Shri Radeshyam Khare & Another

Vs

The State of Madhya Pradesh & Others

Civil Appeal No. 301 of 1958

(T. L. Venkatarama Ayyar, P. B. Gajendragadkar, A. K. Sarkar JJ)

30.09.1958

JUDGMENT

DAS C.J. -

There are two appellants in this appeal. The second appellant is the Municipal Committee of Dhamtari constituted under the C.P. and Berar Municipalities Act, 1922 (Act II of 1922) and the first appellant is its President having been elected as such on July 10, 1956. He assumed charge of his office as President on July 27, 1956. It may be mentioned that he was returned as a Congress candidate but has since been expelled from the party for having contested the last general election as an independent candidate against the Congress candidate.

It appears that there are two factions in the Municipal Committee. The first appellant alleges that one Dhurmal Daga, a member of the committee belonging to the Congress party was on August 7, 1956, detected importing within the municipal limits certain cloth without paying the octroi duty. Dhurmal Daga, on the other hand, alleged that the first appellant was guilty of grave mismanagement of the affairs of the Municipal Committee and went on hunger strike for securing the appointment of a committee to enquire into the misconduct of the first appellant. Copies of the leaflets containing the demands and charges which are said to have been widely distributed are annexures I and II to the present petition. It appears that several persons and firms also preferred charges against the first appellant, the President of the Municipal Committee. The Collector, Raipur, personally intervened and persuaded the said Dhurmal Daga to abandon the fast on an assurance that he would look into the matter. The Collector deputed one Shri N. R. Rana the Additional Deputy Collector to enquire into the complaints of mal-administration of the affairs of the Municipal Committee. By a Memorandum No. K/J N. P. Dhamtari dated August 24, 1956, the said N. R. Rana called upon the first appellant as the President of the second appellant to give detailed explanation of each complaint, a list of which was enclosed therewith. A copy of that memorandum along with its 22 enclosures is annexed to the petition and marked III. Annexures IV and V to the petition are copies of the detailed report on the objections and the reply to the charges made against the Municipal Committee submitted from the office of the Municipal Committee by the first appellant as the President of the Municipal Committee. The Additional Deputy Collector thereafter held the enquiry. The High Court states that it had "gone through the materials on which the State Government based its action on enquiry into the charges levelled against the Municipal Committee" and that the records of the enquiry showed that "on some occasions the petitioner was present during the enquiry". There is no suggestion that the appellants wanted an opportunity to adduce any evidence or were prevented from doing so or that they were in any way hampered in their defence. Presumably the Additional Deputy Collector had made a report which in due course must have been forwarded to the State Government.

On November 18, 1957, a notification was published in the Official Gazette whereby the State Government, in exercise of the powers conferred on it by section 53-A of the C.P. & Berar Municipalities Act, 1922, appointed one Shri B. P. Jain, the second respondent before us, as the Executive Officer of the Municipal Committee, Dhamtari, for a period of 18 months with certain powers as therein mentioned. A copy of that notification has been annexed to the petition and marked VIII but as the major part of the arguments canvassed before us turns on the contents of that notification the same is reproduced below in extenso :

> "Dated, Bhopal, the 18th November, 1957, No. 9262/11538-U-XVIII - Whereas it appears to the State Government that the Municipal Committee, Dhamtari, has proved itself incompetent to perform the duties imposed on it by or under the Central Provinces and Berar Municipalities Act, 1922 (II of 1922), inasmuch as it -
>
> (a) granted grain and building advances to the employees without prior sanction and no efforts were made for their recovery.
>
> (b) showed carelessness in cases of embezzlement of the employees and did not report such cases to Government,
>
> (c) failed to control the President who issued orders in cases in which he had no authority,
>
> (d) spent thousands of rupees on sanitation and other works although there was no provision in the budget,
>
> (e) allowed unconcerned persons to interfere in its working,
>
> (f) showed partiality in the appointments and dismissals of the employees, further such appointments and dismissals were made against rules,
>
> (g) delayed the constitution of the committee and the framing of budget,
>
> (h) misused the trucks of the municipality,
>
> (i) failed to recover the lease money,
>
> (j) shown partiality in the issue of transit passes to certain traders, further excess octroi duty was charged on certain articles and in certain cases where octroi duty is not leviable it was levied just to harass the people,
>
> (k) distributed municipal manure to certain persons without any charge, similarly distributed the manure free of cost and used the truck of the municipality for this purpose,
>
> (l) failed to control its president who spent the money of the Municipal Committee without any authority,
>
> (m) spent huge amount on the maintenance of the roads and drainage but their condition has remained unsatisfactory,

(n) failed to give copies of the documents as allowed under rules, also failed to allow its members to inspect the records as is permissible under rules,

(o) failed to invite tenders of purchase of articles,

and whereas, the State Government considers that a general improvement in the administration of the Municipality is likely to be secured by the appointment of a servant of the Government as Executive Officer of the Committee.

Now, therefore, in exercise of the powers conferred by section 53-A of the Central Provinces and Berar Municipalities Act, 1922 (II of 1922), the State Government are pleased to appoint Shri B. P. Jain, Deputy Collector, as executive Officer of the Municipal Committee, Dhamtari, for a period of eighteen months from the date of his taking over charge and with reference to sub-section (3) thereof are further pleased to direct that the Executive Officer shall exercise and perform the following powers and duties of the Committee to the exclusion of the Committee, President, Vice-President or Secretary, under the provisions of the Central Provinces and Berar Municipalities Act, 1922 (II of 1922), namely :-

Chapter III. Appointment of Officers and servants - Sections 25, 26 and 28.

Chapter IV. Procedure in Committee meeting - Section 31.

Chapter V. Property, contract and liabilities - Sections 37 to 45.

Chapter VI. Duties of Committee - Sections 50 and 51.

Chapter VIII. The municipal fund - whole.

Chapter IX. Imposition, assessment and collection of taxes - whole.

Chapter X. Municipal Budgets and accounts - whole.

Chapter XI. Powers to regulate streets and buildings - Sections 90 to 94, 96, 98, 99, 103 and 104.

Chapter XII. Powers to prevent disease and public nuisance - Sections 117, 118(1), 119 and 132.

Chapter XVIII. Offences, practice and procedure - Sections 218-223.

Chapter XIX. Special provisions for recovery of taxes - whole.

The Executive officer shall exercise general supervising powers in respect of all matters covered by the Central Provinces and Berar Municipalities Act, 1922 (II of 1922).

In Hindi (By order of the Governor of Madhya Pradesh)

S. S. Joshi, Deputy Secretary."##

On December 21, 1957, the two appellants before us presented before the Madhya Pradesh High Court the writ petition out of which the present appeal has arisen and on January 11, 1958, obtained

an order staying the operation of the order of appointment of the Executive Officer. The writ petition was dismissed on February 20, 1958. There was a Letters Patent Appeal which was dismissed in limine on February 21, 1958. The application for certificate under Arts. 132 and 133 was refused on March 21, 1958. The present appellants applied for and on April 1, 1958, obtained from this Court special leave to appeal from the judgment of the Madhya Pradesh High Court. The interim stay order made by this Court was eventually vacated on May 13, 1958. The appeal has now come up before us for final disposal.

Shri M. K. Nambiar, appearing in support of this appeal, urged three points, namely :

> (i) that though the Notification purports to have been made in exercise of the powers conferred on the State Government by section 53-A, in substance and in reality it has been made under section 57 of the Act;
>
> (ii) that if the Notification is held to be one made under section 57 it is ultra vires and bad since the statutory requirements of affording reasonable opportunity to explain has not been complied with;
>
> (iii) that even if the impugned Notification be held to come within section 53-A it is still ultra vires since before promulgating it the State Government has committed a breach of the rules of natural justice in not giving any opportunity to the appellants to defend themselves.

There was a charge of mala fide made against the State Government founded on the fact that the first appellant's leaving the Congress party had resulted in ill-will towards the first appellant of that party which was the ruling party in the State Government, but as that charge has not been pressed before us nothing further need be said about it. I now proceed to deal with the three points formulated above by learned counsel for the appellants.

Re. (i) and (ii) : These two points are correlated and may be conveniently dealt with together. The argument in support of them is developed in two ways. In the first place it is said that the grounds set forth in the impugned notification clearly indicate that in substance and in reality it has been issued rather under section 57 of the Act than under section 53-A. In order to appreciate this argument it is necessary to set out the two sections of the C.P. and Berar Municipalities Act, 1922 in extenso :

> "53-A. (1) If a committee is not competent to perform the duties imposed on it or undertaken by it by or under this Act or any other enactment for the time being in force and the State Government considers that a general improvement in the administration of the municipality is likely to be secured by the appointment of a servant of the Government as the executive officer of the committee, the State Government may, by an order stating the reasons therefor published in the Gazette, appoint such servant as the executive officer of the committee for such period not exceeding eighteen months as may be specified in such order.
>
> (2) Any executive officer appointed under sub-section (1) shall be deemed to be an officer lent to the committee by Government under sub-section (3) of section 25.
>
> (3) When under sub-section (1) an executive officer is appointed for any committee, the State Government shall determine from time to time which powers, duties and

functions of the committee, president, vice-president or secretary under this Act or any rule or bye-law made thereunder shall be exercised and performed by such officer, in addition to, or to the exclusion of, their exercise and performance by the said committee, president, vice-president or secretary.

(4) The secretary of the committee shall be subordinate to the executive officer.

(5) The executive officer shall have the right to attend all meetings of the committee and any joint committee or sub-committee and to take part in the discussion so as to make an explanation in regard to the subject under discussion, but shall not move, second, or vote on any resolution or other motion."

"57. (1) If a committee is not competent to perform, or persistently makes default in the performance of, the duties imposed on it or undertaken by it under this Act or any other enactment for the time being in force, or exceeds or abuses its powers to a grave extent, the State Government may, by an order stating the reasons therefor published in the Official Gazette, dissolve such committee and may order a fresh election to take place.

(2) If after fresh election the new committee continues to be incompetent to perform, or to make default in the performance of, such duties or exceeds or abuses its powers to a grave extent, the State Government may, by an order stating the reasons therefor published in the Official Gazette, declare the committee to be incompetent or in default, or to have exceeded or abused its powers, as the case may be, and supersede it for a period to be specified in the order.

(3) If a committee is so dissolved or superseded, the following consequences shall ensue :

(a) all members of the committee shall, as from the date of the order, vacate their offices as such members;

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

(c) all property vested in it shall until the committee is reconstituted vest in the State Government.

(4) On the expiration of the period of supersession specified in the order, the committee shall be reconstituted, and the persons who vacated their offices under sub-section (3), clause (a), shall not, by reason solely of such supersession be deemed disqualified for being members.

(5) No order under sub-section (1) or sub-section (2) shall be passed until reasonable opportunity has been given to the committee to furnish an explanation.

(6) Any person or persons appointed by the State Government to exercise and perform the powers and duties of a dissolved or superseded committee may receive payment, if the State Government so directs, for his or their services from the

municipal fund."

Learned counsel for the appellants points out that action may be taken under section 53-A "if a committee is not competent to perform the duties imposed on it..... and the State Government considers that a general improvement in the administration of the municipality is likely to be secured.....". Whereas under section 57 action can be taken not only "if a committee is not competent to perform or persistently makes default in the performance of the duties imposed on it or.....", but also if the committee "exceeds or abuses its powers to a grave extent.....". It is pointed out that in case of incompetency action can be taken either under section 53-A or section 57 but in case of abuse of power action can be taken only under section 57. Reference is then made to the grounds enumerated in the notification itself and it is argued that except perhaps grounds a, b, c and g which may be indicative of incompetency, the other grounds, which are, by far, greater in number, obviously constitute abuse of powers and from this circumstance the conclusion is sought to be drawn that in substance and in reality the impugned notification must have been made under section 57 and that that being so the notification cannot be sustained because of the non-compliance with the provisions of sub-section (5) of section 57 which expressly lay down that no order under sub-section (1) or (2) shall be passed until reasonable opportunity has been given to the committee to furnish an explanation. I am not persuaded to uphold this argument.

In the first place it has to be remembered that the sections under consideration only confer certain powers on the State Government but that the latter is not bound to take any action under either of them. In the next place it should be noted that the two sections differ materially in their scope and effect. Under section 53-A the State Government may only appoint a servant of the Government as the Executive Officer of the committee and may determine, from time to time, which powers and duties and functions of the committee, its president, vice-president or secretary shall be exercised and performed by such officer and indicate whether they should be exercised and performed in addition to, or to the exclusion of, their exercise and performance by the said committee, president, vice-president or secretary. The working of section 53-A makes it quite clear that the action that may be taken thereunder is to be effective for a temporary duration not exceeding 18 months and the purpose of taking such action is to ensure the proper performance and discharge of only certain powers, duties and functions under the Act. The section does not, in terms, affect, either legally or factually, the existence of the committee, its president, Vice-President or the secretary. Section 57, however, authorises the State Government, in the circumstances mentioned in the opening part of that section, to dissolve the committee itself and order a fresh election to take place so that the committee as a legal entity ceases to exist and all the sitting members of the committee become function officio. If after such fresh election the same situation prevails, then that section further authorises the State Government to declare the committee to be incompetent or in default or to have exceeded or abused its power as the case may be and to supersede it for such period (not limited by the section) as may be specified in the order. The effect of an order made under section 57 is, therefore, extremely drastic and puts an end to the very existence of the committee itself and, in view of the grave nature of the consequences that will ensue, the legislature presumably thought that some protection should be given to the committee before such a drastic action was taken and accordingly it provided, by sub-section (5) of that section, that no order should be passed until reasonable opportunity had been given to the committee to furnish an explanation - a provision which clearly indicates that action under section 57 can only be taken after hearing and considering all the explanations furnished by or on behalf of the committee. The legislature did not think fit to provide a similar safeguard in section 53A presumably because the order under the last mentioned section was of a temporary duration, was not very drastic and did not threaten the very existence of the committee. A cursory reading of the two sections will also indicate that the conditions precedent

to the exercise of the powers under both sections overlap to some extent, namely, that action can be taken under both if the committee "is not competent to perform the duties imposed on it.....". To the extent that the requirements of the two sections overlap the State Government has the option of taking steps under one section or the other according to its own assessment of the exigencies of the situation. The position, therefore, is that if a committee is not competent to perform the duties imposed on it the State Government has to make up its mind as to whether it should take any action at all and, if it thinks that action should be taken, then it has further to decide for itself as to which of the two sections it would act under. If the State Government considers that the incompetency does not run to a grave extent and the exigencies of the situation may be adequately met by appointing an Executive Officer for a short period not exceeding 18 months with certain powers to be exercised by him, either in addition to or in exclusion of their exercise by the committee, the president, vice-president or the secretary, the State Government may properly take action under section 53-A. On the other hand if the State Government considers, having regard to all the circumstances of the case, that the incompetency is much too grave to permit the committee, its president, vice-president or the secretary to function at all, it may take action under section 57 and dissolve the committee and direct fresh election to take place. In other words incompetency on the part of the committee gives to the State Government an option to apply one of two remedies under the Act, if, that is to say, it considers it necessary to take action at all.

What, then, is the position here ? Certain charges had been made in writing against the committee and its president which were forwarded to the president with a request to submit explanations in detail. The president, acting in his official capacity, gave detailed explanations in writing and sent the same officially from the office of the municipal committee to the Additional Deputy Collector who was deputed by the Collector to hold the enquiry during which the president appeared in person on several days and came to certain findings and presumably made his report which in due course must have reached the State Government. The State Government apparently accepted such of those findings as have been set out in the notification itself. Even according to learned counsel for the appellants some of those findings amount only to incompetency and the rest, he contends, amount to abuse of power. I need not pause to consider whether the abuse of power thus found was of a grave nature so as to fall within section 57 as such or was of a minor character so as to be evidence of mere incompetency. Taking the position to be as contended by learned counsel for the appellants the position was that, as a result of the enquiry, the State Government found two things against the appellant committee, namely, (i) that it was guilty of incompetency and (ii) that it was also guilty of certain abuses of power. I have already stated that the State Government was not obliged to take any action at all either under section 53-A or under section 57. If the State Government considered that it was necessary to take action, it was entirely for the State Government to consider whether it would take action for incompetency or for abuse of power. In the present case the State Government might have thought that the abuse of power so found was not of a very grave nature but evidenced only incompetency. Surely a committee which abused its power might also have been reasonably regarded as "incompetent to perform the duties imposed on it". That apart, supposing the committee was guilty of incompetency as well as of some abuses, what was there to prevent the State Government, as a matter of policy, to take action for incompetency under section 53-A ? The mere inclusion of the findings of abuse of power in the catalogue of the Committee's misdeeds does not obliterate the findings on incompetency. I see nothing wrong in the State Government telling the committee : "You have been guilty of incompetency as well as of abuse of power; but I shall not, just at this moment, take drastic action of dissolving you outright, but shall be content to take action and appoint an Executive officer for 18 months and confer some power on him under section 53-A". In my judgment the State Government was well within its rights, in exercise of its option, to take

action, under section 53-A as it has in terms purported to do. To say that because some of the findings amount to abuse of power the State Government must act under section 57 is to deprive it of its discretion which the Act undoubtedly confers on it. In my view the fact that the impugned notification records, apart from the findings of incompetency, certain findings of abuse of power, does not lead to the conclusion, as contended for the appellants, that the State Government had taken action under section 57 and not under section 53-A although, in terms, it says it acted under the last mentioned section.

Learned counsel for the appellants in support of his contention that the impugned notification was really made under section 57 of the Act, refers us to the powers and duties conferred on the executive Officer thereby appointed to be exercised and performed by him to the exclusion of the committee, its president, vice-president, or the secretary. His argument is that although the municipal committee is not ostensibly dissolved, it is in effect and in reality so dissolved, for the substance of the powers of the committee, its president, vice-president or the secretary has been taken away from them leaving only a semblance of power which is nothing but mere husk and the conclusion urged by learned counsel is that the impugned notification must be regarded as having been made under section 57. In the first place, section 57 does not contemplate the appointment of any executive Officer or the conferment of any power on him, while such appointment and conferment of power is directly contemplated by section 53-A. In the second place the legal existence of the municipal committee and the status of its members and its president, vice-president or the secretary have not been impaired at all. In the eye of the law the municipal committee still exists and along with it the members of the committee, the president, vice-president and the secretary still hold their respective offices. These features clearly militate against the suggestion that action has been taken under section 57. Learned counsel says that we must look beyond mere form and get to the substance of the matter. There can be no doubt that most of the important powers have been taken away from the committee, its president, vice-president and the secretary, but that may well be due to the degree of gravity of the incompetency found or inferred from the other findings. Further, a cursory perusal of the Act and of the notification will show that various other powers and duties have not been taken away from the committee or conferred on the Executive Officer. Thus the powers of the committee under sections 128, 130, 131, 133 to 141 and 144, 145 and 147 to 149 are still vested in and are exercisable by the committee. Likewise the powers under sections 120, 121, 122, 123 to 127, 129, 150, 152 to 160 to 162, 163, 163A and 168 are still vested in and exercisable by the president. These powers that are still left with the committee or the president can hardly or with propriety be described as mere husks. It should not be overlooked that the suggestion that the real power has been taken away leaving only a semblance of it, is really an argument in aid of a charge of mala fides, but, as here-in-before stated, the charge of mala fides or fraud on the part of the State Government has not been persisted in or pressed before us. In my judgment, therefore, there is no warrant for contending that the impugned notification, judged by its effect, must be regarded as having been made under section 57 of the Act. In this view of the matter the argument of invalidity of the action founded on non-compliance with the requirements of sub-section (5) of section 57 does not arise for consideration at all.

Re. (iii) : In the writ application, out of which this appeal arises, the principal prayer of the appellants is for a writ in the nature of certiorari for quashing the order passed by the State Government on November 18, 1957. The next prayer which is for a writ of mandamus restraining the respondents from giving effect to the impugned order is clearly consequential on or ancillary to the main prayer. The last prayer is in the nature of the usual prayer for further or other reliefs. Therefore the president petition is essentially one for the issue of a writ of certiorari. The writ of certiorari is a well-known ancient high prerogative writ that used to be issued by the Courts of the

King's Bench to correct the errors of the inferior Courts strictly so called. Gradually the scope of these writs came to be enlarged so as to enable the Superior Courts to exercise control over various bodies which were not, strictly speaking, Courts at all but which were, by statute, vested with powers and duties that resembled those that were vested in the ordinary inferior Courts. The law is now well-settled that a writ of certiorari will lie to control such a statutory body if it purports to act without jurisdiction or in excess of it or in violation of the principles of natural justice, or commits any error apparent on the face of the records, provided that, on a true construction of the statute creating such body, it can be said to be a quasi-judicial body entrusted with quasi-judicial functions. It is equally well-settled that certiorari will not lie to correct the errors of a statutory body which is entrusted with purely administrative functions. It is, therefore, necessary to ascertain the true nature of the functions entrusted to and exercised by the State Government under section 53-A of the Act.

In Province of Bombay v. Kusaldas S. Advani ([1950] S.C.R. 621) this Court has discussed at considerable length the nature of the two kinds of act, judicial and administrative, and has laid down certain tests for ascertaining whether the act of a statutory body is a quasi-judicial act or an administrative act. It will, therefore, suffice to refer to the celebrated definition of a quasi-judicial body given by Atkin L.J. as he then was, in Rex v. Electricity Commissioners ([1924] 1 K.B. 171) and which now holds the filed. It runs as follows :

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

This definition was accepted as correct in Rex v. London County Council ([1931] 2 K.B. 215) and many subsequent cases both in England and in this country. It will be noticed that this definition insists on three requisites such of which must be fulfilled in order that the act of the body may be said to be quasi-judicial act, namely, that the body of persons (1) must have legal authority, (2) to determine questions affecting the rights of parties, and (3) must have the duty to act judicially. Since a writ of certiorari can be issued only to correct the errors of a court or a quasi-judicial body, it would follow that the real and determining test for ascertaining whether an act authorised by a statute is a quasi-judicial act or an administrative act is whether the statute has expressly or impliedly imposed upon the statutory body the duty to act judicially as required by the third condition in the definition given by Atkin L.J. Therefore in considering whether in taking action under section 53-A the State Government is to be regarded as functioning as a quasi-judicial body or a mere administrative body it has to be ascertained whether the statute has expressly or impliedly imposed upon the State Government a duty to act judicially.

Relying on paragraphs 114 and 115 of Halsbury's Laws of England, 3rd Edition, Volume 11, at pages 55-58 and citing the case of R. v. Manchester Legal Aid Committee ([1952] 2 Q.B. 413), learned counsel for the appellants contends that where a statute requires a decision to be arrived at purely from the point of view of policy or expediency the authority is under no duty to act judicially. He urges that where, on the other hand, the order has to be passed on evidence either under an express provision of the statute or by implication and determination of particular facts on which its jurisdiction to exercise its power depends or if there is a proposal and an opposition the authority is under a duty to act judicially. As stated in paragraph 115 of Halsbury's Laws of England, Volume 11, at page 57, the duty to act judicially may arise in widely differing circumstances which it would be impossible to attempt to define exhaustively. The question whether or not there is a duty to act judicially must be decided in each case in the light of the circumstances

of the particular case and the construction of the particular statute with the assistance of the general principles laid down in the judicial decisions. The principles deducible from the various judicial decisions considered by this Court in the Province of Bombay v. K. S. Advani ([1950] S.C.R. 621) at page 725 were thus formulated, namely :

> " (i) that if a statute empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a lis and prima facie and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and
>
> (ii) that if a statutory authority has power to do any act which will prejudically affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially."

It is clear that in the present case there is no question of any contest between two contending parties which the State Government is, under section 53-A, to decide and, therefore, there is no "lis" in the sense in which that word is understood generally, and he principle referred to under the first heading has no application. We have, therefore, to consider whether the case comes within the principle enunciated under the second head, namely, whether the C.P. and Berar Municipalities Act, 1922, requires the State Government to act judicially when taking action under section 53-A.

Learned counsel for the appellant draws our attention to the language in which section 53-A is couched. He concedes that the ultimate order under that section is purely discretionary, that is to say, the State Government is not obliged to take any action under the section. It may make an order under the section or it may not according as it thinks fit. But in case the State Government chooses to act under the section, it can only do so if the conditions therein laid down are fulfilled. A cursory reading of section 53-A will show that there are two pre-requisites to be satisfied before the State Government can take action under section 53-A, namely, (1) that the municipal committee is not competent to perform the duties imposed on it and (2) that the State Government considers that a general improvement in the administration of the municipality is likely to be secured by the appointment of a servant of the Government as the Executive Officer of the committee. When both these conditions are fulfilled, then and then only may the State Government take action and make an order under section 53-A. Of the two conditions the second one, by the very language in which it is expressed, is left entirely a matter for the State Government to consider, for it depends entirely on the view of its own duty and responsibility that the State Government may take on a consideration of the situation arising before it. In other words, the statute has left that matter to the subjective determination of the State Government. The first requisite, however, is an objective fact, namely, whether the committee is or is not competent to perform the duties imposed on it. The determination of that fact, it is pointed out, has not been left to the subjective determination by the State Government. Learned counsel for the appellants urges that if it were intended to leave the determination of this fact of incompetency also to the subjective opinion of the State Government, the section would have been framed otherwise. It would have said something like this : "If the State Government considers that a committee is not competent to perform the duties..... and that the general improvement in the administration of the municipalities is likely to be secured by.....". This the Legislature has not done and has, thus, clearly evinced an intention not to leave it to the

ipse dixit of State Government. Section 53-A, it is pointed out, differs materially in this respect from section 3 of the Bombay Land Requisition Ordinance (V of 1947) which was considered by this Court in Kusaldas Advani's case ([1950] S.C.R. 621). That section of the Bombay Ordinance opened with the words : "If in the opinion of the Provincial Government....." which were taken as indicative of the Legislature's intention to leave the determination of the existence of all the conditions precedent entirely to the subjective opinion of the Provincial Government so as to make the action a purely administrative one. The argument is that the first requirement is the finding of a fact which may be called a jurisdictional fact, so that the power under section 53-A can only be exercised when that jurisdictional fact is established to exist. The determination of the existence of that jurisdictional fact, it is contended, is not left to the subjective opinion of the State Government and that although the ultimate act is an administrative one the State Government must at the preliminary stage of determining the jurisdictional fact act judicially and determine it objectively, that is to say, in a quasi-judicial way. It is assumed that whenever there has to be a determination of a fact which affects the rights of the parties, the decision must be a quasi-judicial decision, so as to be liable to be corrected by a writ of certiorari. In Advani's case ([1950] S.C.R. 621) Kania C.J. with whom Patanjali Sastri J. agreed, said at page 632 :

> "The respondent's argument that whenever there is a determination of a fact which affects the rights of parties, the decision is quasi-judicial, does not appear to be sound."

Further down the learned Chief Justice said :

> "..... It is broadly stated that when the fact has to be determined by an objective test and when that decision affects rights of someone, the decision or act is quasi-judicial. This last statement overlooks the aspect that every decision of the executive generally is a decision of fact and inmost cases affects the rights of someone or the other. Because an executive authority has to determine certain objective facts as a preliminary step in the discharge of an executive function, it does not follow that it must determine those facts judicially. When the executive authority has to form an opinion about an objective matter as a preliminary step to the exercise of a certain power conferred on it, the determination of the objective fact and the exercise of the power based thereon are alike matters of an administrative character and are not amenable to the writ of certiorari."

To the like effect is the following observation of Fazl Ali J. in the same case at page 642 :

> "The mere fact that an executive authority has to decide something does not make the decision judicial. It is the manner in which the decision has to be arrived at which makes the difference, and the real rest is : Is there any duty to decide judicially ? As I have already said, there is nothing in the Ordinance to show that the Provincial Government has to decide the existence of a public purpose judicially or quasi-judicially."

Dealing with the essential characteristics of a quasi-judicial act as opposed to an administrative act, I said at page 719 :

> "..... the two kinds of acts have many common features. Thus a person entrusted to do an administrative act has often to determine questions of fact to enable him to

> exercise his power. He has to consider facts and circumstances and to weigh pros and cons in his mind before he makes up his mind to exercise his power just as a person exercising a judicial or quasi-judicial function has to do. Both have to act in good faith. A good and valid administrative or executive act binds the subject and affects his rights or imposes liability on him just as effectively as a quasi-judicial act does. The exercise of an administrative or executive act may well be and is frequently made dependent by the Legislature upon a condition or contingency which may involve a question of fact, but the question of fulfilment of which may, nevertheless, be left to the subjective opinion or satisfaction of the executive authority, as was done in the several Ordinances, regulations and enactments considered and construed in the several cases referred to above. The first two items of the definition given by Atkin L.J. may be equally applicable to an administrative act. The real test which distinguishes a quasi-judicial act from an administrative act is the third item in Atkin L.J.'s definition, namely, the duty to act judicially". I found support for my opinion on the following passage occurring in the judgment of Lord Hewart C.J. in R. v. Legislative Committee of the Church Assembly ([1928] 1 K.B. 411, 415) :
>
> "In order that a body may satisfy the required test it is not enough that it should have legal authority to determine questions affecting the rights of subjects; there must be super-added to that characteristic the further characteristic that the body has the duty to act judicially."

The above passage was quoted with approval by Lord Radcliffe in delivering the judgment of the Privy Council in Nakkuda Ali's case ([1951] A.C. 66).

I now proceed to apply the principles discussed above to the facts of the present case. The simple fact that the incompetency of the committee goes to the root of the jurisdiction of the State Government to exercise its power under section 53-A does not require that fact must be determined judicially. The sole question is, does the statute require the State Government must to act judicially. There need not be any express provision that the State Government must act judicially. It will be sufficient if this duty may be implied from the provisions of the statute. The mere fact that a question of fact has to be determined as a preliminary condition before action can be taken under the statute by itself does not carry that implication. There must be some indication in the statute as to the manner or mode in which the preliminary fact is to be determined. I find nothing in section 53-A which in terms imposes any duty on the State Government to act judicially. No form of procedure is laid down or even referred to from which such a duty could be inferred. On the contrary, one finds a significant omission of any provision like that embodied in sub-section (5) of section 57 which requires that no order under that section shall be passed until reasonable opportunity has been given to the committee to furnish an explanation. It is also material to note that whereas an order under section 57 is of a permanent character the one to be made under section 53-A is to be of a limited duration, i.e., for such period not exceeding 18 months as may be specified in such order. Further, section 53-A contemplates swift action and a judicial hearing may easily frustrate the very purpose contemplated by section 53-A, for a judicial act will be subject to the powers of superintendence of the superior courts and the operation of the order under section 53-A may be postponed, as it has been done in this very case, by taking the matter from court to court until it is set at rest by this Court. In this connection reference may also be made to section 25-A of the Act which authorises the State Government to require the committee to appoint, inter alia, a Chief Executive Officer. If such committee fails to comply with the requisition within the period specified, the State Government may, under sub-section (3), if it thinks fit, appoint such officer and fix his pay and

allowance. Sub-section (4) authorises the State Government to require the committee to delegate to the officer so appointed such powers, duties and functions of the committee, its president, vice-president or the secretary under this Act or any rule or bye-law made thereunder as may be specified in such requisition and if the committee fails to comply with such requisition within a reasonable time, the State Government may determine the powers, duties and functions which shall be exercised and performed by such officer in addition to or to the exclusion of their exercise or performance by committee, its president, vice-president or secretary. Nobody will say that the State Government must exercise the powers under section 25-A after holding any judicial enquiry. The only difference in the language of section 25-A and section 53-A both of which were inserted in the Act in 1947 is that action can be taken under section 53-A only when the committee is incompetent to perform the duties imposed on it-a fact the determination of which is not in so many words left to the subjective opinion of the State Government, whereas action can be taken under section 25-A on the satisfaction of the State Government as to certain facts which is, in terms, left to the subjective determination of the State Government. If, as I have said, the determination of a jurisdictional fact is not by itself sufficient to indicate that, it has to be done judicially, there is nothing else in section 53-A or in any other section of the Act which will lead to the conclusion that the State Government must act judicially. The only other thing strongly relied on by learned counsel for the appellants is that the State Government may exercise its power under section 53-A "by an order stating reasons therefor published in the Gazette". The requirement that the State Government must give reasons for the order it makes does not necessarily require it to record a judgment judicially arrived at. The legislature might well have thought that public policy required that the State Government entrusted with large administrative power should record its reasons for exercising the same so as to allay any misgivings that may arise in the mind of the public. In my judgment, the action taken by the State Government under section 53-A is not a judicial or quasi-judicial act but is an administrative act. Learned counsel for the appellants relied on the case of Capel v. Child (2 Cr. & Jr. 558; 37 R.R. 761). That decision clearly went upon the construction of the statute that came up for consideration. The fact that action could be taken under that statute on affidavits was construed as a clear indication that the Bishop had to arrive at a decision as to the negligence of the Vicar on hearing evidence adduced before it by affidavit which led to the next conclusion that the Vicar must be given an opportunity of being heard and of adducing evidence in his own defence. From this circumstance it was inferred that even when the Bishop acted on his knowledge of fact he must also proceed judicially, for the two modes of procedure were treated on the same footing by the section itself. As I have said, there is nothing in section 53-A or any other section which may lead us to infer a duty to proceed judicially as was done in that case. On the contrary there are indications leading to a different conclusion.

To say that action to be taken under section 53-A is an administrative action is not to say that the State Government has not to observe the ordinary rules of fair play. Reference to the observation made by Fortesque J. in Dr. Bentley's case about God asking Adam and Eve whether they had eaten the forbidden fruit appearing in the judgment of Byles J. in Cooper v. The Wandsworth Board of Works ([1863] 14 C.B. (N.S.) 180; 143 E.R. 414) is apposite. The decision in the last mentioned case clearly establishes that in some cases it may be necessary to give an opportunity to a party to have his say before an administrative action is taken against him. But that is quite different from the well-ordered procedure involving notice and opportunity of hearing necessary to be followed before a quasi-judicial action, open to correction by a superior court by means of a writ of certiorari, can be taken. The difference lies in the manner and mode of the two procedures. For the breach of the rules of fair play in taking administrative action a writ of certiorari will not lie.

I have already recounted the events and proceedings that preceded the actual passing of the order

under section 53-A. If the action taken under that section is to be regarded as an administrative action, as I hold it should be, then I have no doubt that the appellants have had more than fair play. It is said that the State Government did not hold any enquiry before making the order and that, therefore, it cannot be said that the appellants had an opportunity to defend themselves against an order of this kind. I do not consider that there is any substance in this contention. If the State Government wanted to hold any enquiry it would do so through some of its officers. Who would be more appropriate and competent to hold the enquiry except the officers on the spot ? The Additional Deputy Collector is obviously the person to whom the duty of enquiry could properly be entrusted. All the charges levelled against the appellants were forwarded to them, and they submitted explanation. The first appellant, who is the President, personally attended many of the sittings. There is no suggestion that they had been prevented from adducing evidence in their own defence. The enquiry was held into what had been alleged against their conduct. It was surely not a purposeless enquiry. As a result of the enquiry certain findings were arrived at which were accepted by the State Government and an order was made under section 53-A. I do not see what grievance the appellants can possibly have. In my judgment there has been no remissness on the part of the State Government.

For reasons stated above I would dismiss this appeal.

BHAGWATI J. -

I also agree that the appeal should be dismissed with costs but would like to add a few words of my own.

I have had the benefit of reading the judgments prepared by my Lord the Chief Justice, Kapur J. and Subba Rao J. I agree with the reasoning and the conclusions reached in those judgments in regard to points Nos. (i) & (ii), viz.,

> (i) that though the Notification purports to have been made in exercise of the powers conferred on the State Government by section 53-A, in substance and in reality it has been made under section 57 of the Act; and,
>
> (ii) that if the Notification is held to be one made under section 57 it is ultra vires and bad since the statutory requirement of affording reasonable opportunity to explain has not been complied with.
>
> In regard to point No. (iii), viz.,
>
> (iii) that even if the impugned Notification be held to come within section 53-A it is still ultra vires since before promulgating it the State Government has committed a breach of the rules of natural justice in not giving any opportunity to the appellants to defend themselves, however, there is a difference of opinion between my Lord the Chief Justice and Kapur J. on the one hand, and Subba Rao J. on the other, as to the character of the act performed by the State Government while arriving at the conclusion that the Committee is not competent to perform the duties imposed on it or undertaken by it. Whereas the former are of the view that in arriving at such conclusion the State Government performs only an administrative function, the latter is of the view that the fact whether the committee is not competent to perform the duties imposed on it or undertaken by it is a jurisdictional fact and in arriving at that

conclusion the State Government performs a quasi-judicial function. In my opinion, the determination of the question whether the State Government performs an administrative or a quasi-judicial function in the matter of arriving at such conclusion is immaterial for the purposes of this appeal, inasmuch as an inquiry had been instituted by the State Government in the matter of the charges levelled against the appellants and full opportunity had been given to them to defend themselves. I need not add anything in this regard to what has been said by my Lord the Chief Justice in the judgment just delivered by him. I only wish to say that the circumstances adverted to therein amply demonstrate that the appellants had notice of the charges which had been levelled against them and had rendered full explanation in regard to the same, and, in the matter of the inquiry in regard to those charges the principles of natural justice had been complied with the conclusion reached by the State Government in the matter of the incompetence of the committee was unassailable.

That being so, I would prefer not to express any opinion on the vexed question as to whether the act performed by the State Government is quasi-judicial or administrative in character.

The result, however, is the same and I agree with the order proposed dismissing the appeal with costs.

S. K. DAS J. -

I agree generally with the conclusions reached by my Lord the Chief Justice and the reasons on which those conclusions are founded. But I wish to add a few words with regard to the third question, namely, if in making the impugned notification, the State Government violated the principles of natural justice. The answer to that question depends on whether on a true construction of the relevant statute, the State Government performed an administrative function or what has been called a quasi-judicial function in making the impugned notification.

I am of the view that the action taken by the State Government under section 53-A of the Act is in its true nature an administrative act. It is said that where there is 'a duty to act judicially', the function is quasi-judicial : that however does not help us very much in understanding the distinction between an administrative function and a quasi-judicial function. Where the statute clearly indicates that the function is judicial, there is little difficulty. The difficulty arises in cases where the point taken is that by necessary implication the statute requires an administrative body or executive authority to act judicially. It is indeed generally correct to say that where an administrative body or authority is under a duty to act judicially, its function is judicial or quasi-judicial. But it is, to some extent, a tautology to say that the function is judicial or quasi-judicial if it is to be done judicially.

To get to the bottom of the distinction, we must go a little deeper into the content of the expression 'duty to act judicially'. As has been repeated so often, the question may arise in widely differing circumstances and a precise, clear-cut or exhaustive definition of the expression is not possible. But in decisions dealing with the question several tests have been laid down; for example-

(i) whether there is a lis inter partes;

(ii) whether there is a claim (or proposition) and an opposition;

(iii) whether the decision is to be founded on the taking of evidence or on affidavits;

(iv) whether the decision is actuated in whole or in part by questions of policy or expediency, and if so, whether in arriving at the decision, the statutory body has to consider proposals and objections and evidence; and

(v) whether in arriving at its decision, the statutory body has only to consider policy and expediency and at no stage has before it any form of lis.

The last two tests were discussed and considered in R. v. Manchester Legal Aid Committee ([1952] 2 Q.B. 413). It is fairly clear to me that tests (i) to (iv) are inappropriate in the present case by reason of the provisions in section 53-A as contrasted with section 57 and other sections of the Act. The test which is fulfilled in the present case is test (v), and that makes the function under section 53-A a purely administrative function in spite of the requirement of an initial determination of a jurisdictional fact and the recording of reasons for the decision.

I am content to rest my decision on the aforesaid ground, as I am not satisfied that the enquiry held by the Deputy Collector was a proper enquiry if it be held that section 53-A entrusts a quasi-judicial function to the State Government and therefore requires compliance with the principles of natural justice. That enquiry was for a different purpose altogether, the charges were not the same, and in my view the Municipal Committee had no real opportunity of meeting the charges on which the State Government ultimately took action. I prefer, therefore, to base my decision on the third question on the short ground that the function which the State Government exercised under section 53-A was administrative in nature and it is settled law that such action is not amenable to a writ of certiorari.

On the first two questions I am in entire agreement with my Lord the Chief Justice and have nothing useful to add.

KAPUR J. -

This appeal pursuant to special leave of this Court is directed against the judgment and order of the Madhya Pradesh High Court. The appellants are the Municipal Committee of Dhamtari and its President Radheshyam Khare who are challenging the order of the State Government of Madhya Pradesh appointing an Executive Officer of the Municipal Committee under section 53-A of the C.P. & Berar Municipalities Act (Act II of 1922) to be termed in this judgment, the Act.

The facts leading to this appeal are that one Dhurmal Daga who was a member of the Dhamtari Municipal Committee (appellant No. 2) was found importing cotton into the municipal area without paying octroi duty. He then went on hunger strike and also distributed pamphlets making allegations against both the appellants. At this stage the Collector of Raipur district personally intervened and persuaded Dhurmal Daga to break his fast on an assurance that he (the Collector) would look into his allegations. In pursuance of that assurance Mr. Rana, Deputy Collector held an enquiry and called the explanation of the Municipal Committee and its President and submitted his report on November 22, 1956, which was forwarded to the State Government on April 24, 1957. The State Government thereupon took action under section 53-A of the Act and by a notification dated November 18, 1957, appointed a Deputy Collector B. P. Jain respondent No. 3 as Executive Officer of the Dhamtari Municipal Committee for a period of 18 months on the ground that the Municipal Committee was incompetent in the performance of its duties under the Act. The relevant part of the notification was as follows :

"Whereas it appears to the State Government that the Municipal Committee, Dhamtari, has proved itself incompetent to perform the duties imposed on it by or under the Central Provinces and Berar Municipalities Act, 1922 (II of 1922), inasmuch as it -

(a) granted grain and building advances to the employees without prior sanction and no efforts were made for their recovery.

(b) showed carelessness in cases of embezzlement of the employees and did not report such cases to Government,

(c) failed to control the President who issued orders in cases in which he had no authority,

(d) spent thousands of rupees on sanitation and other works although there was no provision in the budget,

(e) allowed unconcerned persons to interfere in its working,

(f) showed partiality in the appointment and dismissals of the employees, further such appointments and dismissals were made against rules,

(g) delayed the constitution of the committee and the framing of budget,

(h) misused the trucks of the municipality,

(i) failed to recover the lease money,

(j) shown partiality in the issue of transit passes to certain traders, further excess octroi duty was charged on certain articles and in certain cases where octroi duty is not leviable it was levied just to harass the people,

(k) distributed municipal manure to certain persons without any charge, similarly distributed the manure free of cost and used the truck of the municipality for this purpose,

(l) failed to control its president who spent the money of the municipal Committee without any authority,

(m) spent huge amount on the maintenance of the roads and drainage but their condition has remained unsatisfactory,

(n) failed to give copies of the documents as allowed under rules, also failed to allow its members to inspect the records as is permissible under rules,

(o) failed to invite tenders of purchase of articles."

This order of the State Government was challenged under Art. 226 in the Madhya Pradesh High Court on the allegation that the order passed by the State Government constituted

"a flagrant abuse of the powers conferred under section 53-A of the Municipalities

> Act. The charges enumerated in the notification were never framed. The State Government did not serve any notice on the Municipal Committee or its President to show cause against the charges nor were they afforded any opportunity to have their say in the matter."

The appellants submitted that the finding about the incompetency of the committee was vitiated because no enquiry was held and there was no evidence in support thereof and the order was void and inoperative because

> (1) "there is non-observance of the mandatory provisions. The power has not been exercised within the limits prescribed.
>
> (2) there is no determination of the basic facts.
>
> (3) there is a violation of the rules of natural justice.
>
> (4) the action is mala fide."

The respondents denied the allegations and submitted that the State Government made the order under section 53-A of the Act on the report of Mr. Rana, Deputy Collector who held an enquiry in the allegations made against the appellant under the orders of the Collector of Raipur; that proper notice was given to the Secretary of the Municipal Committee which filed its Written Statement through its President appellant No. 1 who appeared personally during the proceedings of the enquiry, but no opportunity for "leading any evidence" was demanded by the appellant nor was it denied. They also pleaded that no formal enquiry was required under the law and that the Court could not go into the sufficiency or otherwise of the reasons for taking action "and the same will not be enquired into by the Court objectively."

A learned Single Judge of the High Court dismissed the petition holding that whatever be the position under section 57, under section 53-A no explanation was required to be called from the municipal committee and the State Government was authorised under the law to act promptly. The High Court negatived the allegation that the State Government had proceeded against the Municipal Committee, appellant No. 2, at the instance of Dhurmal Daga. The learned Judge said :

> "I have gone through the material on which the State Government based its action on enquiry into the charges levelled against the municipal committee and find that there were several other complaints besides those made by Dhurmal Daga. The record of the enquiry shows that on some occasions the petitioner was present during the enquiry. I am satisfied that the invocation of the power so this Court under Art. 226 of the Constitution is not open to the present petitioner."

A Letters Patent appeal against this judgment was dismissed on February 21, 1958.

The appellants have come in appeal to this Court by special leave and have raised four points before us :

> (1) That the notification though it purports to be under section 53-A of the Act is really under section 57 which is shown by the grounds given in the notification, the powers vested in the Executive Officer and by the effect of the order;

(2) and if it is a notification under section 57 it is ultra vires because the statutory requirements of the section had not been complied with;

(3) even if the notification be held to be under section 53-A of the Act it was still null and void and inoperative as it violated the principles of natural justice and

(4) that the order made was mala fide inasmuch as it had been passed with an ulterior object of taking away the control of the municipality from the Independent Party which was in a majority and that this was in accordance with the policy adopted by the State Government of superseding or suspending municipalities which were not controlled by the Congress Party. As further proof of the mala fides of Respondent No. 1, the State Government, it was alleged that Radheshyam Khare appellant No. 1 was expelled from the Congress Party for six years in about March 1957 because he stood as an Independent candidate for election to the Lower House of Parliament in the 1957 elections.

The allegation of mala fides was not seriously pressed nor is there any material to sustain it.

In order to decide the other questions raised in this appeal it is necessary to examine the scheme of the Act and its provisions relating to the powers of the State Government in regard to municipal committees. Chapter I of the Act makes provisions for the constitution of municipalities. Section 4 empowers the State Government to signify by notification its intention to declare a local area to be a municipality, to alter its limits or to withdraw the whole of it from a municipality. Section 5 gives the right to the inhabitants of such local area to file objections against anything contained in the notification within a period of 6 weeks and after consideration of such objections if any, the State Government can confirm, vary or reverse its notification under section 4. Sections 6 to 8 deal with consequential orders on inclusion and exclusion of local areas.

Section 9 authorises the State Government to give such powers to a municipality as in its opinion it is suited for. It provides :

"If the circumstances of any municipality are such that, in the opinion of the State Government, any provision of this Act is unsuited thereto, the State Government may, by notification :

(a) withdraw the operation of that provision from the municipality;

(b) apply that provision to the municipality in a modified form to be specified in such notification;

(c) make any additional provision for the municipality in respect of the matter mentioned in the provision which has been withdrawn from, or applied in a modified form to, the municipality."

Chapter II deals with the membership of committees and chapter III with Subordinate Agencies. Under this chapter fall Sub-Committees, Presidents and other officers of Municipal Committees. Section 25-A which deals with the appointment of a Chief Executive Officer, Health Officer or Supervisor is as under :

(1) "The State Government may, if in its opinion the appointment of -

(a) a Chief Executive Officer is necessary for general improvement in the administration of the municipality..... and it is satisfied that the state of the municipal fund justifies expenditure on such appointment, require the committee to appoint any such officer.

(2) A requisition under sub-section (1) shall state the period within which the committee shall comply therewith.

(3) If the committee fails to comply with the requisition within the stated period, the State Government may, if it thinks fit, appoint such officer at the cost of the committee and fix his pay and allowances, the rate of his contribution to the provident fund or to his pension and other conditions of service.

(4) The State Government may require the committee to delegate to the Chief Executive Officer..... appointed under this section such powers, duties and functions of the committee, president, vice-president, or secretary under this Act or any rule or bye-law made thereunder as may be specified in such requisition, and if the committee fails to comply with such requisition within a reasonable time, the State Government may determine which powers, duties and function shall be exercised and performed by such officer in addition to, or to the exclusion of, their exercise and performance by the committee, president, vice-president or secretary.

(5) The secretary of the committee shall be subordinate to the Chief Executive Officer.

(6) The provisions of sub-section (5) of section 53-A shall apply to the Chief Executive Officer or Health Officer or Supervisor appointed under this section."

Chapter IV deals with the procedure to be followed in Committee Meetings, chapter V with property, contracts and liabilities and chapter VI with duties of committees. Chapter VIII is headed "Control". It prescribes the authorities which have the power to control the acts of committees and also lays down the extent of such control and the method of its exercise. Section 52 gives to the Deputy Commissioner the power to examine the proceedings of committees or sub-committees. Section 53 empowers a Deputy Commissioner to suspend the execution of any order or resolution of a committee or a sub-committee and prescribes the circumstances in which this power can be exercised. Then comes section 53-A which empowers the appointment of an Executive Officer by the State Government. Section 54 provides that in the case of emergency the State Government, on the receipt of the report under section 52 or otherwise may require a municipality to execute any work or perform any act which in its opinion is necessary for the service of the public. Under section 55 the State Government if satisfied after receiving a report under section 52 or after enquiry if any that a municipal committee has made default in performing its duties may appoint "some person to perform" the duty and can direct the municipal committee to pay reasonable remuneration to the person so appointed. If default is made in any such payment the State Government can under section 56 direct a person having custody of municipal funds to make such payment. Section 57 empowers the State Government to dissolve and/or to supersede the municipal committee. Section 58 gives to the State Government the power of revision and an overall control over the actions of officers acting or taking any action under the Act. But it cannot reverse any order unless notice is given to the parties interested and they are allowed to appear and be heard. Section 58-A authorises the State Government to enforce its orders. Section 58-B gives to the State Government the power

of review of orders passed by itself and Commissioners and Deputy Commissioners have similar powers of reviewing their own orders provided that no order shall be varied unless notice is given to the parties interested to appear and be heard in support of the order.

Under section 59 certain officers appointed by general or special orders of the State Government are entitled to attend any meeting of the committee and address it on any matter affecting the work of their departments. Section 60 provides for the settlement of disputes between the committees and other local bodies.

As sections 53-A and 57 are the subject matter of controversy in this case it is necessary to quote them in full :

Section 53-A "(1) If a committee is not competent to perform the duties imposed on it or undertaken by it by or under this Act or any other enactment for the time being in force and the State Government considers that a general improvement in the administration of the municipality is likely to be secured by the appointment of a servant of the Government as the executive officer of the Committee, the State Government may, by an order stating the reasons therefor published in the Gazette, appoint such servant as the executive officer of the committee for such period not exceeding eighteen months as may be specified in such order.

> (2) Any executive officer appointed under sub-section (1) shall be deemed to be an officer lent to the committee by Government under sub-section (3) of section 25.
>
> (3) When under sub-section (1) an executive officer is appointed for any committee, the State Government shall determine from time to time which powers, duties and functions of the committee, president, vice-president or secretary under this Act or any rule or bye-law made thereunder shall be exercised and performed by such officer, in addition to, or to the exclusion of, their exercise and performance by the said committee, president, vice-president or secretary.
>
> (4) The Secretary of the committee shall be subordinate to the executive officer.
>
> (5) The executive officer shall have the right to attend all meetings of the committee and any joint committee and to take part in the discussion so as to make an explanation in regard to the subject under discussion, but shall not move, second, or vote on any resolution or other motion."

Section 57 which gives power to the Government to dissolve or supersede the municipality is as follows :

> "(1) If a committee is not competent to perform, or persistently makes default in the performance of, the duties imposed on it or undertaken by it under this Act or any other enactment for the time being in force, or exceeds or abuses its powers to a grave extent, the State Government may, by an order stating the reasons therefor published in the Official Gazette, dissolve such committee and may order a fresh election to take place.
>
> (2) If after fresh elections the new committee continues to be incompetent to perform, or to make default in the performance of, such duties or exceeds or abuses its powers to a grave extent, the State Government may, by an order stating the

reasons therefor published in the Official Gazette, declare the committee to be incompetent or in default, or to have exceeded or abused its powers, as the case may be, and supersede it for a period to be specified in the order.

(3) If a committee is so dissolved or superseded, the following consequences shall ensue :

(a) all members of the committee shall, as from the date of the order, vacate their offices as such members;

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

(c) all property vested in it shall until the committee is reconstituted vest in the State Government.

(4) On the expiration of the period of supersession specified in the order, the committee shall be reconstituted, and the persons who vacated their offices under sub-section (3), clause (a), shall not, by reason solely of such supersession be deemed disqualified for being members.

(5) No order under sub-section (1) or sub-section (2) shall be passed until reasonable opportunity has been given to the committee to furnish an explanation.

(6) Any person or persons appointed by the State Government to exercise and perform the powers and duties of a dissolved or superseded committee may receive payment, if the State Government so directs, for his or their services from the municipal fund."

A review of all these provisions shows that under that Act the municipalities are not independent corporations exercising powers unregulated by Government control. They confer regulatory authority on the State Government to keep control over municipalities, the extent of control and the mode of its exercise being dependent on circumstances and expediency varying with the exigencies of every case. The Statute leaves the discretion to the State Government to choose the action to be taken and the provision under which it is to be taken. Wherever the legislature intended an enquiry to be held before taking any action provision is made for it and wherever it intended a person to be allowed to appear and be heard it has specifically provided for it. Generally speaking excepting where an order is to be reversed qua a particular person, there is no provision for a hearing. The nature and extent of regulatory powers of the State Government and the mode of their exercise are matters of policy and expediency and indicate the taking of administrative action by the State Government and not the exercise of any judicial power and would therefore be excluded from judicial review.

Counsel for the appellants firstly submitted that although the State Government has purported to act under section 53-A, in fact and in reality the order falls under section 57 and because the provisions of sub-section (5) have not been complied with, the order of the State Government is illegal, null and void. A comparison of the two sections 53-A and 57 shows the difference in the powers exercisable by the State Government under the two sections and the consequences that result therefrom. Under section 53-A all that the State Government does is to appoint for a period of not

more than eighteen months an Executive Officer who exercises such powers under the Act as are mentioned in the order which may be in addition to or to the exclusion of their exercise by the municipality, etc., a power also exercisable under section 25-A or to a limited degree under section 9. Under section 57 the municipal committee itself is dissolved and may be superseded in which case its members cease to exist and vacate their offices and the powers and duties of the municipal committee then become vested in the person or persons appointed for the purpose by the State Government and its property also vests in the State Government. These consequences do not follow an order under section 53-A. But it is submitted that in reality the result is the same because of the powers which under the notification have been given to the Executive Officer and what is left with the Committee is only "husk". If this were so then whenever any action is take whether under section 9 of the Act or under section 25-A in conceivable cases it would amount to supersession of the municipal committee and would therefore fall under section 57 which argument was neither submitted nor is tenable. According to the language of the two sections, 53-A and 57 of the Act the two classes of actions contemplated are quite different and different consequences follow; one should not be confused with the other. The contention that the action taken under section 53-A is colourable and the matter really falls under section 57 is an allegation of mala fides which has not been made out. If the statute gives to the State Government powers under its various provisions and the State Government chooses in its discretion to use one rather than the other it is beyond the power of any court to contest that discretion unless a case of abuse is made out (per Lord Halsbury L.C. in the Westminster Corporation v. London and North Western Railway Co. ([1905] A.C. 426)). And it cannot on that ground alone be held to be a mala fide act.

A great deal of stress was laid by the appellants' counsel on the withdrawal of the powers of the municipality and particularly under section 31 and it was contended that the Committee would not be able to hold its monthly meetings as required under that section. It is difficult to interpret the notification in this manner, because so interpreted it would mean that the Execution Officer alone will meet for the transaction of business at least once a month which would amount to an absurdity. The reference in the notification must be to sub-section (2) of section 31 which deals with the power of the President, etc., to call a meeting suo motu or on the requisition of a fifth of the members. Similarly the mention of Chapter V in the notification cannot vest the property of the committee in the Execution Officer. The notification deals with powers and duties and not with the vesting of property. It may however be mentioned that even where no Executive Officer is appointed by the State Government it can direct that any property vested in the municipality shall cease to be to vested and it can make such orders as it thinks fit regarding the disposal and management of such property (section 38). No doubt the powers under section 39, which deals with the management of public institutions, powers and duties of the municipality, are taken away and are vested in the Executive Officer but these powers in any case are subject to rules made by Government and these rules are always subject to change by the State Government. The powers of the municipal committee under section 40 to request the State Government for acquisition under the Land Acquisition Act have also been withdrawn. Section 41 deals with transfers of municipal property to the Government and section 42 with power of the municipality to transfer municipal property but under that section the control of the State is not excluded even when there is no Executive Officer. Section 44 deals with the making of contracts and the other sections in that chapter do not deal with the powers and duties of a municipal committee excepting section 49. Chapter VI prescribes the duties of a municipal committee and some of those also have been vested in the Executive Officer. There is no doubt that some very important powers have by the notification been taken away from the municipal committee and have been vested in the Executive Officer but that is a far step from saying that the committee has thereby been suspended. This exercise of its functions by the State

Government is of no different quality leading to different results than what would have happened had action been taken under section 25-A or under section 9 of the Act. It cannot therefore be said under the circumstances of this case that the action of the State Government is cobweb varnish or that it is merely a colourable order or a device to avoid the requirements of sub-section 5 of section 57.

It was then contended that the notification enumerates acts of the municipality some of which are instances of mismanagement and others of abuse of power. It cannot be said that the allegations in regard to the spending of money without a provision in the budget or showing partially in the matter of appointment and dismissal or in the matter of issuing of transport passes or distribution of municipal manure or the charge of spending huge amounts on maintenance of roads and drainage without improving their condition are nothing short of gross mismanagement or abuse of power and cannot fall under the charge of incompetency in the performance of duties or in the exercise of powers by the municipality. Assuming that they can only be instances of abuse, there is nothing wrong in the State Government enumerating all the misdeeds and wrongs done by the committee and then saying that it prefers to take action under section 53-A as it has done and not under section 57. If the acts and omissions are instances of abuse the State Government could if it thought fit, take action under section 57. If having two courses open to it the State Government took the lesser of the two actions, its discretion cannot be questioned, in the absence of proof of bad faith. It cannot therefore be said that the State Government has only pretended to act under section 53-A but in reality it was acting under section 57 of the Act.

It was lastly contended that the State Government when it acts under section 53-A has a duty to act judicially and the rules of natural justice required that the appellants should have been given an opportunity to show cause against action being taken under that section. As said above under section 9 of the Act the State Government has, on the ground of unsuitability, the power to withdraw from the municipality any of the powers conferred under the Act either wholly or partially and under section 25-A it has the power of appointing a Chief Executive Officer if it is necessary for the general improvement in the administration of the municipality and exactly the same consequences would follow as they do when an Executive Officer is appointed under section 53-A. There are also sections 52, 53, 54, 55 and 56 which place regularity control in certain Government agencies. If action taken under those provisions is an exercise of executive functions of the State Government can it be said that the exercise of similar power under section 53-A and for similar object i.e. improving the general administration in case of incompetency of the municipality will change an administrative decision into a judicial or quasi-judicial decision ? The real test to distinguish between a quasi-judicial and an administrative act of an authority is based on the duty of that authority having power to determine a question, to act judicially. Lord Hewart C.J. in R. v. Legislative Committee of the Church Assembly ([1928] 1 K.B. 411, 415) said :

> "In order that a body may satisfy the required test it is not enough that it should have legal authority to determine question affecting the rights of subjects; there must be superadded to that characteristic the further characteristic that the body has the duty to act judicially".

And thus the authority taking a decision should not merely determine a question it should also be under a duty to act judicially. It is that essential characteristic which the State Government lacks in the present case. When it considers something likely to result from its action it is merely taking executive action and not determining a question or acting judicially. This dictum of Lord Hewart was quoted with approval by Das J. (as he then was) in Kusaldas Advani's case ([1950] S.C.R. 621,

720). He said, "Therefore, in considering whether a particular statutory authority is a quasi-judicial body or a mere administrative body it has to be ascertained whether the statutory authority has the duty to act judicially". There is no indication in the statute itself that the State Government has a duty to act judicially when it appoints an Executive Officer under section 53-A nor has any procedure been prescribed as to the manner in which the power under this section is to be exercised by the State Government which may give an indication as to nature of the decision taken. The municipal committee is a creation of the Act and therefore it has all the powers and is subject to all the controls under the Act which are to be exercised as provided thereunder.

The Act gives different modes of regulatory control to the State Government and the powers of the State Government extend from revision of the actions, orders and resolutions of the municipal committee to the exclusion of local areas from its jurisdiction, taking away powers given under the Act, the appointment of Executive Officers, suspension and supersession of municipalities. In certain sections e.g. section 57 dealing with this regulatory control the statute requires that the explanation of the committee be called for before a particular action is taken by the State Government and in others no such requirement is prescribed. That is a clear indication of the intention of the legislature that an opportunity was to be given in one case and not in the other. In other words a kind of quasi-judicial approach was intended in one case and administrative in the other. The Privy Council in Nakkuda Ali's case ([1951] A.C. 66, 78) (a case under a Ceylon Regulation) said :

> "But, that apart, no procedure is laid down by the regulation for securing that the license holder is to have notice of the Controller's intention to revoke the license, or that there must be any enquiry, public or private, before the Controller acts".

In Advani's case ([1950] S.C.R. 621) Fazl Ali J. examining the duty of authorities to act judicially said at p. 641 :

> "There are no express words in section 3 or any other section, to impose such a duty (to determine judicially); nor is there anything to compel us to hold that such a duty is implied".

The learned judge took into consideration the fact that certain sections specifically provided an enquiry and others did not, and observed :

> "..... the fact remains that there is nothing in the Ordinance to suggest that the public purpose is to be determined in a judicial way".

Therefore where in a statute like the present one some sections prescribe the calling for the explanation of the municipality before any action is taken by the State Government and others do not, it is an indication of the intention of the legislature to exclude the application of principles of audi alteram partem in the latter case.

The section (section 53-A) has to be read as one whole and not in compartments. The relevant words are :

> "If the committee is not competent to perform the duties imposed upon it..... and the State considers that a general improvement in the administration of the municipality is likely to be secured by....."

The latter portion i.e. "the State Government considers..... is likely to be secured" indicates a purely subjective determination and taking a policy decision. The use of the words "considers" and "is likely" relate to a subjective and not an objective process. "To consider" means to think, to contemplate mentally, to regard and "likely" means probably; such as might well happen; apparently suitable for. These words cannot have any reference to objectivity but suggest subjectiveness. The opening words of the section "If the committee is not competent....." can not be read separately from the latter part. When under section 53-A the State Government appoints an Executive Officer which act it considers likely to improve the general administration of the municipality it does not take two decisions, one objective as to the incompetency of the administration of the municipality and the other subjective as to the action likely to improve the administration. The decision is only one. The State Government is the sole judge of both matters, namely, of the incompetency and the remedy needed. Both are parts of one integrated whole a decision taken in the exercise of the administrative functions of the State Government and admits of no element of judicial process. (Vide The Province of Bombay v. Kusaldas Advani ([1950] S.C.R. 621) (per Kania C.J. at p. 633-635) and per Das J. (as he then was) at p. 703). The State Government must necessarily be the sole judge of the state of incompetency of the municipality otherwise it would not be able to take its administrative decision as to the action which it should take and which it considers is likely to improve the administration. Both the decisions as to the incompetency of the municipality and the exercise of the executive function as to the action to be taken thereon are matters of like character i.e. administrative matters. (Kusaldas Advani's case at p. 633). If that were not so then on the question of incompetency the State Government procedure will be analogous to a judicial process subject to review of Courts and the action it will take will be an administrative decision not subject to judicial review which will not only lead to inconvenience but to confusion. The Privy Council pointed out in Venkatarao v. Secretary of State ([1936] L.R. 64 I.A. 55) that "inconvenience is not a final consideration in a matter of construction, but it is at least worthy of consideration, and it can hardly be doubted that the suggested procedure of control by the Courts over Government in the most detailed work of managing its services would cause not merely inconvenience but confusion".

The very fact that an order under section 53-A is in the nature of an emergency action to protect the interests of the rate payer and has a limited duration not exceeding 18 months also negatives the order being founded on an objective determination as to the incompetency of the committee. Such a construction will defeat the very purpose of section 53-A. Further action under section 57 is of a permanent nature and has accordingly been expressly made subject to an explanation by the municipal committee. The absence of such a provision from section 53-A clearly shows that the legislature did not intend that there should be an elaborate hearing but intended that the State should under section 53-A take a swift administrative decision. The correct position, as indicated above, is that the decision of the State Government as to incompetency and the decision as to the action to be taken were really one decision, one integrated whole - a subjective decision of the State Government that it considered that by the appointment of an executive officer a general improvement in the hitherto general administration was likely to be secured. Merely because the fact of incompetency is a preliminary step to the exercise of an administrative function by the State Government, under section 53-A it is not necessary that the fact is to be determined judicially. Where the exercise of the administrative functions of an Execution authority like the State Government are subject to a decision as to the existence of a fact, there is no duty cast on the State Government to act judicially. Both the decision as to the fact and as to the action to be taken are really one and not two decisions, the determination being for the purpose of taking an appropriate administrative decision. As has been said above it is one integrated whole and cannot be separated into parts with different legal qualities. This was the view of Kania C.J. in the Province of Bombay v. Kusaldas Advani ([1950]

S.C.R. 621) where it was observed at p. 633 :

> "Because an executive authority has to determine certain objective facts as a preliminary step to the discharge of an executive function, it does not follow that it must determine those facts judicially. When the executive authority has to form an opinion about an objective matter as a preliminary step to the exercise of a power conferred on it, the determination of the objective fact and the exercise of the executive power based thereon are alike matters of an administrative character".

Fazl Ali J. in that case said at p. 642 :

> "For prompt action the executive authorities have often to take quick decisions and it will be going too far to say that in doing so they are discharging any judicial or quasi-judicial functions. The word 'decision' in common parlance is more or less a natural expression and it can be used with reference to purely executive as well as judicial orders. The mere fact that an executive authority has to decide something does not make the decision judicial. It is the manner in which the decision has to be arrived at which makes the difference, and the real test is : Is there any duty to act judicially ?"

The language of sub-section (1) of section 53-A indicates that the question whether the State Government considers that the action taken under the section i.e., the appointment of an Executive Officer is likely to secure an improvement in the general administration of the municipality is one of expediency, opinion and policy, matters which are peculiarly for the State Government to decide and which, always assuming that it is acting bona fide, it is the sole judge. No objective test is possible. Therefore the use of these words "considers" and "is likely" negatives any objective approach or judicial or quasi-judicial process. The State Government is not essentially a judicial or a quasi-judicial body but its essential function is administrative. The various provisions of the Act show that it takes its decisions as to the mode and extent of control of municipalities in pursuance of its opinion and policy and on grounds of expediency. In arriving at its decision it at no stage has any form of lis or quasi-lis before it nor can it be said that there are two parties before it. The Municipal Committee and itself cannot be termed quasi-litigants or parties to a proposition and opposition. It is not bound to take action under section 53-A or any other section of the Act. It has to consider the question from the point of view of policy and expediency and the exigencies of the case which shows that it is not under a duty at any stage to act judicially to determine a question. This further supports the view that a correct interpretation of the words "considers" and "is likely to be secured" indicates a subjective decision and these words make the order of the State Government administrative and not judicial or quasi-judicial.

The argument that the order is quasi-judicial because it affects the rights of the Municipal Committee is vacuous because all that the order complained of does is that it restricts the exercise of certain powers by municipal committee and vests some powers in another authority contemplated by the statute. Besides every decision of the Executive generally affects the rights of one citizen or another. In Advani's case ([1950] S.C.R. 621) Kania C.J. said at page 632 :

> "..... it is broadly stated that when the fact has to be determined by an objective test and when that decision affects rights of some one, the decision or act is quasi-judicial. This last statement overlooks the aspect that every decision of the executive generally is a decision of fact and in most cases affects the rights of some one or the

other."

But it was contended that in its order the State Government has to state reasons for taking action under section 53-A. In a democratic system of government there is always the other party, the electors and citizens, who must know why the State Government takes one particular action rather than another. Besides the mere requirement of giving reasons would not change what was an administrative body into a judicial body or an administrative body into a judicial or quasi-judicial determination.

The following passage from Halsbury's Laws of England, Vol. II, p. 56 (3rd Edition) aptly states the law and may usefully be quoted :

> "If, on the other hand, an administrative body in arriving at its decision has before it at no stage any form of lis and throughout has to consider the question from the point of view of policy and expediency, it cannot be said that it is under a duty at any time to act judicially."

See also R. v. Manchester Legal Aid Committee ([1952] 2 Q.B. 413, 431).

In B. Johnson & Co. (Builders) Ltd. v. Minister of Health ([1947] 2 A.E.R. 395) it has also held that the Minister was entitled to inform his mind by informal machinery of an enquiry and merely because in order to inform his mind the enquiry had to be held it could not be said that the Minister was not performing his administrative function. At p. 405 Cohen L.J. went further and said :

> "His duty as regards information received by him in his executive capacity is to use that information fairly and impartially. This may involve that he should give an opportunity to the authority or to the objector, as the case may be, of dealing with some allegation in a communication he has received before the quasi-lis started, but, if he fails to do so, he is responsible only to Parliament for the discharge of his executive duties, and cannot be made responsible in these courts."

Appellants' counsel relied on some English cases, the first of which was Cooper v. Wandsworth Board of Works ([1863] 14 C.B. (N.S.) 180; 143 E.R. 414, 420) where Byles J. said at p. 420 :

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

This view is not in accord with the modern exposition of the law in Nakkuda Ali's case ([1951] A.C. 66, 78) or Franklin's case ([1948] A.C. 87). Lord Shawin Arlidge's case ([1915] A.C. 120, 138) rejected the concept of natural justice in the following language :

> "..... in so far as it attempts to reflect the old jus naturale it is a confused and unwarranted transfer into the ethical sphere of a term employed for other distinctions; and, in so far it is resorted to for other purposes, it is vacuous."

In R. v. Manchester Legal Aid Committee ([1952] 2 Q.B. 413, 431) the court observed :

> "The true view, as it seems to us, is that the duty to act judicially may arise in widely different circumstances which it would be impossible, and, indeed, inadvisable, to

> attempt to define exhaustively. Where the decision is that of a court then, unless, as in the case, for instance, of Justices granting excise licenses, it is acting in a purely ministerial capacity, it is clearly under a duty to act judicially. When, on the other hand, the decision is that of an administrative body and is actuated in whole or in part by questions of policy, the duty to act judicially may arise in the course of arriving at that decision."

But at page 431 it was said :

> "If, on the other hand, an administrative body in arriving at its decision at no stage has before it any form of lis and throughout has to consider the question from the point of view of policy and expediency, it cannot be said that it is under a duty at any stage to act judicially."

That was a case of a debtor who applied for and obtained a certificate of legal aid under the Legal Aid and Advice Act, 1949, in connection with his claim for damages against a company but was thereafter adjudicated bankrupt and at his instance the certificate was cancelled as his claim vested in the trustee in bankruptcy. The trustee then applied for and obtained a certificate of legal aid. The National Assistance Board and the local Committee considered only the financial circumstances of the bankrupt and not of the trustee whose disposable income was in excess of the lowest limit entitling a certificate of legal aid. The debtor company applied for an order of certiorari to quash the certificate alleging that the Committee had exceeded its jurisdiction. Under the Legal Aid (General) Regulation, 1950, reg. 4(1), it was a condition precedent to the grant of a certificate that there should have been a determination by the National Assistance Board of the disposable income of the trustee who was personally liable vis a vis is opponent. It was held that the Board having legal authority to determine questions affecting rights of subjects had a duty to act judicially and that it had exceeded its jurisdiction. The case has some distinguishing features, wanting in the case before us. The statute there prescribed the limit of income of applicant for a certificate of legal aid and the regulations required the determination by the National Assistance Board of the disposable income and disposable capital of such applicant which was a condition precedent to the grant of the certificate. Clearly without such determination the grant of the certificate was not within the jurisdiction of the Board and therefore the Board had to determine a question and was required to act judicially within the rule laid down in the majority judgment in Kusaldas Advani's case ([1950] S.C.R. 621, 720). The Board under that statute was bound to give aid, if certain conditions were fulfilled and was quite unconcerned with questions of policy. "They have to decide the matter solely on the facts of a particular case, solely on the evidence before them and apart from any extraneous considerations. In other words, they must act judicially, not judiciously."

In Cabel v. Child ([1832] 2 Cr. & Jr. 558; 37 R.R. 761) the words "Whenever it shall appear to the satisfaction of the Bishop" were held to imply a duty to act judicially and therefore the principles of natural justice applied. This rule is inconsistent with the decision of the Privy Council in Nakkuda Ali's case ([1951] A.C. 66, 78) or the decision of the House of Lords in Franklin's case ([1948] A.C. 87) or the interpretation placed upon the word "satisfied" in some of the later English cases, Robinson v. Minister of Town and Country Planning ([1947] K.B. 702) and B. Johnson & Co. (Builders) Ltd. v. Minister of Health ([1947] 2 A.E.R. 395). This Court in Kusaldas Advani's case ([1950] S.C.R. 621, 720) also held this word to indicate a subjective approach. See also Wijeysekra v. Festing ([1919] A.C. 546) where the words of the Statute were "whenever it shall appear to the Governor.....". See also R. v. Metropolitan Police Commissioner ([1953] 2 A.E.R. 717) where also the words were "..... if he is so satisfied....." and it was held that these words did not

imply "a judge or a quasi-judge". The decision in these cases laying down the rule of application of natural justice must be confined to their own facts and the language of the particular statute they interpreted. No general rule can be deduced therefrom nor can they be applied to other statutes and other circumstances.

The case before us is not one where no enquiry has been held. There was an enquiry against the appellants in regard to specific allegations made against them and after hearing them a report was made by a Deputy Collector which was forwarded to the State Government before it took action. One Dhurmal Daga made a number of allegations Annexures I and II and those allegations were supported by others like Dear & Co., Poonam Chand Somraj, Dhamtari Traders and Shilaram and the affidavit of the State Government in the High Court shows that the notice was issued to both the appellants to reply to the allegations. Radheshyam appellant No. 1 appeared before the Enquiry Officer and gave a long explanation denying the allegations made by Dhurmal Daga and others. It was after this that the Enquiry Officer made his report which was sent to the State Government and it took action which it considered apposite and that is the action complained of.

But it was submitted that no justice was given to the appellants as to the nature of the complaint against them and the various charges which have been enumerated in the notification were never specifically brought to their notice and they were not called upon to show cause why action should not be taken under section 53-A. In the first place the words of the section as explained above do not contemplate any such notice and the argument based on the opening words of the section that the municipality was guilty of incompetence was an objective fact cannot be accepted. It cannot be said in this case that in point of fact the appellants did not know what the complaint against them was or that they had no opportunity of giving their explanation in regard to the charges. All the acts which are enumerated in the notification are contained in the various allegations which were made against the appellants by Dhurmal and others. The appellants put a long explanation giving their version of the facts contained in the complaint and the Enquiry Officer sent his report after hearing the appellants and on the consideration of this report the State Government passed its order under section 53-A. The High Court after going through the record of the enquiry was satisfied as to the propriety and legality of the enquiry and that portion of its judgment has been quoted above.

Then it was submitted that the enquiry by Mr. Rana was unauthorised by the State Government and was no substitute for the enquiry required by the statute. But the statute has prescribed no procedure for enquiries under section 53-A even if it were to be said that the section contemplates an enquiry. And it is no defect affecting the final decision of the State Government whether the enquiry originates in the manner it did or the State Government ordered it.

In these circumstances the third point raised by the appellants cannot be sustained and the submission of the appellants is without substance. The appeal therefore fails and is dismissed with costs throughout.

SUBBA RAO J. -

I have had the advantage of reading the judgment prepared by my Lord, the Chief Justice and my learned brother, Kapur J. I regret my inability to agree with them in their views on the following two questions : (1) Whether under section 53-A of the C.P. & Berar Municipalities Act (Act II of 1922), hereinafter called the Act, the Government performs a judicial act; and (2) whether in fact the Government complied with the principles of natural justice in making the Order dated November 8, 1956, under section 53-A of the Act.

As the facts have been fully narrated by my Lord, the Chief Justice, it would suffice if the facts relevant to the aforesaid questions are briefly stated here. The second appellant is the Municipal Committee, Dhamtari, and the first appellant is its President. He was elected as President on July 10, 1956, and took charge of his office on July 27, 1956. On August 8, 1956, one Dhurmal Daga went on a hunger strike for the redress of his grievances against the appellants. The Collector, Raipur, intervened and persuaded him to break his fast and ordered an inquiry into the charge of maladministration. The Deputy Collector, who made the inquiry, gave notice of the said inquiry to the Secretary to the Committee and the first appellant filed a written reply on September 7, 1956, and personally appeared at the inquiry. Presumably, the result of the inquiry was forwarded to the Government. On November 18, 1957, the Government issued an Order, under section 53-A of the Act, enumerating fifteen charges involving acts of non-feasance, misfeasance, gross negligence and fraud, and stating that, by reason of the said acts, it appeared to the Government that the Committee had proved itself incompetent to perform the duties imposed on it by or under the said Act. The order further proceeded to state that the Government considered that a general improvement in the administration of the Municipality was likely to be secured by appointing a servant of the Government as the Executive Officer of the Committee. The said Order also appointed Shri B. P. Jain as Executive Officer and entrusted to him most of the important powers and duties of the Committee and the President. Before the drastic action was taken, no opportunity was given either to the President or to the Committee to explain their conduct in regard to any one of the charges. The previous inquiry made by the Deputy Collector was to attempt to persuade Dhurmal Daga to give up his fast and that inquiry by the Deputy Collector could not, in any sense of the term, be regarded as an inquiry for taking action under section 53-A of the Act. Records also do not disclose whether that inquiry related to the same charges which were the foundation for the Government taking action under the Act. I, therefore, proceed on the footing that the Government acted under section 53-A of the Act without giving any opportunity to the appellants to explain their conduct in regard to the grave charges levelled against them, on the basis of which they were held to be incompetent within the meaning of section 53-A of the Act.

The material part of section 53-A reads :

> "If a committee is not competent to perform the duties imposed on it or undertaken by it by or under this Act or any other enactment for the time being in force and the State Government considers that a general improvement in the administration of the municipality is likely to be secured by the appointment of a servant of the Government as the executive officer of the committee, the State Government may, by an Order stating the reasons therefor published in the Gazette, appoint such servant as the executive officer of the committee for such period not exceeding eighteen months as may be specified in such order."

The learned Advocate-General, appearing for the State, contended broadly that under this section the Government performs only an administrative act by appointing an Executive Officer for a short period and therefore no opportunity need be given to the affected parties before action is taken thereunder. Mr. M. K. Nambiar, counsel for the appellants, argued that under this section the Government is empowered deprive the Municipal Committee, duly elected under the Act, of its powers, though for eighteen months, on the basis of its incompetency and it is against all principles of natural justice to stigmatize such a body as incompetent without giving it an opportunity to explain its conduct. He would say that whether the Committee is competent or not is an objective and jurisdictional fact to be decided judicially by the State Government and, therefore, the act of the Government is a judicial act, which can only be discharged by following the principles of natural

justice.

Before considering the validity of the arguments based upon the provisions of the section, it would be convenient at this stage to notice briefly the distinction between a judicial and an administrative act and the criteria laid down by decisions for ascertaining whether a particular act is a judicial act or an administrative one. The said criteria have been laid down with clarity by Lord Justice Atkin in Rex v. The Electricity Commissioners ([1924] 1 K.B. 171), elaborated by Lord Justice Scrutton in Rex v. London County Council ([1931] 2 K.B. 215) and authoritatively restated in Province of Bombay v. Kusaldas S. Advani ([1950] S.C.R. 621). The aforesaid decisions lay down the following conditions to be complied with : (1) The body of persons must have legal authority; (2) the authority should be given to determine questions affecting the rights of subjects; and (3) they should have a duty to act judicially. So far there is no dispute. The question raised in this case is what do the words "a duty to act judicially" mean. If the statute in express terms says that the decision should be arrived at judicially, then it is an obvious case. If it does not expressly say so, can the intention of the Legislature be gathered or implied from the terms of the statute ? If it can be so gathered, what are the guiding factors for implying such a duty on the part of a tribunal or authority ? In this context a brief discussion of some of the relevant cases will be helpful. This Court, as I have already stated, restated the law laying down the criteria for ascertaining whether an act is a judicial act or not in Kusaldas's case ([1950] S.C.R. 621). There the question was whether the Provincial Government was acting judicially in making the order of requisition under section 3 of the Bombay Land Requisition Ordinance (Bom. Ordinance V of 1947). The material part of the section under discussion read as follows :

> "If in the opinion of the Provincial Government it is necessary or expedient to do so, the Provincial Government may, by order in writing requisition any land for any public purpose."

To ascertain the nature of the act of the Government under that section, this Court reviewed the law on the subject and held, by a majority, that on a proper construction of section 3 of the Ordinance, the decision of the Bombay Government that the property was required for a public purpose was not a judicial or a quasi-judicial decision but an administrative act and the Bombay High Court had, therefore, no jurisdiction to issue a writ of Certiorari in respect of the order of requisition. Das J. as he then was, after considering the law on the subject summarized the principles at page 725 thus :

> "(i) that if a statute empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a lis and prima facie and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and
>
> (ii) that if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially."

The propositions so stated appear to me to be unexceptional. But the further difficulty is whether the duty to act judicially should be expressly so stated in the statute or whether it can be gathered or

implied from the provisions of the statute. I do not think that Das J. as he then was, meant to lay down as a condition that the duty to act judicially should be expressly stated in the statute, for rarely any statute would describe the character of disposal of a particular proceeding. If it was intended to insist upon an express condition in the statute, the learned Judge would not have scrutinized the provisions of the Ordinance to ascertain whether the order thereunder was intended to be a judicial act or not. A useful discussion bringing out in hold relief the difference between a judicial and an administrative act is found in R. v. Manchester Legal Aid Committee ([1952] 2 Q.B. 413). There a debtor applied to a local aid committee, set up under the Legal Aid and Advice Act, 1949, for a certificate for legal aid to pursue a claim for alleged breach of contract against limited company. As he was adjudicated insolvent, the certificate was revoked and on application made by his trustee, it was granted to him again. One of the questions raised was whether the legal aid committee in issuing the certificate was acting judicially and therefore subject to an order of certiorari. The court held that the said body was under a duty to act judicially. Parker J. delivering the judgment of the Court, summarized the law on the subject at page 428 thus :

> "The true view, as it seems to us, is that the duty to act judicially may arise in widely different circumstances which it would be impossible, and, indeed, inadvisable, to attempt to define exhaustively. Where the decision is that of a Court, then, unless, as in the case, for instance, of justices granting excise licenses, it is acting in a purely ministerial capacity, it is clearly under a duty to act judicially. When, on the other hand, the decision is that of an administrative body and is actuated in whole or in part by questions of policy, the duty to act judicially may arise in the course of arriving at that decision. Thus, if, in order to arrive at the decision, the body concerned had to consider proposals and objections and consider evidence, then there is the duty to act judicially in the course of that inquiry.....

Further, an administrative body in ascertaining facts or law may be under a duty to act judicially notwithstanding that its proceedings have none of the formalities of and are not in accordance with the practice of a court of law.....

If, on the other hand, an administrative body in arriving at its decision at no stage has before it any form of lis and throughout has to consider the question from the point of view of policy and expediency, it cannot be said that it is under a duty at any stage to act judicially."

On the basis of the aforesaid principles, the learned Judge held that the local committee, though an administrative body, was acting judicially in issuing the certificate, as in ascertaining the facts for issuing the certificate it was quite unconcerned with any question of policy. I respectfully agree with the principles enunciated by the learned Judge and they are not in any way inconsistent with the principles laid down by this Court. The law has been neatly summarised in Halsbury's Laws of England, Third Edition, Volume 11, at pages 55 and 56 and it is as follows :

> "It is not necessary that it should be a court : an administrative body in ascertaining facts or law may be under a duty to act judicially notwithstanding that its proceedings have none of the formalities of, and are not in accordance with the practice of, a court of law. It is enough if it is exercising, after hearing evidence, judicial functions in the sense that it has to decide on evidence between a proposal and an opposition. A body may be under a duty, however, to act judicially (and subject to control by means of these orders) although there is no form of lis inter parties before it; it is enough that it should have to determine a question solely on the facts of the

> particular case, solely on the evidence before it, apart from questions of policy or any other extraneous considerations."
>
> "Moreover an administrative body, whose decision is actuated in whole or in part by questions of policy, may be under a duty to act judicially in the course of arriving at that decision..... If, on the other hand, an administrative body in arriving at its decision has before it at no stage any form of lis and throughout has to consider the question from the point of view of policy and expediency, it cannot be said that it is under a duty at any time to act judicially."

It is not necessary to multiply citations.

The concept of a "judicial act", has been conceived and developed by the English Judges with a view to keep the administrative tribunals and authorities within bounds. Unless the said concept is broadly and liberally interpreted, the object itself will be defeated, that is, the power of judicial review will become innocuous and ineffective. The comprehensive phraseology of Art. 226 of the Constitution supports rather than negatives the liberal interpretation of that concept. The argument that the Court shall not obstruct the smooth working of the administrative machinery does not appeal to me, for the simple reason that the exercise of the power of judicial review or, to be more precise, the existence of such power in courts - for hardly one act in thousands come before courts - eliminates arbitrary action and enables the administrative machinery to function without bias or discrimination. With this background, the principles, as I apprehend them, may be concisely stated thus : Every act of an administrative authority is not an administrative or ministerial act. The provisions of a statute may enjoin on an administrative authority to act administratively or to act judicially or to act in part administratively and in part judicially. If policy and expediency are the guiding factor in part or in whole throughout the entire process culminating in the final decision, it is an obvious case of administrative act. On the other hand, if the statute expressly imposes a duty on the administrative body to act judicially, it is again a clear case of a judicial act. Between the two there are many acts, the determination of whose character creates difficult problems for the court. There may be cases where at one stage of the process the said body may have to act judicially and at another stage ministerially. The rule can be broadly stated thus : The duty to act judicially may not be expressly conferred but may be inferred from the provisions of the statute. It may be gathered from the cumulative effect of the nature of the rights affected, the manner of the disposal provided, the objective criterion to be adopted, the phraseology used, the nature of the power conferred or the duty imposed on the authority and other indicia afforded by the statute. In short, a duty to act judicially may arise in widely different circumstances and it is not possible or advisable to lay down a hard and fast rule or an inexorable rule of guidance.

In the present case, section 53-A of the Act itself provides the necessary criteria to answer the question. Before the Government can take action under the section, three preliminary conditions for the exercise of the power are laid down : (1) The Committee is not competent to perform the duties imposed on it; (2) the State Government considers that a general improvement in the administration of the municipality is likely to be secured by the appointment of a servant of the Government; (3) an order stating the reasons therefor. The first condition depends upon the determination of an objective fact, namely, whether the committee is competent to perform the duties imposed upon it. It is a jurisdictional fact that confers jurisdiction on the Government to take further action. The determination of this fact is not left to the subjective satisfaction of the Government. Indeed, the different phraseology used in regard to the second condition, namely, "the State Government considers", brings out in bold relief the distinction between the two; while in the former an objective

fact has to be determined, the latter the fact is left to the subjective satisfaction of the Government. If the facts covered by both the conditions are left to the subjective satisfaction of the Government, the phraseology would have been different and the clause would have run thus : "If the Government considers that the committee is not competent to perform the duties imposed on it or undertaken by it by or under this Act or any other enactment for the time being in force and that a general improvement in the administration of the municipality is likely to be secured by the appointment of a servant of the Government as the Executive Officer of the Committee....." To accept the argument of the Counsel for the respondents will be to rewrite the section in the above manner which is not permissible. There is also a good reason and a justification for the difference in the phraseology used in the section. The municipality is an elected corporate body and is entrusted with responsible statutory functions. While it may be necessary, in public interest, to deprive the committee of some powers for a short period when it is proved to be demonstrably incompetent, such a body cannot easily be relegated to a subordinate position on the mere will and pleasure of the Government. The section reconciles the public good and the committee's rights and prestige, by conditioning the exercise of the power of the Government to depend upon the objective determination of the jurisdictional fact. Whatever ambiguity there may be in the section, it is dispelled by the third condition, namely, that which enjoins on the Government to give reasons. What is the object of the Legislature in imposing the said condition, if the matter is left to the subjective satisfaction of the Government ? The concept of subjective satisfaction of the Government does not involve any attempt to satisfy the mind or appeal to the good sense of another. The working of the mind need not be disclosed and the validity of the section need not depend upon any objective standard. The condition to pass a speaking order is destructive of any idea of invulnerability, for the said condition implies that the order should satisfy the mind of a reasonable man.

It is contended that a comparative study of the provisions of sections 53-A and 57 shows that the Government has to give notice before taking action under section 57, whereas no such duty is cast upon it under section 53-A and that would indicate the intention of the Legislature that the Government is not expected to act judicially under section 53-A. There is some force in this contention, but that is not decisive of the question to be decided in this case. If the provisions of a particular section necessarily imply a duty to act judicially, the mere fact that there is no express provision to issue a notice to the affected parties cannot convert a judicial act into an administrative one. Nor an Executive Officer is only for a temporary period indicate the administrative character of the act. The finding of incompetency carries a stigma with it and what is more derogatory to the reputation of the members of the committee than to be stigmatized as incompetent to discharge their statutory duties ? Would it be reasonable to assume that public men in a democratic country are allowed to be condemned unheard ? What is material is not the period of the tenure of the executive officer, but the ground for the appointment of the officer, namely, the incompetency of the committee. Shortly stated, the position is this : The committee is comprised of elected representatives of the respective constituencies; they are presumably competent men in whom the electorate has confidence. The Government has to arrive at the finding of their incompetency on the basis of objective facts to be ascertained and to give reasons for its finding. It is against all canons of natural justice that a tribunal should arrive at a finding of far-reaching consequence without giving an opportunity to explain to the persons who would be affected by such a finding. For the aforesaid reasons, I have no doubt that the section imposes a duty on the Government to act judicially in ascertaining the objective and jurisdictional fact, namely, whether the committee is incompetent. It is a necessary condition of such a duty to give an opportunity to the committee to explain the grave charges levelled against it. Admittedly, no such opportunity was given to the

committee and I cannot agree with the learned Advocate-General that the inquiry by the Deputy Collector at an earlier stage for a different purpose had in effect given an opportunity to the committee. It is not known what were the charges for which that inquiry was held. The record discloses that the inquiry was held by a subordinate officer - there is nothing on record to show that the Government authorised either the Collector or the Deputy Collector to make the inquiry in connection with the fast of Dhurmal Daga. In my view, the inquiry cannot presumably take the place of reasonable opportunity to be given by the Government for the proposed action under section 53-A of the Act. In the result, it follows that the Order of the High Court should be set aside and that of the Government appointing the Executive Officer quashed. I do it accordingly.

ORDER PER CURIAM :

This appeal is dismissed with costs, in this court and the courts below.

Appeal dismissed.

</html