

(1983) 08 GAU CK 0009
In the Gauhati High Court
Case No : Civil Rule No. 120 of 1976

Upendra Bhagat

APPELLANT

Vs

Union Territory of Mizoram and Anr.

RESPONDENT

Date of Decision : 24-08-1983

Acts Referred:

Constitution of India, 1950 — Article 311(2), 311(2)

Citation : (1983) 2 GLR 474

Hon'ble Judges : B.L.Hansaria, J and T.N.Singh, J

Bench : Division Bench

Advocate : G.Bhattacharyya, J.M.Choudhury, K.K.Bezbaruah, Advocates
appearing for Parties

Judgement

Hansaria, J.—Procedural safeguards given to civil servants cannot be "teasing illusion". As the efficiency of the entire administrative system depends on it, some serious thoughts are necessary as to when the right conferred by Article 311 (2) of the Constitution can be taken away. The second proviso to this Article has mentioned of three contingencies when this can be done. In the case at hand we are concerned with proviso (b) which permits dispensation of enquiry:

"Where the authority empowered to dismiss or remove a person or reduce him in rank, is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry".

This proviso has been invoked in the present case to dismiss the petitioner who was a constable and was found "providing assistance to the MNF hostiles". The reason for invoking the proviso is the unwillingness of the witnesses "to come forward to depose.....due so the fear of terrorist activities of the MNF hostiles".

2. The invocation of proviso (b) raises a host of questions. To answer them, we have to take note of clause (3) of the Article as well, the relevant portion of which reads as below :

"if.....a question arises whether it is reasonably practicable to hold such

inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final".

3. Justiciability.

3.1. The first question which has to be answered is whether in view of the aforesaid clause (3), can this Court at all examine as to whether the power under clause (b) of the proviso was rightly exercised or not, when the authority does say affirmatively that it was not reasonably practicable to hold the enquiry? To reach a satisfactory answer to this poser, we shall have to undertake a long journey which I do not propose to hazard as it would take us much beyond the ambit of the present case. Suffice it to say that judicial reviewability has been accepted as a part of the rule of law to which we are wedded and the same is inbuilt in our basic law. Despite ouster clauses, the courts have not shirked or given up their responsibilities. As stated by Lord Denman, C. in *R. vs. Chetlemham Commissioner* (1841) 1 QB 467, a statute "cannot affect our right and duty to see justice executed". Lord Denning in his "Discipline of Law" (1979) has traced the history and interpretation of ouster clauses as it grew on the English soil. The leading English case on this point is, of course, that of *Anisminic* (1969) 1 All ER 208) which had dealt with this clause in the context of the following provision in the relevant statute;

"A determination by the tribunal of any application made to them under this Act shall be not called in question in any court of law".

Despite this, the House of Lords had set aside the decision of the tribunal because according to the majority of the Law Lords, the tribunal had made an error of law in misconstruing the Order in question; and the error was regarded so serious that it was held that the tribunal had gone outside its jurisdiction so far outside that the determination was a nullity, no determination in the eye of law, a purported determination only.

3.2. As to the Indian decision on this subject reference to *State of Rajasthan vs. Union of India* (Assembly dissolution case), AIR 1977 SC 1361, would be enough as the Supreme Court had expressed its opinion on this aspect when Article 356 of the Constitution had clause (5) in it to read as below:

"Notwithstanding anything in this Constitution, the satisfaction of the President mentioned in clause (1) shall be final and conclusive and shall not be questioned by Court on any ground".

The Court stated that despite such a provision, if the satisfaction was malafide, or based on wholly extraneous and irrelevant grounds, the Court would have jurisdiction to examine it because in that eventuality it would be a case of no satisfaction.

3.3. It would not be out of place to refer to *Union of India vs. Jyoti Prakash*, AIR 1971 SC 1093, in paragraph 31 of which it was stated that despite the finality of

the decision of the President on the question of the age as stated in Article 217(3), as amended, the Court had jurisdiction in appropriate cases to set aside the order, if it appears that it was passed on collateral consideration, or the rules of natural justice were not observed, or that the President's judgment was coloured by the advice or representation made by the executive, or it was founded on no evidence.

3.4. The question of justiciability of the reasons had come up for direct examination in *State of Orissa vs. Krishnaswamy*, AIR 1964 Orissa 29, which held that despite the provision in clause (3), the Court had jurisdiction to see whether the authority had acted with "unreasonable readiness" or "culpable complacency", or had applied its mind to the relevant facts or not". This view was approved in *Karam Singh vs. Transport Commissioner*, AIR 1965 J&K 53. The Punjab & Harayana High Court has also accepted in *Boota Ram vs. State of Punjab*, 1980(2) SLR 185, that the reasons given must have reasonable nexus to the practicability or otherwise of holding enquiry. This view has been taken by the Court even after nothing what Dr. Ambedkar had stated on the floor of the Constituent Assembly on clause (3) the purport of which is that this provision was introduced to "cast out jurisdiction of the Court".

3.5. Let it be said that in taking the aforesaid stand, the courts have not gone at tangent with the views of the founding fathers inasmuch as if there is real decision, the Court would definitely hold its hands off. But what could it do if there be a purported decision only or no decision in the eye of law? In such cases, the Court shall have to come forward to discharge its constitutional obligation. This almost follows from the requirement of recording reasons, which must have had some purposes behind it, one of which would definitely be examinability of the same in appropriate proceeding. Before advertent to other aspects involved in the matter, it would be in fitness of things to refer to *Ikamuddin vs. P. N. Goswami* (Civil Rule 261/73 disposed of on 8.3.76) in which a Bench of this Court has not subscribed to the views of the Orissa High Court in *Krishnaswamy* (Supra). With respect, we disagree, especially in view of the aforesaid decisions of the Supreme Court, and because no reasons has been ascribed for the views taken.

4. Reasonable nexus :

4.1. Thus, it can be taken to be a well established position that the reason for arriving at the satisfaction must be relevant and germane to the question of reasonable practicality of holding the enquiry. Any and every reasons would not do in this regard. What reason or reasons could be regarded as relevant in this regard is difficult to say or lay down exhaustively. The same must, however, be connected with holding of the enquiry, and the nonpracticability of the same. The word "practicable" has been defined in Webster's Dictionary as "possible to practice or perform,....feasible". In Stroud's Judicial Dictionary also, "practicable" has been defined as "possible". Then, as pointed out in *In Re Affairs of Farquhar*, 1943(2) All ER 781, "practicable" cannot be construed as "equitable" or "fair" or

"reasonable". As to when an enquiry may not be possible or feasible, is difficult to spell out with exactitude and thoroughness. But it may be stated, as observed in Karam Singh (Supra), that where an employee be at such a place that it would not be reasonably possible to ensure his attendance, this would be the case of nonpracticability. According to R. K. Mishra vs. General Manager Northern Railway, 1977(2) SLR 127 (Del.), the impracticability in holding the enquiry must imply some physical or legal impediment in the way of holding the enquiry. Such a situation may arise, as per this decision, where the delinquent is not traceable or where on account of a war, internal disorder or disturbed condition, it not possible to enforce the attendance of the delinquent or of the persons who are to conduct enquiry, or those who may be required to give evidence. The mere fact that the witnesses are not prepared to support the charge either because of their belief, was not regarded as a relevant factor inasmuch as the rule purpose of enquiry is not to establish charge, but to find out the truth.

4.2. At this stage, it would be quite appropriate to refer to the debates in the Constituent Assembly when senior members took strong exception to this proviso finding place in the Constitution. According to late H. V. Kamath, this provision would demoralise the services and would hang like a sword of Democles which would fall "when a whimsical or vindictive minister will let it fall". So, efforts were made to narrow down the scope of proviso (b) by proposing an amendment that this could be invoked only when the incumbent was absconding and his whereabouts were not known. This was ultimately not conceded. So, it would be wrong on our part to confine the applicability of the proviso only to the cases to which this provision was sought to be confined.

4.3. Views similar to those noted in para 4.1 were expressed by the Orissa High Court in Mahendra Ram vs. Union of India, 1977 (1) LLJ 74 and Pramod Chandra vs. Divisional Superintendent, 1917(2) SLR 485. Both these cases related to charge of receiving illegal gratification and the enquiries were dispensed with by stating that the witnesses would never come forward to support the charge, or it would not be possible to compel the outsiders to be witness in the enquiry. R. N. Mishra, J. (as the then was) observed that though wiping out of corruption is a desired end, the same could not be done in breach of law as it would lead to chaos. The reasons recorded were not regarded as germane and the dismissal orders were set aside.

4.4. We would now like to refer to a decision of this Court in Manik Chandra vs. General Manager, 1975 LIC 1530. The dismissal order in that case was upheld though no inquiry was held and one of the reasons for dispensing with the inquiry was threat to witnesses because of which they feared to come forward. A perusal of the judgment shows that this was not the only ground on which the invocation of the proviso was upheld. More weighty reasons like nonpossibility to serve the charge on the employees, necessity of immediate action to stop further deterioration of railway services, endangering public order in case of holding of inquiry had also been regarded as the reasons in this connection. It was the

combined effect of all these reasons which had persuaded this Court to uphold the dismissal order in the above case. Let it however be stated that real threat or terrorisation of witness has been accepted by to some other High Court as in good reasons in this context. In *Jyoti Prasad vs. Union*, 1975 (1) SLR 80 (Cal) while illustrating as to when an enquiry may be dispensed with it was stated that fear of life on the part of the witnesses to come forward to depose would be one such reason. From what has been stated by Patna High Court in paragraph 6 of *Virendra Kumar vs. Union of India*, 1982 (2) SLR 3 (pat) it would seem that the Court accepted that if there be real terrorisation to the witnesses, the same may furnish a good ground for withholding the enquiry. (See *Baidynath vs. G. M.* 86 CWN 745 also). Needless to say that the reason given must have factual existence, as pointed in *Union of India vs. N. K. Chander*, 1976 (2) SLR 447 and *Chief Mechanical Engineer vs. Jyoti Prasad*, 1975 LIC1288. The same should not be illusory also.

4.5. Reference may also be made to a Full Bench decision of the Allahabad High Court in *Maksudan vs. Security Officer*, AIR 1981 LIC 881. There the grounds for dispensing with the enquiry were "the collusion with the local RPF staff" or "inability to collect evidence". After pointing out that the satisfaction in this regard is not subjective but objective, the Court held that the reasons which had weighed with the authority for dispensing with the enquiry were wholly arbitrary, and orders of dismissal based on such reasons was set aside.

5. How much of enquiry to be dispensed with :

5.1. The holding of enquiry being a general requirement as envisaged by Article 311(2), the proviso has to be so construed that it may not eat up the parent provision. Holding of enquiry being a part of the principle of natural justice, exclusion of the same has to be under exceptional circumstances. A strict construction on the power is, therefore, called for. This was also the view taken in *R. K. Mishra and Mahendra Ram* [supra].

5.2. As an enquiry visualised by Article 311(2) consists of many steps and parts, only those could be dispensed with, according to us, about which it could reasonably be said that holding of the same was not practicable. In taking this view we are not relying on any provision similar to Rule 14 of the Railway Service (Discipline & Appeal) Rules, 1968, whose distinction with Article 311 was pointed out in *Boota Ram* (supra). We have expressed the afore said view following the rules of interpretation which would allow a proviso of the present nature to operate on the narrow field carved out for it bearing in mind the beneficial provision and the object behind holding of enquiry. May we refer in this connection to *B. C. Das vs. State of Assam*, AIR 1971 SC 2004 in which the enquiry was dispensed with under clause (c) of the proviso after the incumbent had been asked to show cause and they had in fact done so. As the power is to dispense the enquiry when it is not reasonably practicable it should not take within its gamut those parts of the enquiry also which are practicable. Though the proviso may cover the entire enquiry, prudence and logic would require

compliance with that part of it which is practicable.

5.3. This would be more so if in any of the service rules require consideration of the matter before passing of the final order, as does aforesaid Rule 14 and Rule 10 of the Assam Services (Discipline and Appeal) Rules, 1964. The Supreme Court had occasion to examine the purport of the word "consider" finding place in Rule 14 of the Railway Rules in T. R. Challapan (AIR 1975 SC 2216). As, however, in the present cases no such rule has been brought to our notice, we may not proceed further in this direction.

6. FACTUAL MATRIX.

6.1. With the aforesaid legal position in mind, we may examine the facts of the present case. The petitioner was found to be hobnobbing with MNF hostiles and on receipt of such report he came to be dismissed from service with immediate effect by an order passed on 5.3.75 because of remissness and misconduct. As however, the disciplinary authority was advised by the Law Department of the Government of Mizoram that such an order having not contained reasons and having not mentioned about the invocation of the proviso (b) may not stand, the petitioner was reinstated on 20.12.75. On the same day, the impugned order was passed. As the reason for dispensing with the enquiry has been incorporated in the impugned order itself, we are not called upon to examine as to whether this is a requirement of law or not, on which there are two views as would appear from Boota Ram. A perusal of the affidavit in opposition filed by the respondents would show that the fear of terrorist activities was not a pretence inasmuch as in January 1975 even the Inspector General of Police, the Deputy Inspector General of Police and Superintendent of Police were also shot at and killed by the MNF hostiles inside the office room of the Inspector General of Police. This led the ordinary people to believe that if anybody were to make any statement against the interest of MNF in an open enquiry, they would be known and would meet the same fate as the IGP and other. Thus, the reason given cannot be said to be imaginary, despite the fact that the witnesses would have been police personal. The question is whether it is relevant. Now, if witnesses do not come forward due to fear to their lives, how could an enquiry be possible? It is not a question of witnesses being available for examination, but their not supporting the allegation. According to us a difference has to be made between the absolute disinclination of witnesses even to appear on the stage due to fear to their lives, and their hesitation in telling the truth. The second reason would be more akin to the question of establishing the charge and not the nonpossibility of holding the enquiry, and as such not relevant; but the first would be.

6.2. In the situation as prevailing at the relevant time in Mizoram, we are satisfied that the fact of the unwillingness of the witnesses to depose due to fear of the terrorist activities was a relevant consideration in invoking proviso (b). Though, according to us, this might not have prevented the issue of a second show cause, the failure to do so in the present case cannot be regarded as lethal because proviso (b) does permit dispensation with the second show cause, and

in view of the serious allegation against the petitioner the same being his assistance to MNF hostiles even while acting as a member of police force, no useful purpose would have been served by asking the petitioner to show his cause against the proposed penalty of dismissal.

6.3. Before concluding, it may be stated that though proviso (b) permits nonholding of enquiry, it does not give a blank cheque to the disciplinary authority to award punishment even though the charge is not established to its satisfaction. As a penalty can be awarded for good and sufficient reasons, the disciplinary authority has to satisfy itself on the allegation before it awards any punishment. We have perused the records made available to us and we do find that in the present case an enquiry was held, though *ex parte*, by the concerned O. C. and it after perusal of this report that the Superintendent of police was satisfied with the allegation, and on being further satisfied about the nonpracticability of holding of the enquiry for the reason alluded, decided to dismiss the petitioner from service.

6.4. This being the position, we do not find any infirmity in the order to merit invocation of our extraordinary power under Article 226 of the Constitution. The petition is, therefore, dismissed.

Dr. T. N. Singh, J. :

Ouster clause

7. Basic features of our Basic Law were set out in *Keshavananda* (AIR 1973 SC 1461) not to be displayed as items of constitutional cosmetic. When the Basic Law in express terms overrides one of them, judicial review what should be the judicial response to the problem posed by such a situation? This question with which we are confronted in this case, I consider to be of signal importance. I speak therefore to add a few words of my own, while agreeing with the conclusions arrived at and the order proposed in the exhaustive judgment of my esteemed brother, to put on record my own views on the scope and nature of the "ouster" of judicial review contemplated under clause (3) of Art. 311 of the Constitution. I say so because I am examining the matter from a different perspective.

Domestic context

8.1. From the banks of Jamuna to the banks of Brahmaputra cannot be a far cry for us as what nation's legislative or judicial mentors mandate, this court is bound to heed with fully committed care and caution. Although, what may come to us from across the shores of other lands may not bind us hand and foot. In the two decisions of the apex court referred to and relied on by learned brother we do certainly get some light. Still, I feel it necessary to indicate that those decisions dealt with different provisions, albeit of our Basic Statute itself, concerning President's powers exercisable under different situations and in different contexts. Indeed, in one case the nature of the power was patently

political (see (1) Assembly Dissolution case, *supra*) while in the other case its character was adjudged as judicial (see (2) Jyoti Prakash case, *supra*). In decision (1) although Beg, C. J., referred to Keshavananda (*supra*) his lordship adopted not "judicial review" but "supremacy of the constitution" as the more appropriately applicable "basic" norm to mark out the ambit and scope of the old clause (5) of Art. 356(1) taking care to note that the provision was posited in Part XVIII of the Constitution which was concerned with an "emergency" situation. In decision (2) the provision itself, not its setting, laid down the guideline for the exercise of the power requiring "consultation with the Chief Justice of India". The finality clause in both cases were, thus, not without antennae and these, therefore, enabled the court to pick up the code to decipher the message imbibed by those provisions. Indeed, therefore, while in decision (1) the court held that Art 365 (5) debarred the courts from questioning President's satisfaction "on any ground" and that courts can only "determine the validity of the action on whatever may remain for them to consider or what are admitted to be grounds of Presidential satisfaction," in decision (2) it was held that although "the court will not sit in appeal over the judgment of the President nor will the courts determine the weight which should be attached to the evidence", the court had jurisdiction to set aside in "appropriate cases" the order if it appeared to the court that "it was passed on collateral considerations or the rules of natural justice were not observed, or that the President's judgment was coloured by the advice or representation by the executive or it was founded on no evidence". Indeed this decision (2) was rendered at a time when the Basic Structure Theory was not evolved and the decision, therefore, inevitably and manifestly, found handy for application the usual norms of administrative law.

8.2. The Basic Structure Theory was subjected to a reappraisal by the Constitution Bench in *Minerva Mills* (AIR 1980 SC 1789) and using the feature of "limited amending power of Parliament" the court struck down clauses (4) and (5) of Art. 368 which were added by 1976 Amendment, but this was obviously possible because the father feature of "judicial review" embraced it within its fold which aspect Bhagwati, J. stressed in his separate opinion. The majority speaking through Chandrachud, C.J. in executing the excision significantly observed : "donee of a limited power cannot by exercise of that power convert the limited power into an unlimited one". Bhagwati J. reiterated to what his lordship and Gupta, J. observed in the Assembly Dissolution case (*supra*) and reasserted that a political controversy which involved "determination of a constitutional question" was not beyond the pale of judicial review. Perhaps, we may then bear the last word of the apex court on constitutional ouster when the provisions of clause (2)(d) of Art. 323A, which was introduced in 1976, comes up for its consideration. But for that there may have to be a long wait as the provisions of Part XIV are not self-executory. In my opinion these provisions bear closer resemblance to the provision under consideration in the instant case as the donee of the power in the two provisions have more or less a common character. This being the position I may refer now to few decisions of the High

Court on Art 311(3) referred and relied on in the leading judgment.

8.3. These decisions have a common feature in that in all cases the courts were called upon to interpret the same provision of Rule 14 at "the Railway Servants" (Discipline and Appeal) Rules 1968 of which clause (i), (ii) and (iii) are a verbatim reproduction of clause (a), (b) and (c) of the second proviso to Art. 311(2). These, therefore, deal merely with aspects not strictly related to "justifiability" and my learned brother has dealt with those aspects in great detail. In a decision of this Court reported in 1975 LIC 1530 (Manik Ranjan vs. N.F.Rly.), M.C. Pathak, C. J., speaking for the court observed that the language of the Rule made the subjective satisfaction of the disciplinary authority subject to the objective test on the basis of the grounds recorded and the finding of the disciplinary authority that it was not practicable to hold the inquiry must also be reasonable and that both aspects were examinable and reviewable by the appellate authority. The question of "ouster" not only under clause (3) but even under subclause(b) to the second proviso to clause(2) of Art. 311 came to be considered in Jyoti Prasad's case (19751 SLR 80). It was held that finality contemplated in clause (3) is attached to a "decision" made under the said subclause(b) which complied with the requirements thereof in that it would otherwise not be a "valid decision". Reliance was placed on Anisminic and also on Jyoti Prakash Mitter (AIR 1971 SC 1953, supra). It is true that the "reasonable nexus" requirement was applicable in case of both rule 14(ii) and the said subclause (b) but because of that, in my opinion, in the absence in the Railway Rules on an express ouster clause similar to the constitutional subclause (3) it was not necessary to import considerations bearing on the later provision into Rule 14(ii) and indeed, the court did, in fact, base its decision on noncompliance merely with the requirement of the Rule. The later Calcutta decision (Union of India vs. N.K. Chander, 1976(2) SL R 447) therefore, even after referring to the earlier Single Bench decision of the Court steered clear of the illusion. Orissa and Patna High Courts have followed the same course (see, 7977 (1) LLJ74, Mahendra Ram and 1982(2) S.L R. 3 Virendra Kumar), but a Single Judge of Delhi High Court (in 7P77 (2) S.L.R., R.K. Mishra) has proceeded even beyond Jyoti Prasad (supra) to hold explicitly that Art. 311(3) would come into play even when action was taken under the aforementioned Railway Rules. With due respect, I am unable to agree with this view. For, in my opinion, an exception cannot be read as a mandate, its constitutional character notwithstanding. The different subclauses of the second proviso to clause(2) and clause (3) of Art. 311 do not carry in them any constitutional mandate so as to subordinate thereunto any statutory provision. These have merely to be read as directory so as to inspire emulation on adoption by lawmakers but not for judicial incorporation. It is true that although a Full Bench of Allahabad High Court (in Maksudan's case 1981 LIC 881) while construing a similar provision of Railway Protection Force Rules did indeed refer to Art. 311(3) but their lordships in that case based their decision on the application of "reasonable nexus" requirement of the relevant Rule itself. The decision neither in Krishnaswami (supra) nor in Karam Singh

(supra) were based either on the construction of Art. 311(3) but some observations of a clinching nature do appear in *Boota Ram* (supra) Although the court held that the "ouster" contemplated under clause (3) had to be allowed full scope to operate and this could be done by reading it together with subclause (b) to the second proviso, it was further observed in that case that the result of following such a course would inevitably lead to the conclusion that the reasons establishing the nexus need neither be stated in the order nor communicated, unless asked for, walk the later proposition, I respectfully disagree.

English Experience :

9.1. Despite the obvious difference and disparities in the constitutional setup of the two countries as my learned brother has referred to *Anisminic* (supra) I may say a few words on it. Indeed, the view expressed in the later decision in which *Anisminic* was considered are noteworthy but before doing so it must be noted that in this case the correctness of its own earlier decision in *Smith v. East Elloe* (1961 All E.R. 855) had to be doubted by the House of Lords. Indeed, the correct position that emanated after *Anisminic* has been succinctly suggested at para 56 (note3) of Halsbury's Laws of England (4th edn.) in these terms; "A grant of power in "subjective" language may possibly be so construed as to indicate that a particular aspect of a question lies within the area of a tribunal's exclusive jurisdiction". Indeed, at para 22 (in Halsbury) the rationale of the English rule is lucidly explained by saying that the court there "applying a common law presumption of legislative intent have generally declined to give literal effect to such formulae". Even so, it is added, "judicial practice has not been uniform".

9.2. In *Exp Ostler* (19763 W.L.R. 288) the Court of Appeal distinguished *Anisminic* (supra) and applied *East Elloe* (supra). The court construed the language of the relevant ouster clause and Lord Denning considered *East Elloe* to a good and binding authority for the disposal of the case before the court inasmuch as the language of the two ouster clauses was similar and differed from that considered in *Anisminic*. Other points of difference were also pointed out, notably that (1) the provision postulated a "complete ouster" in *Anisminic*. unlike *East Elloe* and (2) in *Anisminic* the House was considering the case of "determination" by a truly judicial body. Lord Denning again spoke on the subject in *Pearlman* (19783 W.L.R. 736) but in this case his Lordship applied *Anisminic* to hold that certiorari lies to quash the determination of the Judge even though it was made by the statute "final and conclusive". The Privy Council in a case from the Bahamas (in 19802 W.L.R. 14, *Attorney General v. Ryan*) applied *Anisminic* in construing an ouster clause occurring in the Bahamas Nationality Act, 1973. Their lordships held that validity of the Minister's decision was amenable to the test of ultra vires despite notwithstanding the ouster clause. In the latest decision *In re Racial Communication* (19803 W.L.R. 181) the House of Lords refused to apply to the case its own decision in *Anisminic*. Explaining the earlier decision Lord Diplock pointed out that *Anisminic* merely abolished judicially the

old distinction, as respects administrative tribunals and authorities, between "errors of law that went to jurisdiction and errors of law that did not". The distinction between presumptions attending decision making powers conferred on a court of law and on administrative tribunals or authorities was stressed in the case to make the project the same as an acid test to determine the scope of ouster clause in any statute.

Conclusions :

10.1 Thus, in my opinion, in both jurisdictions the character of the donee of the power to whose decision the statutory provision attaches finality by means of an "ouster clause" is considered a relevant and important factor in determining the scope of "ouster" of judicial review or, in other words, the ambit of the "nexus" requirements, along with other factors as manifested by the provision itself in its context and setting. In India, as it appears from the above discussion, in respect of a constitutional provision, the judicial practice developed by apex court is to achieve this result by invoking the "basic feature" test while in respect of a statutory provision the High Courts have, following English experience, applied usual norms of administrative law. I would, however, like to extend even to statutory provisions the benefit of the constitutional umbrella so that in all weathers, fair and foul, such ouster clauses retain its restrictive character. Unlike England, in India, therefore, the language of the statutory provision is to be so construed that it may not endow an ouster clause with a rule which may appear *sui generis* in its content or context. The written Constitution in India decrees such a course to be followed and the language, therefore, even of a statutory provision, must answer to the same "basic feature" test evolved by the apex court. Nonjusticiability or "complete ouster", therefore, in Indian context, has to be denied to the statutory provisions even when they appear in bald form purporting to make the nexus requirement irrelevant.

10.2 In the instant case the impugned order was passed explicitly under Art. 311(2) (b) and not under any statutory rule. Therefore, the provisions of clause (3) of An. 311 which is directly relatable thereto will be attracted. But, the language of clause (3) itself saves judicial review by postulating manifestly the reasonable nexus requirement indicating at the same time its ambit as we have to read clause (3) not in isolation but in the context of subclause (b) of the second proviso to Art. 311(2) in its overall setting and especially of its companion subclause (a) and (c). A complete ouster being thus expressly excluded, the decision in the case will inevitably turn, in my opinion, on the content of the requirement of "reasonable nexus". However, because the donee of the power postulated in the said subclause (b) not being either the President or the Governor in whose case subclause (c) itself envisage a different requirement expediency; in the interest of security of the State; and exercise of the power on his "satisfaction" the nexus must not only be patently reasonable answering to the reasonable man's test but the reasons establishing the nexus must also be incorporated in the order and communicated to the delinquent civil

servant so as to make the reasonableness of the nexus appear meaningful and efficacious in content as well as in form. In the instant case, both the requirements having been fulfilled, I agree with my learned brother to hold that the impugned order is legal and valid and does not warrant interference by this Court.