12 , Lord Denning spelt out the duty to act fairly as follows :

"THE difficulty investigating body is, however, the master of its own procedure. It need not hold a hearing. It can do everything in writing. It need not allow lawyers. It need not put every detail of the case against a man. Suffice it if the broad grounds are given. It need not name its informants. It can give the substance only. Moreover, it need not do everything itself. It can employ secretaries and assistants to do all the preliminary work and leave much to them. But, in the end, the investigating body itself must come to its own decision and make it own report."

The opportunity when and what :

(15) It is in this context that we have to consider whether the Committee had the opportunity of presenting its case before the order of supersession was passed. The decision making process of the State Government acting u/s 238(1) can be divided into four stages in accordance with the principles of administrative law. ""First, the evidence must be taken and weighed both as to its accuracy and credibility. Secondly, basic and underlying facts must be reached. Thirdly, ultimate facts, usually in the language of the statute, are to be inferred from the basic facts. Fourthly, the application of the statutory criteria will lead to the decision" [Administrative Adjudications and the Duty to Give Reasons A search for Criteria, by Geoffrey A. Flick (1978) P L, 16 . The main distinction can be

expressed into (a) primary facts, and (b) secondary facts Said-ud-Din Vs. Mahabir Singh and Others,]. Prof. A. L. Good heart would call the distinction between the primary and the secondary facts as one between the perception of facts and the evaluation of facts.

(16) At what stage was the opportunity to be given to the Committee to present its case or defense before the order u/s 238 (1) could be passed ? The answer is not in doubt. Whether we consider the four stages mentioned by Flick above or the two stages mentioned Said-ud-Din's case or by Prof. Goodheart. At the first stage, the facts are to be collected with due care as to their accuracy and credibility. After this, findings as to the truth or correctness of these facts have to be arrived at. Since these findings really constitute the decision against the person to be affected by the ultimate order opportunity must be given to such a person to put up his own side or defense, so that his version may be taken into account in coming to the final conclusions on questions fact.

(17) A perusal of the facts stated in the counter affidavits by Shri Shaiza and Shri Jagmohan, supported by the copies of the correspondence between the Government and the Committee would show the following: (1) As to the first ground for supersession, Shri Krishna Pratap, Deputy Secretary, Ministry of Works & Housing. received a representation, dated 23-1-1980 from the previous contractor, M/s. Mohinder Singh & Co. and he requested the President of the Committee to (a) a factual report on the subject and (b) not to make payments, commitments or arrangements or to do anything irrevocable till the Committee heard from the Ministry. The then Lt. Governor was also not agreeable to the grant of mobilisation advance of Rs. 15 lakhs by the Committee to the new contractor. This was conveyed by Shri Shaiza to Shri Krishna Pratap. On 19-2-1980 the President of the Committee explained the reasons why the Committee had to agree to the giving of mobilisation advance to the new contractor. On 22-2-1980 Shri Krishna Pratap wrote; a letter to the President of the Committee to deal with the matter in accordance with law without prejudice to any action that the Ministry or the Delhi Administration might like to take. The Committee was thus made aware of the objections of the Government and had the opportunity to state its reasons for its action. The Government could regard this action as abuse of power. (2) As to the second ground, in addition to the aperiens made in Shri Shaiza's affidavit regarding the re-employment of Shri B. K. Mittal, the Committee was expressly given an opportunity to state its case by Annexure R-10. dated 20th November, 1979 and by the letter dated 7th January, 1980 forwarding copies of Annexure R-10 and Annexure R-12 to the Committee for its comments. Annexure R-IO in a letter by the Secretary of the Local Self-Government Department to the President of the Committee criticising the failure of the Committee to initiate proceedings against Shri Mittal for imposition of a major penalty in accordance with the recommendation of the Central Vigilance Commission and for re-employing him. When the action of the Committee was condemned, it was an opportunity given to the Committee to show cause why the action was right or proper and why it did not deserve such condemnation.

Annexure R-12 is a representation of the employees, dated 11-12-1979 alleging corruption in the Committee. Comments of the Committee were asked for an Annexure R-12 (annexing Annexure R-10) by the letter of 7th January, 1980 of the Government. Shri Shaiza has asserted in his affidavit that no reply was given by the Committee to the letter. dated 7th January, 1980. In our view, the Government thus gave ample opportunity to the Committee to explain. why major penalty proceedings were not taken against Shri Mittal and why Shri Mittal was re-employed. Apparently, the Committee had no defense against this criticism and, Therefore, did not give any reply to it. Government could regard this also as an abuse of power. (3) As to the third ground, the report of the enquiry officer holding that three out of four charges were proved against Shri Gangal and the advice of the Central Vigilance Commission that a major penalty of not less than removal should be imposed on him were disregarded by the Committee. Apart from the opposition to this action expressed by Shri Kalia and other official members, the Committee was not told by the Government that it objected to the action. The Committee thus did not have the opportunity to explain its viewpoint against any objection by the Government as such in this matter. This ground thus cannot be used to support the suppression of the Committee. But the opinion of the Government is evident that the supersession would be justified on the other grounds. The order is thus not vitiated (The State of Maharashtra and Another Vs. B.K. Takkamore and Others, . (4) As to the fourth ground, sanction of the Lt. Governor was sought by the Committee as per Rule 11(8) of the Municipal Account Code to its revised budget estimates for 1978-79 and budget estimates for 1979-80. The budget was scrutinised by the Delhi Administration. Besides other short-comings it was observed that the budget showed an ad hoc provision for additional staff amounting to Rs. 33 lakhs of which no details were given. The then Chief Executive Councillor on 22-6-1979 and the then Lt. Governor on 25-6-1979 criticised this action. In letter, dated 13-7-1979, Annexure R-15, the Secretary of the Local Self-Government expressly informed the Committee as follows :

"WITH a view to effect economy in expenditure the staffing pattern of various departments may be got studied by the Administrative Reforms Department of the Delhi Administration..... Till this study is completed and a report submitted the ad hoc provision of Rs. 33 lakhs for additional staff should not be utilised."

The Committee considered the letter and passed a resolution on 27-7-1979, Annexure R-16, expressing its own viewpoint, which was divergent from the viewpoint of the Government. This court cannot consider the merits of these two conflicting viewpoints. But we note that the opinion formed by the Government was based on material which was relevant in the assessment of the conduct of the Committee. On 18-1-1980, as per annexure R-18, the Delhi Administration sent a copy of the note raising objections to the creation of the additional post of Director (Hort). On 13-2-1980 Shri Shaiza again wrote to the President of the Committee sending a copy of the representation from the Staff. Reply to both

these letters was sent by the Committee on 21-2-1980, mentioning there that reply to -letter dated 18-1-80 had been sent on 15-2-1980. The Government could regard this as plain excess of power. The Crucial Question :

(18) Justice Hugo Black of the United States Supreme Court used to advise both the other Justices and his law clerks "to go for the jugular". He meant that "cases were not won or lost", nor was the law decided on legal niceties. Judges might say, they were, but that was never the real reason. In each case there was always a crucial issue to locate. The issue might be heard to find, but once found it must be addressed". ("The Brethren", Inside the Supreme Court by Bob Woodward and Scot Armstrong, (1979) p. 38). The crucial issue in this case is whether or not the Government can be said to have acted fairly in dealing with the Committee. This depends on whether the opportunity to present its case was given by the Committee before arriving at conclusions on the questions of basic facts. The above discussion would show that such an opportunity was given in respect of the first, the second and the fourth grounds. As for the third ground, opportunity was not expressly given, but the conduct" of the Committee is on the face of it totally unjustifiable.

(19) The further question is whether another opportunity should have been given to the Committee to answer an express question as to why the Committee should not be superseded. The answer is to be in the negative. According to Flick, the "ultimate facts usually in the language of the statute, are to be inferred from the basic facts". According to the ratio of the decision in State of Gujarat Vs. Jamnadas G. Pabri and Others, . whether the primary facts amount to incompetence, etc. u/s 238(1) was to be in the subjective satisfaction of the Government and is not judiciable or subject to judicial review It follows that before drawing such an inference, the Government was not required to give a fresh opportunity to the Committee to show cause why the conclusion of law should not be arrived at.

(20) It is true that sometimes the opportunity is not given before the findings of fact are arrived at. It is given before the penalty or final action is taken. It is only then that cause can be shown not only why the facts should not be believed or accepted but also why the penalty should not be imposed even if the facts are to be believed. In Article 311(2) of the Constitution two separate opportunities are prescribed for the two stages. But this cannot be laid down as a universal rule. Discretion under Article 226 Only to redress injustice.

(21) Even under Article 226 of the Constitution this court would not exercise its discretion to grant relief, unless injustice is shown to have been done to the petitioner. This court has the discretion to abstain from interference under Article 226 of the Constitution if (a) the conduct of the petitioner is such as to disentitle him to the relief, (b) he has not suffered any injustice, or (c) that the grant of the relief to him would result in injustice (A. M. Alison v. B. L. Sen Air 1967 S.C. 27) , Smt. Narayani Debi Khaitan v. State of Bihar. C.A, 140 of 1964 (22), decided on 22-9-1964, the passage cited in Vashist Bhargava v. Income Tax

Officer, Salary Circle, 2nd (1975) I Del 634 (23), at 647 and 648, and followed by S. M. Sikii and K. S. Hegde JJ. (in Durga Prashad Vs. Chief Controller of Imports and Exports, , as also the other Supreme Court and other decisions relied upon in Vashist Bhargava's case) As Lord MacMillan writes, "in almost every case, except the very plainest, it would be possible to decide the issue either way with reasonable legal justification" and that in such cases, ethical considerations operate and ought to operate (Law and Other Things, page -18). If justice was done to the Committee, then technical considerations should not persuade this court to interfere with the order of supersession.

(22) Can a member be aggrieved by the denial of audi alteram partem to the Committee ? : The Committee as a body corporate and the petitioners as its members are two distinct legal entities .They both suffer loss of status and reputation by the impugned order and are aggrieved. The Committee contending its supersession to be illegal would still exist in the eye of law and could file a writ petition after meeting and resolving to do so. On showing that such a meeting was impracticable, an individual Councillor may claim to be representing the Committee and after making the old Committee a respondent (Durayappah's case. 355), or alternatively in his individual right file a writ petition. Non-compliance with section 238(1) would be a common ground to be urged against the impugned order either by the Committee or by an individual member Suresh Seth Vs. The State and Another, .

(23) Professor H. W. R. Wade, writing in 83 L.Q.R. 499, and 84 L.Q.R. 95, as also in "Administrative Law", Fourth Edition, pages 456 and 457, has stated that the denial of a fair hearing is a wrong which is personal to the party aggrieved and a third party has no sufficient standing to challenge the order on the ground that the party entitled to a hearing was not given a hearing. But the petitioners are not third parties. By the very effect of action u/s 238(1), the petitioners lose their office u/s 238(2). The illustration given by Prof. Wade that on the facts of Ridge v. Baldwin (supra), a person other than Ridge could not have complained that Ridge was not given a hearing does not, Therefore, apply to the present case. The hearing which is to be given to the Committee would be given to the members of the Committee acting in a meeting and by way of a resolution. The Committee consists only of 13 or 14 members all nominated. Each members is thus an integral part of the Committee. Even if the primary grievance for denial of a hearing may be of the Committee, the difficulty of a superseded Committee acting in its corporate capacity to challenge the impugned order would allow an individual member of the Committee to challenge it on the ground that he also was aggrieved along with the other members of the Committee by the denial of a hearing. He certainly has a special grievance over and above the grievance of a member of the general public caused by the denial of hearing and as such would have locus standi to challenge the impugned order (Radhey Shyam v. Lt. Governor. Delhi. 2nd (1970) 2 Del 260 (26). and Standing and Justiciability (1971) 13 J I L I153 . If both the Corporation and the member are aggrieved by the same act separately, each has a cause of action. Rustom Cavasjee Cooper

Vs. Union of India (UOI), , distinguishing at 557-558 *State Trading Corporation v. Commercial-tax Office* (1954) 4 Scr 99 , and *Tata Engineering and Locomotive Co. Ltd. Vs. State of Bihar and Others*, . Distinction between locus standi and a legally protected interest :

(24) It is possible that even a person having a legally protected interest may not have locus standi as a personal qualification according to the distinction between the two made by Brennan J. (with whom Justice White concurred) in *Barlow v. B. L. Collins* (1970) 357 U.S. 150. and in *Association of Data Processing Service Organisation v. Camp*. (1970) 397 U.S. 150. But such a distinction cannot be made in the present case as the legally protected interest of the petitioners has been affected and they also have a locus standi.

(25) Shri Tandon for the respondents argued that the petitioners had no right to hold their posts and, Therefore, the loss of those posts was not an injury to a legally protected interest. We are unable to agree. The power u/s 16 of the General Clauses Act given to the appointing authority to terminate the appointment is subject to an intention to the contrary (*State of Travancore-Cochin and Others Vs. The Bombay Co. Ltd.*,). Further, as the office of the Municipal Councillor is not held during the pleasure of the Government, the petitioners could be removed only for a cause (*Ridge v. Baldwin* (1964) A.C. 40 , and *Dr. Bool Chand Vs. The Chancellor, Kurukshetra University*, . According to the decision in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, , even a temporary Government servant has the right to hold the post if appointed for a fixed term. His tenure cannot be terminated before that term. This applies to the petitioners as *Kanta Devi and Another Vs. State of Rajasthan and Others*, . The petitioners thus have a legally protected interest in their office and also a locus standi.

(26) Shri Tandon for the respondents relied on the following decisions of the Supreme Court for the proposition, that once the facts are proved or admitted and the inference there from is irresistible, then no show cause notice is to be given to explain why such an inference should not be drawn from these facts *The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee*, , paras 13 and 15, *Shahoodul Haque Vs. The Registrar, Co-operative Societies, Bihar and Another*, , *Amar Chandra Chakraborty Vs. The Collector of Excise, Government of Tripura and Others*, , and *The Bihar School Examination Board Vs. Subhas Chandra Sinha and Others*, . They apply fully to the inference of incompetence, default, excess or abuse of power drawn in this case.

(27) Was the Lieutenant Governor bound to consult the executive Council before passing the order ? : u/s 27 of the Delhi Administration Act, 1966, the Executive Council assists and advises the Administrator. In the interests of a democratic functioning of the Delhi Administration, we may assume that the Lieutenant Governor is bound to consult the Executive Council. But the second proviso to sub-section (1) of section 27 of the said Act states that the ultimate decision regarding anything concerning New Delhi will be in the discretion of the

Administrator. Therefore, so far as the affairs of New Delhi are concerned, section 27 is directory and not mandatory. The non-consultation with the Executive Council, Therefore, does not vitiate the order of the Lt. Governor superseding the Committee. According to the notification issued u/s 29 which is annexure 23 to the writ petition, dated 1-6-1968, the matters in relation to the New Delhi Municipal Committee were placed within the discretion of the Lieutenant Governor. Further, the Rules made by the President, if any, u/s 29 for the conduct of the business would also recognise that regarding the administration of New Delhi the Lieutenant Governor will act in his own discretion. It follows, Therefore, that the impugned order is not vitiated by the failure of the Lieutenant Governor to consult the Executive Council.

(28) Does the impugned order state the reasons for it as required by section 238(1) of the Punjab Municipal Act ? ; A basic distinction exists between the facts of a case and the conclusions of law or mixed law and fact drawn from these facts. The grounds on which supersession of a Municipality can be based u/s 238(1) are the conclusions of law or of mixed law and fact which are drawn by the State Government from the particular sets of facts. A perusal of the impugned order shows that in respect of each of the four incidents on which the order of supersession was based, not only the facts were stated but also the conclusions drawn by the State Government were either expressly stated or were necessarily implied and it is because of the adverse view of these facts taken by the Government that the Government was of the view that the Committee had been incompetent to perform and had made persistent defaults in the performance of its duties and had also abused its powers.

(29) Shri Sorabjee, however, submitted that the reasons for the supersession should have been stated quite separately from the facts on which the conclusions of the Government were based. He further pointed out that no reference was made to the Explanation given by the Committee about the four charges made against the Committee. Lastly, according to him, no reasons were given why the Explanation was not accepted. He relied firstly on *Abdul Latif Nomani Vs. Commissioner Gorakhpur and Others*, . In that case section 40(4) of the U.P. Municipalities Act required a show cause notice only against the proposed action, namely, the penalty. It did not refer to the giving of hearing for the proof of the facts. The notice was found defective because it did not ask why the proposed action should not be taken. He further relied upon *Municipal Council, Kharsia and Another Vs. State of Madhya Pradesh and Others*, , *Municipal Committee and Another Vs. State of Madhya Pradesh*, , and *Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others*, , as also *Lila Krishan v. State of Haryana* (1971) 73 P.L.R. 289, and *The Municipal Council, Malkapur and Another Vs. The State of Maharashtra and Another*, . Some of these cases are related to orders passed in appeal. Appeals are quasi-judicial of almost judicial proceedings and reasons have to be given in the appellate order unless the order appealed against was reasoned order and the appellate authority merely agrees with it.

(30) While we recognise that the merits of the supersession are for the Government to judge and that "not to make decisions that others should make, is to preserve morale, to develop competence, to fix responsibility, and to preserve authority" (Chester Bernard, "The Functions of the Executive p. 194). We must equally emphasise the independence of the local Self-Government within its field. It must not be taken away by the Government except after acting fairly. It is only because the record bears out that the required opportunity was in fact and in effect given to the Committee by the Government that we have refrained from interference. The dismissal of the writ petition should not be understood as whittling down or even diluting the necessity of the Government acting fairly by giving the hearing to the Committee before supersession u/s 238(1). Shri Sorabjee argued that at no time the Government indicated its intention to supersede the Committee and that the hearing u/s 238(1) should have included an express notice to show cause why the Committee should not be superseded. Had the opportunity to present its case not been given to the Committee before conclusions of fact were arrived at by the Government, such notice to show cause would have been necessary. On the facts of this case, however, the Committee was told of the views of the Government and had the opportunity to express itself on being appraised of these views. A notice to show cause why the Committee should not be superseded would have been a mere formality after which nothing of substance could be added by the Committee to what the Committee has already stated in respect of the objections raised by the Government. We would not, Therefore, resort to technicality in impugning the supersession. Flick (supra), while distinguishing between findings and reasons, has expressed this as follows :

"THE difficulty is in deciding whether the courts will permit a finding of ultimate facts to be inferred. Some cases suggest that an express statement is required, but it is submitted that the better view is that, whilst a court should not be prepared to infer findings of basic facts from the evidence presented for the very good reason that specific findings may not necessarily flow from general findings, it is to insist upon "undue formalism" to insist on an express statement of the ultimate facts where they can be clearly implied from the action taken."

(31) Lastly, it was argued that the reasons did not consider the Explanation given by the Committee and, Therefore, were not in compliance with section "238(1) The simple answer is that no real Explanation or justification was given by the Committee. Further, the inference was irresistible from the admitted facts that the circumstances under which the Committee could be superseded existed. Bona fides :

(32) Most of the actions for which the Committee was blamed had taken place before Shri Jagmohan, the present Lieutenant Governor, assumed office. He has acted on the facts as proved on the record. On the study of the file put up before him, he came to the conclusion that these actions amounted to incompetence, persistent default and abuse of power within the meaning of section 238(1) of

the Punjab Municipal Act. It is settled law that the formation of such opinion on the circumstances objectively proved was in the discretion of the State Government. The exercise of the discretion has not been shown to be based on any irrelevant or non-existent grounds and cannot be assailed. The question of mala fides, does not arise at all. As order is entirely valid, even the question of bona fides in law or of ultra virus does not arise. Conclusions :

(33) For the above reasons, we sum up our conclusions as follows : (1) The power of the Government to supersede the Municipal Committee u/s 238(1) of the Punjab Municipal Act, 1911 can be exercised if (a) facts exist which can be objectively proved to be true or correct; and (b) from which the Government can infer that the Committee is incompetent, made persistent default or has exceeded or abused its power. It was so exercised in this case. (2) It is implied in section 238(1) that before concluding that the facts are true or correct, the Government is found to give to the Committee a fair opportunity to show that the facts are not true or correct or are otherwise capable of being explained in favor of the Committee. Such opportunity was given in the present case. (3) The Government need not expressly call upon the Committee to show cause why it should not be superseded if the Committee (as in this case) had the opportunity to controvert the facts on which the supersession is based. (4) If the supersession is based on more than one grounds. some of which are non-existent or irrelevant, the order would not be necessarily vitiated if (as here) in the opinion of the Government supersession would have been made on the other grounds or ground. (5) The reasons stated in the order of supersession should flow from the evaluation of the facts showing the application of mind by the authority. The impugned order satisfies this requirement. (6) The petitioners have the locus standi to impugned the supersession on the Committee for violation of section 238(1) because they have to vacate their office u/s 238(2) as a result of it. (7) The petitioner's tenure of office as Municipal Councillors having been fixed as one year, it could not be terminated earlier except as a result of a valid order under s. 238(1) as was done in this case. (8) The Lt. Governor acts in his discretion in relation to the affairs of New Delhi under the second proviso to section 27(1) of the Delhi Administration Act. 1966. Hence the provisions of section 27 of the said Act implying consultation with the Executive Council were only directory and not mandatory in regard to New Delhi. The impugned order is not vitiated due to non-consultation. (9) There is no bona fides either in fact or in law or any excess or abuse of power or discretion in the passing of the impugned order. (10) As no injustice was caused to the petitioners by the impugned order, the court would not exercise its discretion under Article 226 of the Constitution to grant any relief to the petitioners.

(34) For the above reasons, the writ petitions are dismissed. There will be no order as to costs.