Mohd. Rashid Ahmad

Vs

State of U. P. and Another

Ashfaq Hussain

Vs

State of U. P. and Another

Civil Appeal Nos. 1724 of 1969 and 1732 of 1971

(A. P. Sen, V. D. Tulzapurkar, R. S. Sarkaria JJ)

15.12.1978

JUDGMENT

SEN, J. –

1. These two appeals by special leave, directed against the judgment of the Allahabad High Court dated May 12, 1969, raise common questions and therefore, are disposed of by this common judgment.

2. By separate notifications issued under Section 3 of the U.P. Nagar Mahapalika Adhiniyam, 1959, the State Government constituted Municipal Corporations in five cities in the State, namely Kanpur, Agra, Varanasi, Allahabad and Lucknow w.e.f. February 1, 1960.

3. The appellant in the present appeal, Mohd. Rashid Ahmad was a permanent Assistant Engineer in the Development Board, Kanpur, constituted under the Cawnpore Urban Area Development Act, 1945. In 1953, an Administrator was appointed of both the Development Board and the Municipal Board, Kanpur, constituted under the U.P. Municipalities Act, 1916, under the U.P. Local Bodies (Appointment of Administrators) Act, 1953. The two local bodies, however, continued to have separate legal existence and their officers and servants continued as the employees of the respective bodies. The appellant Mohd. Rashid Ahmad was appointed as Offg. Executive Engineer by the Administrator of the Municipal Corporation, Kanpur, for a period of one year on September 12, 1960. He has since then continued to function in the same capacity, on a purely temporary arrangement under Section 577(ee), that is, for so long as no substantive appointment could be made to that post under Section 106. The Uttar Pradesh Public Service Commission, however, considered that he was not fit for appointment for the post of the Executive Engineer, Municipal Corporation, Kanpur.

4. The appellant in the connected appeal, Ashfaq Hussain was a permanent Sanitary Inspector in the Municipal Board, Kanpur. After the constitution of the Municipal Corporation, Kanpur, he continued to hold that post under Section 577(e). On July 24, 1967 he was transferred in the same capacity to the Municipal Corporation, Allahabad, where he was promoted temporarily as an Assistant Engineer. He, therefore, stood provisionally absorbed under Section 577(e).

5. Both the U.P. Nagar Mahapalika Adhiniyam, 1959, and the U.P. Municipalities Act, 1916 empowered these local bodies to appoint their employees subject to certain regulatory control by the State Government. By Section 12 of the U.P. Nagar Mahapalika (Sanshodhan) Adhiniyam, 1964, the State Legislature added Section 112A to the U.P. Nagar Mahapalika Adhiniyam, 1959. Similarly, by Section 37 of the U.P. Municipalities (Amendment) Act, 1964, Section 69B was added to the U.P. Municipalities Act, 1916, which was identical in terms to Section 112A. Section 112A of the Adhiniyam empowered the State Government to provide by rules for the creation of one or more services to be known as Centralised Palika Services, as it may deem fir and proper, common to all the Municipal Corporations and Municipal Boards, and prescribe the method for recruitment and conditions of service of persons appointed to any such service.

6. Section 112A of the U.P. Nagar Mahapalika Adhiniyam, 1959, enacts :

> 112A. Centralization of services. - (1) Notwithstanding anything contained in Sections 106 to 110, the State Government may at any time by rules provide for the creation of one or more services of such officers and servants as the State Government may deem fit, common to the Mahapalikas or to the Mahapalikas and Municipal Boards, of the State, and prescribe the method of recruitment and conditions of service of persons appointed to any such service.
>
> (2) When any such service is created, officers and servants serving on the posts included in the service, as well as officers and servants performing the duties and functions of those posts under sub-clause (1) of clause (ee) of Section 577 may, if found suitable, be absorbed in the service, provisionally or finally, and the services of others shall stand determined, in the prescribed manner.
>
> (3) Without prejudice to the generality of the provisions of sub-sections (1) and (2), such rules may also provide for consultation with the State Public Service Commission in respect of any of the matters referred to in the said sub-sections.

7. The State Government in exercise of the powers conferred by Section 112A of the U.P. Nagar Mahapalika Adhiniyam, 1959 and Section 69B of the U.P. Municipalities Act, 1916, made the U.P. Palika (Centralised) Service Rules, 1966, which came into force on July 9, 1966. Rule 3 created 19 Palika (Centralised) Services, covering 76 posts, common to all the Municipal Corporations and Municipal Boards. The rules provided for regulating the recruitment and conditions of service of the persons appointed to these newly created services. Rule 6 dealt with recruitment to the Centralised Palika Services. Due to inadvertence Rule 6 was not drafted in conformity with the requirements of Section 112A and Section 69B. That was because clause (1) provided for automatic final absorption of officers and servants provisionally absorbed under Section 577(e), contrary to the provisions of Section 112A of the Adhiniyam and Section 69B of the Municipalities Act.

8. On September 5, 1966, the Governor promulgated the U.P. Local Self-Government (Amendment) Ordinance, 1966, which was replaced by the U.P. Local Self-Government Laws (Amendment) Act, 1966. Section 19 of the Act reads as follows :

> 19. Deeming, validation, etc. - The Uttar Pradesh Palika (Centralised) Services Rules, 1966, shall be deemed to have been made under the provisions of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959, and the U.P. Municipalities Act, 1961, as if the amendments made by this Act to the said Acts were always in force and be

> deemed to be and always to have been valid and shall, subject to any amendments made thereto continue in force, and notwithstanding anything contained in the said Acts, the power to make amendment to the said rules may, during the period ending on September 4, 1967, be exercised retrospectively.

9. It, in effect, amended Section 112A of the Adhiniyam and Section 69B of the Municipalities Act. Section 4 of the Act provided that the U.P. Palika (Centralised) Services Rules, 1966 shall be deemed to be valid. The Act further provided that the amendments made to the rules may be given retrospective effect. The power of making retrospective rules was, however, limited to a period of one year from the commencement of the ordinance.

10. On October 10, 1966, the State Government passed the U.P. Palika (Centralised) Services (Amendment) Rules, 1966. These rules repealed and re-enacted Rule 6 with retrospective effect from July 9, 1966. Under clause (ii) of Rule 6(2) the State Government had to pass a final order of absorption, in respect of particular officers and servants of the erstwhile Municipal Boards, if they were found suitable, in accordance with Section 112A of the Adhiniyam. Clause (iii) provided that such orders had to be made on or before March 31, 1967. By clause (iv) if no orders of final absorption were passed till then, the officer or servant concerned was to be deemed to have been finally absorbed. The State Government was, however, constrained to make the U.P. Palika (Centralised) Services (Amendment) Rules, 1967 on March 30, 1967 and amend clause (iii) of Rule 6(2), as the work of final absorption could not be completed by March 31, 1967. The date of passing the necessary orders in this behalf was sought to be shifted to June 30, 1967. A new clause (iii) was accordingly substituted by this amendment effected on March 30, 1967. But, unfortunately the amendment was made to come into effect from April 1, 1967. This created a serious legal infirmity, as on the expiry of March 31, 1967, the legal fiction embodied in clause (iv) was brought into play.

11. Thereafter, the State Government made the last amendment to the rules by the U.P. Palika (Centralised) Services (Amendment) Rules, 1967 on June 26, 1967, in supersession of the U.P. Palika (Centralised) Services (Amendment) Rules, 1967 made on March 30, 1967. This amendment introduced a new clause (iii) to Rule 6(2), in place of the existing clause (iii) of U.P. Palika (Centralised) Services Rules, 1966, by which the date of passing the order was shifted from March 31, 1967 to August 31, 1967, with retrospective effect from July 9, 1966.

12. Having provided for the creation of Centralised Palika Services, the State Government had, in the meanwhile, laid down the procedure by which an officer or servant provisionally absorbed under Section 577(e) of temporarily appointed under Section 577(ee), were to be finally absorbed, if found suitable, under Section 112A. By its three circulars dated January 11, 1967, January 31, 1967 and February 23, 1967, addressed to the Divisional Commissioners, it intimated the constitution of Divisional Committees for making necessary recommendations to the State Government in this behalf. The first circular embodied the Government policy in these terms :

> Government desire that all officers and servants, whose services are proposed to be determined on grounds of unsuitability may be given an opportunity of personal interview by the Committee.

After such interviews, the Committees were to finalise their recommendations and furnish the same to the Government. In view of the limited time available to the Government, for finalising action in the matter, it was desired that the first meeting of the Committees should be held in the last week of January or in the first week of February, 1967. The Divisional Commissioners were required to

intimate the date to the Secretary to the Government, Local Self-Government Department, so that all necessary arrangements could be made to forward the character rolls and service records of the Centralised Services officers and servants.

13. By the second circular, the State Government reconstituted the Committees, so far as the five Municipal Corporations were concerned, and directed that these Divisional Committees were to make selections for all Centralised Services except those whose starting salary was Rs. 500 and above. Selection for the posts in the latter category were to be made by the State Selection Committee. Thus, the Government divided the officers and servants into two categories, and their cases were to be dealt with at two different levels for purposes of final absorption under Rule 6(2)(iii) read with Section 112A.

14. By its third circular, the State Government without disturbing the earlier categorisation of officers and servants into two classes, laid down certain broad criteria with a view to secure a reasonable uniformity in the standards to be applied by the Divisional Committees in making the selection. It may, however, be observed that the Government reiterated its declared policy that all such officers and servants, whose services were proposed to be determined on the ground of unsuitability be given an opportunity of personal interview by the Committees stating :

> . . . the committee should interview the official concerned to judge his suitability or otherwise for absorption in the centralised services.

. . . When it is proposed to declare an official to be unsuitable for absorption on the basis of adverse entries, the divisional committee should afford an opportunity to the official concerned to appear before it and clear up his position.

It was also desired that only those adverse remarks may be considered against the official concerned, which were found to have been duly communicated to him.

15. It must at once be stated that though the State Government had by its circular dated January 31, 1967 entrusted the task of determining the suitability or otherwise of officers and servants holding Centralised Services posts drawing less than Rs. 500, to Divisional Committees, and reserved such function in respect of officers and servants drawing Rs. 500 or more, to the State Selection Committee, and by its subsequent circular dated February 23, 1967 maintained the classification of such officers and servants for purposes of judging their suitability for absorption in the Centralised Palika Services, the final orders of absorption in each case under Section 112A were passed by the State Government. In the former class, the recommendations of Divisional Committees were scrutinised by the State Government in the Local Self-Government Department, in the light of the service records of the officials concerned, and the necessary orders thereon were passed. In respect of the latter category, the Secretary to the Government, Local Self-Government Department prepared a note and put it up to the Minister for passing the final orders.

16. It is also worthy of mention that the delay in completing the work of final absorption by the State Government was mainly due to three factors, namely : (1) due to shortness of the time available at its disposal, (2) the number of officers and servants holding the Centralised Services posts under Section 577(e) and (ee) was quite large, and (3) because of delay on the part of the erstwhile Municipal Boards to forward the character rolls and service records of the officers and servants concerned. On account of this, the task of absorption under Section 112A could not be completed before March 31, 1967, i.e., the date originally fixed by clause (iii) of Rule 6(2) of the

U.P. Palika (Centralised) Services Rules, 1966. The period was, therefore, subsequently extended from March 31, 1967 to June 30, 1967, and thereafter from March 31, 1967 to August 31, 1967.

17. Eventually, the State Government in exercise of its powers under clause (iii) of Rule 6(2) of the U.P. Palika (Centralised) Services Rules, 1966 determined the services of the appellant Mohd. Rashid Ahmad on July 18, 1967 and that of Ashfaq Hussain on August 27, 1967, on the ground that they were not found fit for absorption under Section 112A of the Adhiniyam.

18. The two appellants and several other employees of the erstwhile Municipal Boards and District Boards challenged the validity of the various orders passed by the State Government terminating their services before the Allahabad High Court on several grounds. Amongst others, they challenged the validity of Rule 6(2)(iii), framed under Section 112A of the Adhiniyam, on the ground that it was ultra vires the State Government as it brings about extinction of the relationship of employer and employees between them and the erstwhile Municipal Boards. It was also urged that the impugned orders were violative of Articles 14 and 16 of the Constitution because the classification made by the State Government by its circular dated January 31, 1967 entrusting the task of determination of the suitability or otherwise of officers and servants holding Centralised Services posts drawing less than Rs. 500 to Divisional Committees, which were enjoined to give them the right of a personal hearing to have their say in the matter of final absorption, and entrusting of such function in respect of officers and servants drawing Rs. 500 and above to the State Selection Committee without a corresponding right of hearing, was without any rational basis. It was also urged that the impugned orders were vitiated being in breach of the rules of natural justice. A Division Bench of the Allahabad High Court, however, rejected all these contentions.

19. In view of the language of Entry 5, List II of the Seventh Schedule, the objection regarding the validity of Rule 6(2)(iii) was rightly not pressed before us. On the view that we take of the various circulars issued by the State Government laying down the procedure for dealing with the question of suitability or otherwise of officers and servants of the erstwhile Municipal Boards for absorption in the Centralised Services under Rule 6(2)(iii) the contention based on Articles 14 and 16 of the Constitution also does not arise.

20. Learned counsel appearing for the appellants assailed the impugned orders of the State Government on two grounds, namely :

> 1. By reason of the legal fiction contained in clause (iii) of Rule 6(2), the services of the appellants stood finally absorbed in the U.P. Palika Centralised Services on March 31, 1967 due to the failure of the State Government to pass the necessary orders in that behalf before that date. Under the legal fiction contained in clause (iv) thereof, and the subsequent amendment made by the U.P. Palika (Centralised) Service (Amendment) Rules, 1967 which came into force on April 1, 1967, the vested right acquired by them to hold their respective posts could not be affected to their detriment; and
>
> 2. The orders of termination of services passed by the State Government were vitiated due to its failure to give to the appellants an opportunity of hearing.

21. With respect to the first contention it is urged that the appellants stood provisionally absorbed under Section 577(e) read with clause (i) of Rule 6(2). It is said that they would be deemed to have been finally absorbed on March 31, 1967, if no orders contemplated by clause (iii) thereof were

made with respect to them on or before that date. The argument is that the two subsequent amendments made on March 30, 1967 and June 26, 1967, by which the State Government purported to shift the date first from March 31, 1967 to June 30, 1967 and then from March 31, 1967 to August 31, 1967, were legally ineffective, as the first amendment made to clause (iii) of Rule 6(2) came into force on April 1, 1967 by which date the appellants already stood finally absorbed. There was, therefore, no power in the State Government to re-open the question of final absorption under Section 112A(2) of the Adhiniyam.

21-A. There is a fallacy in the argument. The validity of the two amendments made by the State Government in Rule 6(2) from time to time cannot be questioned. While it is true that a rule cannot be made with retrospective effect, the legislature by enacting Section 19 of the U.P. Local Self-Government (Amendment) Act, 1966, expressly conferred powers on the State Government to make retrospective rules. Indeed, the validity of the amendments was not questioned before us.

22. Even if the first amendment of March 30, 1967 was ineffective because it was brought into force from April 1, 1967, the second amendment of June 26, 1967, which introduced a new clause (iii) to Rule 6(2) with retrospective effect from July 9, 1966, was fully effective. It shifted the date for passing of the order of final absorption from March 31, 1967 to August 31, 1967. Till the expiry of the date now fixed, i.e. August 31, 1967, the legal fiction contained in clause (iv) of Rule 6(2) would not be brought into play. That is the inevitable legal consequence of the subsequent amendment made on June 26, 1967.

23. It would be clear that clause (iii) of Rule 6(2), as amended on October 10, 1966, gave power to the State Government to pass an order of absorption under Section 112A of the Adhiniyam, of an officer or servant of the Municipal Corporations provisionally absorbed under Section 577(e) if found suitable, on or before March 31, 1967. If there was a failure on the part of the State Government to pass such an order in respect of a particular officer or servant by that date, it would, unless there was a provision to the contrary, bring into play the legal fiction contained therein, and he would, by its force, be deemed to be finally absorbed in the post held by him.

24. The State Government in their return have candidly stated that due to inadvertence, the subsequent amendment effected on March 30, 1967, was made to take effect on April 1, 1967, by which date the legal fiction under clause (iv) had already taken effect. It, therefore, became necessary to correct the serious legal infirmity. It was for that reason that the subsequent amendment was made on June 26, 1967 by which a new clause (iii) was substituted in place of the existing clause (iii) to Rule 6(2). The amendment substituted new clause (iii) to Rule 6(2) with effect from July 9, 1966 i.e., from the very inception.

25. It was legitimately within the powers of the State Government to give to the amended rule a retrospective effect. As a result of the amendment, the original clause (iii) was substituted by a new clause (iii) by which the date for passing an order of absorption by the State Government was shifted to August 31, 1967, which again introduced another legal fiction. It provided that if there was a failure on the part of the State Government to pass an order of absorption by August 31, 1967, the officer or servant concerned shall be deemed to be finally absorbed. The legal fiction was brought into force with effect from July 9, 1966.

26. It is needless for us to stress that both the legal fictions, one created by the original clause (iii) fixing the fictional date of absorption as March 31, 1967 and the subsequent legal fiction providing for the fictional date of absorption as August 31, 1967, could not co-exist. With the subsequent

amendment effected on June 26, 1967, the earlier legal fiction was never brought into play, as by reason of the amendment, the State Government had the power to pass the necessary orders till August 31, 1967. The introduction of the second fictional date i.e., August 31, 1967, was to "eclipse" the earlier fictional date of absorption.

27. Perhaps no rule of construction is more firmly established than this - that retrospective operation is not to be given to a statute so as to impair an existing right or obligation other than as regards the matter of procedure, unless that effect cannot be avoided without doing violence to the languages of the enactment. If the enactment is expressed in a language which is fairly capable of either interpretation, it ought to be construed as prospective only. But where, as here, it is expressly stated that an enactment shall be retrospective, the courts will give it such an operation. It is obviously competent for the legislature in its wisdom, to make the provisions of an Act of Parliament retrospective. That is precisely the case here. In Quinn v. Prairiedale ((1958) 25 WWR 241) where a subsequent enactment provided that the relevant section should be deemed never to have been contained in the earlier statute, it was held to be sufficient to rebut the presumption against retrospectivity. (Craies on Statute Law, 6th Ed., p. 390, and Maxwell on Interpretation of Statutes, 12th Ed., p. 216)

28. In State Punjab v. Mohar Singh ((1955) 1 SCR 893 : AIR 1955 SC 84) and in Indira Sohanlal v. Custodian of Evacuee Property, Delhi ((1955) 2 SCR 1117 : AIR 1956 SC 77) this Court had to consider the effect of repeal of an enactment followed by re-enactment in the light of Section 6 of the General Clauses Act, 1897. The line of enquiry, as observed in Mohar Singh's case, would be not whether the new Act expressly keeps alive old rights and liabilities, but whether it 'manifests an intention to destroy them'. It was held that Section 6 of the General Clauses Act was not entirely ruled out when there was a repeal of the enactment followed by a fresh legislation unless the new legislation manifested an intention to the contrary. Such incompatibility had to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause was, by itself, not conclusive.

29. In the present case, however, there can be no doubt that by the introduction of the new fictional date of absorption as August 31, 1967, there was a clear intention to destroy the earlier fictional date of March 31, 1967. It would clearly be incompatible, on consideration of subsequent amendment, for both the provisions, i.e., the original clause (iii) fixing March 31, 1967 and the new clause (iii) fixing August 31, 1967 to be the fictional date, to operate simultaneously. The effect of introduction of the new fictional data was to annihilate the earlier fictional date. The appellants, therefore, did not stand automatically absorbed by the failure of the State Government to pass the necessary orders by March 31, 1967, as its powers stood extended by the subsequent amendment to August 31, 1967. Before that date expired, the State Government in both these cases, passed the necessary orders terminating the services of the appellants as they were not found fit for absorption under Section 112A(2) of the Act. The first contention, therefore, fails.

30. That takes us to the second contention, namely, whether the impugned orders are vitiated on account of the failure of the State Government to afford to the appellants an opportunity of a hearing.

31. With the establishment of Municipal Corporations in five cities in the State, namely, Kanpur, Agra, Varanasi, Allahabad and Lucknow, w.e.f. February 1, 1960, the Municipal Boards, Improvement Trusts, Development Boards etc. in these cities, ceased to exist with the repeal, by Section 581 of the U.P. Nagar Mahapalika Adhiniyam, 1959, of the U.P. Municipalities Act, 1916,

the U.P. Town Improvement Act, 1919, the U.P. District Boards Act, 1922, the Cawnpore Urban Area Development Act, 1945, the U.P. Local Bodies (Appointment of Administrators) Act, 1953, with effect from that date in relation to these cities. In consequence thereof, the existing posts held by the officers and servants of these bodies stood abolished. Consequent upon the abolition of the posts, all officers and servants of the erstwhile local bodies lost their right to hold their posts.

32. The Adhiniyam, however, provided by Section 577(e), notwithstanding anything contained in Sections 106 and 107, for the provisional absorption of these officers and servants in the Municipal Corporations, till they were finally absorbed in any Centralised Services created by rules made under Section 112A, or their services did not stand determined in accordance with such rules. By Section 577(ee) the Administrator was authorised to make temporary appointments of officers and servants against the posts mentioned in Section 106 till substantive appointments were not made thereto as provided in the Adhiniyam, and they were to be treated as on deputation with the Municipal Corporations.

33. This was, no doubt, an ad interim arrangement until the State Government by rules framed under Section 112A(1) provided for the creation of the Centralised Palika Services, common to all the Municipal Corporations and Municipal Boards, and made final absorption of officers and servants serving on the posts included in such Centralised Services under Section 112A(2). In the very nature of things, the officers and servants provisionally absorbed under Section 577(e) or temporarily appointed under Section 577(ee) could not be automatically absorbed in the newly created Centralised Services. There had to be a screening of all such officers and servants with a view to determine their suitability or otherwise for final absorption in Centralised Services. It was particularly necessary to weed out the deadwood to bring about an overall improvement in the municipal administration in these cities.

34. The very nature of the functions entrusted to the State Government under Rule 6(2)(iii) of the U.P. Palika (Centralised) Services Rules, 1966 for purposes of final absorption under Section 112A of the Adhiniyam, implies a duty to act in a quasi-judicial manner. It cannot be denied that an officer or servant provisionally absorbed under Section 577(e) or temporarily appointed under Section 577(ee) had the right to be considered for purposes of final absorption. Such officers or servants, particularly those in permanent employment who had put in 20 to 25 years of service in the erstwhile Municipal Boards or Development Boards were vitally affected in the matter of final absorption.

35. By Section 112A of the Act, the legislature created a machinery for determining the suitability or otherwise of such officers or servants for absorption in the newly created Centralised Services. The entrustment of this work to the State Government under Section 112A, imposed a corresponding duty or obligation on the Government to hear the officers and servants concerned. In view of this, it is rightly urged that the impugned orders, unless they conform to the rules of natural justice, were liable to be struck down as invalid.

36. It is a fundamental rule of law that no decision must be taken which will affect the rights of any person without first giving him an opportunity of putting forward his case. In Local Government Board v. Arlidge (LR 1915 AC 120) Lord Haldane, L.C. tried to reconcile the procedure of a Government department with the legal standards of natural justice. In Ridge v. Baldwin (LR 1964 AC 40) Lord Reid stated :

It is not suggested that he holds the position of a judge or that the appellant is entitled to insist on

the forms used in ordinary judicial procedure, but he had his duty of giving to any person against whom the complaint is made a fair opportunity to make any relevant statement which he may desire to bring forward and a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice.

37. These decisions rest on the classical formulation of the "duty to hear" evolved by Lord Loreburn in Board of Education v. Rice (LR 1911 AC 179). The main requirements of a fair hearing are two : (1) a person must know the case he is to meet, and (2) he must have an adequate opportunity of meeting that case.

38. There has, ever since the judgment of Lord Reid in Ridge v. Baldwin (supra), been considerable fluctuation of judicial opinion in England as to the degree of strictness with which the rules of natural justice should be extended, and there is growing awareness of the problems created by the extended application of natural justice, or the duty to act fairly, which tends to sacrifice the administrative efficiency and despatch, or frustrates the object of the law in question. Since this Court has held Lord Reid's judgment in Ridge v. Baldwin would be of assistance in deciding questions relating to natural justice, there is always "the duty to act judicially". There is, therefore, the insistence upon the requirement of a "fair hearing".

39. In A. K. Kraipak v. Union of India ((1969) 2 SCC 262 : AIR 1970 SC 150 : (1970) 1 SCR 457) there was a reiteration of the principles, albeit in a different form, laid down by this Court in State of Orissa v. Dr. (Miss) Binapani Dei ((1967) 2 SCR 4625 : AIR 1967 SC 1269 : (1967) 2 LLJ 266) and by the House of Lords in Padfield v. Minister of Agriculture, Fisheries & Food (LR (1968) AC 997 : (1968) 1 All ER 694) that the executive should not arbitrarily or capriciously act and that the myth of executive discretion is no longer there. Indeed, in Kraipak's case (supra) it was observed :

> The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated . . . Under our Constitution the rule of law pervades over the entire field of administration. Every organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedure which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power.

This Court pertinently drew attention to the basic concept of natural justice vis-a-vis administrative and quasi-judicial enquiries, and stated that any decision, whether executive, administrative or judicial or quasi-judicial, is no decision if it cannot be "just", i.e. an impartial and objective assessment of all the pros and cons of a case, after due hearing of the parties concerned.

40. In the light of these principles, we have to see whether the State Government acted in breach of the rules of natural justice in passing the impugned orders.

41. It is, however, strenuously urged on behalf of the State Government that on a true construction of the two circulars in question, while it was incumbent on the Divisional Committees to give all officers and servants whose services were proposed to be determined on the ground of unsuitability, an opportunity of a personal hearing, no such duty was cast on the State Government. We are unable to agree with this line of reasoning. The first circular dated January 11, 1967 was all pervasive, and it covered all categories of officers and servants either provisionally absorbed under Section 577(e) or temporarily appointed under Section 577(ee), irrespective of their salary. The Government policy was made quite clear in that circular, which we have quoted earlier.

42. At this stage, the functions of the Divisional Committees were to be purely recommendatory in nature. The Committees had to make their selection of officers and servants suitable for absorption after an interview of all such officers and servants, and forward their recommendations to the Government, for finalising action in the matter of final absorption under Section 112A. The subsequent circular dated January 31, 1967, making a categorisation of the officers and servants concerned, into two groups, reserving the power of selection for final absorption to the State Selection Committees in the case of all Centralised Services whose starting salary was Rs. 500 and more, and entrusting the function to the Divisional Committees in case of those whose starting salary was less than Rs. 500, was still subject to the Government policy already laid down. It is, therefore, not right to suggest that the State Government was absolved of the "duty to hear" the officers and servants of the erstwhile Municipal Boars and other local authorities drawing Rs. 500 and above.

43. All the officers and servants of the erstwhile Municipal Boards and other local authorities provisionally absorbed under Section 577(e) or temporarily appointed under Section 577(ee) were, therefore, entitled to be heard in the matter of their final absorption under Section 112A read with Rule 6(2)(iii), irrespective of their salary.

44. The requirements of a fair hearing are fulfilled in the case of officers and servants of the erstwhile Municipal Boards and other local authorities drawing a salary of less than Rs. 500 but not in the case of those drawing Rs. 500 or more.

45. It is accepted before us that the appellant Ashfaq Hussain was called for an interview by the Divisional Committee. The State Government in its return has placed material showing that he had a uniformly bad record and there were adverse entries in his character rolls for several years. It is not disputed that Ashfaq Hussain had been called for an interview by the Divisional Committee. We are not impressed by the submission that the adverse remarks were not put to him when he appeared before the Divisional Committee. It is clear from the two circulars of the State Government dated January 11, 1967 and February 23, 1967 that in all cases in which the services of an officer or servant were to be determined on the ground of his unsuitability, they were to be given an opportunity of personal interview by the Committee. The whole purpose of the personal interview was that when it was proposed to declare such an official unsuitable for absorption, the Committee had to afford him an opportunity to appear before it and clear up his position. It is reasonable to presume that when the appellant, Ashfaq Hussain, was called for that purpose, the adverse remarks in his character rolls must have been put to him. On an overall view of the record of service of Ashfaq Hussain, the Divisional Committee was not wrong in recommending to the Government to terminate his services, and the Government was within its rights in passing the impugned order of termination in regard to him.

46. In the case of the appellant Mohd. Rashid Ahmad, it however appears from the return filed by

the State Government that no such opportunity was afforded to him before the State Government passed the impugned order dated July 18, 1967 terminating his services. It is evident, no doubt, from the return filed by the State Government that the services record of the appellant was before the Government, on the basis whereof it was decided that he was unsuitable for being finally absorbed and also that the Secretary for Local Self-Government in his note of July 10, 1967 recommended that he was not suitable for final absorption in the Centralised Services, but it is clear that the Minister for Local Self-Government before passing the impugned order of termination dated July 11, 1967 did not give to the appellant an opportunity of a hearing. The order of termination of his services passed by the State Government, therefore, suffers from a serious legal infirmity.

47. It was said, however, on behalf of the State Government that under Section 107(1) of the Adhiniyam no appointment to a post carrying an initial salary of not less than Rs. 500 per mensem, could be made except after consultation with the Public Service Commission, and that the Commission did not find the appellant fit for appointment as Executive Engineer, Municipal Corporation, Kanpur. It was also pointed out that under Section 108 the appellant could not hold the post beyond the period of one year. It was, therefore, urged that the State Government was justified in terminating the services of the appellant as he could not be finally absorbed in the post of an Executive Engineer in the Centralised Services. It was said that the post had to be advertised for filling up the vacancy as required under Section 107(1) of the Adhiniyam. We are afraid the contention cannot be accepted.

48. Under Section 112A(1) of the Adhiniyam, the State Government having, by U.P. Palika (Centralised) Services Rules, 1966, constituted the Centralised Palika Services, the appellant Mohd. Rashid Ahmad, who was performing the duties and functions of the post of Executive Engineer under Section 577(ee), was entitled to be considered, if found suitable, for absorption under Section 112A(2). Admittedly, the appellant was not heard in the matter of his final absorption. It is also not in dispute that the procedure laid down in the U.P. Palika (Centralised) Services Rules, 1966, was not followed. If the appellant was at all found fit for absorption, it was for the State Government next to decide the suitable post on which he could be absorbed. The method of recruitment provided by Rule 20 had to be followed. Evidently, this has not been done.

49. In view of the foregoing reasons, Civil Appeal 1724 of 1969 succeeds and is allowed, while Civil Appeal 1732 of 1971 fails and is dismissed. There shall be no order as to costs.

</html