S. L. Kapoor

Vs

Jagmohan and Others

Civil Appeal No. 1516 of 1980

(A. P. Sen, O Chinnappa Reddy, R. S. Sarkaria JJ)

18.09.1980

JUDGMENT

CHINNAPPA REDDY, J. –

1. In exercise of the powers conferred by Section 12 of the Punjab Municipal Act, 1911, as applicable to New Delhi, the Lt. Governor of the Union Territory of Delhi, by a Notification dated September 29, 1979, appointed nine non-official members and four ex-officio members to the New Delhi Municipal Committee to hold office for a period of one year with effect from October 4, 1979. However, well before the expiry of the term for which the members were appointed, on February 27, 1980, the Lt. Governor, in exercise of the powers conferred by Section 238(1) superseded the New Delhi Municipal Committee with immediate effect and appointed Shri P. N. Behl as the person who may exercise and perform all powers and duties of the New Delhi Municipal Committee until the said Committee was reconstituted.

2. The preamble to the order of supersession recited that the Committee was incompetent to perform and had made persistent default in the performance of the duties imposed on it under the law and had further abused its powers, resulting in wastage of Municipal funds. Four instances or grounds were mentioned. The first ground was that a clause for the payment of a mobilisation advance of rupees fifteen lakhs was included in the contract awarded to M/s. Tarapore & Co. for the construction of City Centre though such a clause did not find a place in the original contract with M/s. Mohinder Singh & Co. The contract we may mention here, had been awarded to M/s. Tarapore & Co. on the failure of M/s. Mohinder Singh & Co. to complete the work. It was alleged that the contract was awarded to Tarapore & Co., at an enhanced cost without the prior approval of the Lt. Governor. The inclusion of the clause relating to payment of mobilisation advance was also without the approval of the Lt. Governor. The second ground was that one B. K. Mittal was re-employed by the New Delhi Municipal Committee notwithstanding the advice of the Central Vigilance Commission that "major penalty proceedings" should be initiated against him. The third ground was that although the Central Vigilance Commissioner advised the removal from service of V. P. Sangal, the Municipal Committee resolved to impose the minor penalty of stoppage of a few increments. The fourth ground was that the Municipal Committee created a number of posts including that of Director of Horticulture and appointed Shri Sharma to that post in spite of the directive of the Lt. Governor not to create posts unless the staffing pattern was studied by the Administrative Reforms Department.

3. Two of the non-official members of the superseded New Delhi Municipal Committee, Shri S. L. Kapoor and another, filed civil writ petitions in the Delhi High Court to quash the order of supersession dated February 27, 1980. The writ petitions were heard by a Full Bench of five judges

and were dismissed on May 9, 1980. S. L. Kapoor has preferred this appeal after obtaining special leave of this Court under Article 136 of the Constitution.

4. Before the High Court, as before us, the principal submission of the learned counsel for the petitioner-appellant was that the order of supersession was passed in complete violation of the principles of natural justice and total disregard of fair play. It was pointed out that no notice to show cause against supersession was ever issued to the Committee, there was not the slightest hint until the order was made that there was any proposal to supersede the Committee and the Committee never had any opportunity either before or after the order of supersession was passed to offer their explanation against the allegations made in the order of supersession. The Full Bench upheld the claim of the petitioners that it was necessary to hear the Committee before an order under Section 238(1) of the Punjab Municipal Act was passed. But, held, the High Court, the Committee was made aware of the allegations and had been given opportunity to state its case or version in the case of at least three out of the four grounds and therefore, there was no failure to observe the principles of natural justice. Even otherwise, the High Court expressed the view that undisputed facts were there and they spoke for themselves and no purpose would have been served by giving formal notice to the Committee of the allegations and the proposal to take action to supersede the Committee since the result would have been the same. In the view of the High Court there was no prejudice to the Committee by the failure to observe natural justice. Shri Soli Sorabjee, learned counsel for the appellant, questioned the conclusion of the High Court that the Committee had the opportunity to offer their explanation in regard to the allegations on which the order of supersession was passed. He also canvassed the view that the failure to observe the principles of natural justice did not vitiate the order of supersession since the observance of natural justice would have, on the undisputed facts, led to the same result.

5. The learned Attorney-General who appeared for the Lt. Governor contended that Section 238(1) of the Punjab Municipal Act did not contemplate and did not require, as a matter of interpretation, that any opportunity should be given to the Committee before an order of supersession was passed. It was submitted that although much of the distinction between a judicial act and an administrative act had vanished, there was still a thin but discernible line between the two and that in the case of an administrative act some positive beneficial interest must be established before natural justice could be insisted upon. It was said that neither the Committee nor its members had any beneficial interest in the continuance of the Committee and therefore, the supersession of the Committee did not involve any civil consequences such as would give rise to a right to be heard. The argument was initially pushed further and it was submitted that, in any case, an individual member of the Committee, none of whose individual rights had been infringed, had no locus standi to maintain the petition. The submission about locus standi was however, withdrawn by the learned Attorney-General at a later stage and it is unnecessary for us to consider that question.

6. First, the question whether the rule of audi alteram partem is attracted : Section 11 of the Punjab Municipal Act provides that there shall be established for each municipality a committee having authority over the municipality consisting of such number of members as the State Government may fix in that behalf. Section 12 provides that every such committee shall consist of members appointed by the State Government either by name or by office, or of members selected from among inhabitants in accordance with rules made under the Act. Section 13 empowers the State Government to stipulate the term of office for which members of the committee shall be appointed and elected. Section 18 makes every committee a body corporate having perpetual succession and a common seal, with power to acquire and hold property to contract etc., etc. Every members of the committee is deemed to be a public servant by Section 19. Section 56 vests in the committee the

various kinds of property specified therein. Section 61 empowers the committee to impose varied taxes. There are innumerable other provisions of the Act which prescribe the powers and duties of the committee. Section 16 empowers the State Government to remove any member of the committee if he comes to suffer any of the specified disqualifications but only after the State Government communicates to the member concerned the reasons for his proposed removal and gives him an opportunity of tendering an explanation in writing. Section 232 empowers the Commissioner or Deputy Commissioner to suspend the execution of any resolution or order of the committee or prohibit the doing of any which is about to be done or is being done in pursuance of or under the cover of the Act or in pursuance of any sanction or permission granted by the committee if in his opinion the resolution, order or act is in excess of the powers conferred by law or contrary to the public interest or likely to cause waste or damage to municipal funds or property. Section 233 authorises the Deputy Commissioner, in case of emergency to provide for the execution of any work or the doing of any act if the immediate execution of the work or the doing of the act is necessary for the service or the safety of the public. Section 234 enables the Commissioner to provide for the performance of any duty to the committee if the committee makes default in performing such duty after being required to perform it. Section 236 empowers the State Government to require that the proceedings of the committee shall be in conformity with law and vests in the government necessary powers to annual or modify any proceedings which it may consider not to be in conformity with law. Section 238 is what we are directly concerned with and it reads as follows :

> 238. (1) Should a committee be incompetent to perform or persistently make default in the performance of, the duties imposed on it by or under this or any other Act, or exceed or abuse its powers, the State Government may by notification, in which the reasons for so doing shall be stated, declare the committee to be superseded.
>
> (2) When a committee is so superseded, the following consequences shall ensue :
>
> (a) all members of the committee shall, from the date of the notification, vacate their seats;
>
> (b) all powers and duties of the committee may, until the committee is reconstituted, be exercised and performed by such persons as the State Government may appoint in that behalf;
>
> (c) all property vested in the committee shall, until the committee is reconstituted, vest in the State Government;
>
> (3) The State Government may, if it shall think fit, at any time constitute another committee in the place of any committee superseded under this section.

7. The old distinction between a judicial act and an administrative act has withered away and we have been liberated from the psittacine incantation of "administrative action". Now, from the time of the decision of this Court in State of Orissa v. Dr. (Miss) Binapani Devi ((1967) 2 SCR 625 : AIR 1967 SC 1269 : (1967) 2 LLJ 266), "even an administrative order which involves civil consequences ... must be made consistently with the rules of natural justice". What are civil consequences ? The question was posed and answered by this Court in Mohinder Singh Gill v. Chief Election Commissioner, New Delhi ((1978) 2 SCR 272, 308-309; (1978) 1 SCC 405, 440, 441), Krishna Iyer, J., speaking for the Constitution Bench said (at pp. 308-309) : (SCC p. 440, para 66)

But what is a civil consequence, let us ask ourselves, by passing verbal booby-traps ? "Civil consequences" undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence.

The learned Judge then proceeded to quote from BLACK'S LEGAL DICTIONARY and to consider the interest of a candidate at a parliamentary election. He finally said : (SCC p. 441, para 66)

The appellant has a right to have the election conducted not according to humour or hubris but according to law and justice. And so natural justice cannot be stumped out on this score. In the region of public law locus standi and person aggrieved, right and interest have a broader import.

8. In Schmidt v. Secretary of State for Home Affairs ((1969) 2 Ch D 149), Lord Denning, M.R., observed :

> The speeches in Ridge v. Baldwin (1964 AC 40), show that an administrative body may, in a proper case, be bound to give a person who is affected by their decision an opportunity of making representations. It all depends on whether he has some right or interest or, I would add, some legitimate expectation, of which it would not be fair to deprive him.

It was held in that case that a foreign alien had no right to enter the country except by leave, but, if he was given leave to come for a limited period and his permit was sought to be revoked before the expiry of the time-limit, he ought to be given an opportunity of making representation, for he had a legitimate expectation of being allowed to stay for the permitted time.

9. In Alfred Thangarajah Durayappah v. W. J. Fernando ((1967) 2 AC 337), the Municipal Council of Jaffna was dissolved and superseded by the Governor-General on the ground that it appeared to him that the Council was not competent to perform the duties imposed upon it. The mayor sought to question the dissolution and supersession of the Council in the Supreme Court of Ceylon, on the ground that there was a failure to observe the principles of natural justice. One of the questions which arose for consideration was whether, as a matter of interpretation, natural justice was not excluded from action under Section 227 of the Municipal Ordinance under which provision the dissolution and supersession had been made. The argument was that words such as "where it appears to ..." or "if it appears to the satisfaction of . . ." or "if the . . . considers it expedient that . . ." or "if the . . . is satisfied that . . ." stood by themselves without other words or circumstances or qualifications, a duty to act judicially was excluded, and so, was natural justice. The argument was accepted by the Supreme Court of Ceylon but the Privy Council disagreed with the approach. They observed that there were three matters which should always be borne in mind when considering whether the principle audi alteram partem should be applied or not. The three matters were :

> First, what is the nature of the property, the office held, status enjoyed or services to be performed by the complainant of injustice. Secondly, in what circumstances or upon what occasions is the person claiming to be entitled to exercise the measure of control entitled to intervene. Thirdly, when a right to intervene is proved, what sanctions in fact is the latter entitled to impose upon the other. It is only upon a consideration of all these matters that the question of the application of the principle can properly be determined.

The Privy Council then proceeded to examine the facts of the case upon these considerations and said :

> As to the first matter it cannot be doubted that the Council of Jaffna was by statute a public corporation entrusted like all other municipal councils with the administration of a large area and the discharge of important duties. No one would consider that its activities should be lightly interfered with . . . . The legislature has enacted a statute setting up municipal authorities with a considerable measure of independence from the Central Government within defined local areas and fields of government. No minister should have the right to dissolve such an authority without allowing it the right to be heard upon that matter unless the statute is so clear that it is plain it has no right of self-defence.

Upon the second matter it is clear that the minister can dissolve the council on one of the three grounds : that it (a) is not competent to perform any duty or duties imposed upon it (for brevity their Lordships will refer to this head as incompetency); or (b) persistently makes default in the performance of any duty or duties imposed upon it; or (c) persistently refuses or neglects to comply with any provision of law . . . . It seems clear to their Lordships that it is a most serious charge to allege that the council, entrusted with these very important duties, persistently makes default in the performance of any duty or duties imposed upon it. No authority is required to support the view that in such circumstances it is plain and obvious that the principle audi alteram partem must apply.

Equally it is clear that if a council is alleged persistently to refuse or neglect to comply with a provision of law it must be entitled (as a matter of the most elementary justice) to be heard in its defence. Again this proposition requires no authority to support it. If, therefore, it is clear that in two of the three cases, the minister must at judicially, then it seems to their Lordships, looking at the section as a whole, that it is not possible to single out for different treatment the third case, namely, incompetence . . . .

The third matter can be dealt with quite shortly. The sanction which the minister can impose and indeed, if he is satisfied of the necessary premise, must impose upon the erring council is as complete as could be imagined; it involves the dissolution of the council and therefore the confiscation of all its properties. It was at one moment faintly argued that the council was a trustee and that it was not therefore being deprived of any of its property but this argument (soon abandoned) depended upon a complete misconception of the law of corporations . . . . For the purposes of the application of the principle it seems to their Lordships that this must apply equally to a statutory body having statutory powers, authorities and duties just as it does to an individual. Accordingly on this ground too the minister should have observed the principle.

For these reasons their Lordships have no doubt that in the circumstances of this case the minister should have observed the principle audi alteram partem. Sugathadasa v. Jayasinghe ((1958) 59 NLR 457) was wrongly decided.

Narrow as were the considerations applied by the Privy Council to determine whether the principle audi alteram partem applied or not, Alfred Thangarajah Durayappah v. W. J. Fernando ((1967) 2 AC 337) appears to us to furnish a complete answer to the submission of the learned Attorney-General that, as a matter of interpretation, Section 238 of the Punjab Municipal Act did not contemplate and did not require that an opportunity should be given to the Committee before an order of supersession was passed. We may notice here that the language of Section 238(1) of the Punjab

Municipal Act is very nearly the same as the language of Section 277(1) of the Municipal Ordinance which was interpreted by the Privy Council in Alfred Thangarajah Durayappah v. W. J. Fernando ((1967) 2 AC 337). We have already referred to some of the relevant provisions of the Punjab Municipal Act to indicate some of the rights and duties of the committee under that Act. A committee so soon as it is constituted, at once, assumes a certain office and status, is endowed with certain rights and burdened with certain responsibilities, all of a nature commanding respectful regard from the public. To be stripped of the office and status, to be deprived of the rights, to be removed from the responsibilities, in an unceremonious way as to suffer in public esteem, is certainly to visit the committee with civil consequences. In our opinion the status and office and the rights and responsibilities to which we have referred and the expectation of the committee to serve its full term of office would certainly create sufficient interest in the municipal committee and their loss, if superseded, would entail civil consequences so as to justify an insistence upon the observance of the principles of natural justice before an order of supersession is passed.

10. One of the submissions of the learned Attorney-General was that when the question was one of disqualification of an individual member, Section 16 of the Punjab Municipal Act expressly provided for an opportunity being given to the member concerned whereas Section 238(1) did not provide for such an opportunity and, so, by necessary implication, it must be considered that the principle audi alteram partem was excluded. We are unable to agree with the submission of the learned Attorney-General. It is not always a necessary inference that if opportunity is expressly provided in one provision and not so provided in another, opportunity is to be considered as excluded from that other provision. It may be a weighty consideration to be taken into account but the weightier consideration is whether the administrative action entails civil consequences. This was also the view taken in Mohinder Singh Gill v. Chief Election Commissioner, New Delhi ((1978) 2 SCR 272, 316 : (1978) 1 SCC 405, 446-447), where it was observed (at p. 316) : (SCC pp. 446-447, para 77)

We have been told that wherever the Parliament has intended a hearing it has said so in the Act and the rules and inferentially where it has not specified it is otiose. There is no such sequitur. The silence of a statute has no exclusionary effect except where it flows from necessary implication. Article 324 vests a wide power and where some direct consequence on candidates emanates from its exercise we must read this functional obligation.

> 1. Another submission of the learned Attorney-General was that Section 238(1) also contemplated emergent situations where swift action might be necessary to avert disaster and that in such situations if the demands of natural justice were to be met, the very object of the provision would be frustrated. It is difficult to visualise the sudden and calamitous situations gloomily foreboded by the learned Attorney-General where there would not be enough breathing time to observe natural justice, at least in a rudimentary way. A municipal committee under the Punjab Municipal Act is a public body consisting of both officials and non-officials and one cannot imagine anything momentous being done in a matter of minutes and seconds. And, natural justice may always be tailored to the situation. Minimal natural justice, the barest notice and the "littlest" opportunity, in the shortest time, may serve. The authority acting under Section 238(1) is the master of its own procedure. There need be no oral hearing. It is not necessary to put every detail of the case to the committee : broad grounds sufficient to indicate the substance of the allegations may be given. We do not think that even minimal natural justice is excluded when alleged grave situations arise under Section 238. If indeed such grave situations arise, the public

> interest can be sufficiently protected by appropriate prohibitory and mandatory action under the other relevant provisions of the statute in Sections 232 to 235 of the Act. We guard ourselves against being understood as laying down any proposition of universal application. Other statutes providing for speedy action to meet emergent situations may well be construed as excluding the principle audi alteram partem. All that we say is that Section 238(1) of the Punjab Municipal Act does not.

12. The next question for consideration is whether the Committee was given an opportunity to make its representations against the allegations upon which the order of supersession was ultimately founded. We have already mentioned that the first allegation was about the agreement to pay "mobilisation advance" to M/s. Tarapore & Co. It appears that the work of construction of New Delhi City Centre was initially awarded to Mohinder Singh & Co. in October 1976 but on account of their inability to complete the work within the stipulated time it was decided to invite "restricted tenders" from other contractors. That was done and the contract was awarded to Tarapore & Co. One of the conditions of the contract which was accepted by the Committee was that the contractor should be paid 7 1/2 per cent of the value of the tender as "mobilisation advance". On December 31, 1979, the New Delhi Municipal Committee addressed a letter to the Secretary (Local Self-Government), Delhi Administration requesting the sanction of the Lt. Governor for payment of "mobilisation advance" to the contractors. It was mentioned in the letter that the contractors had offered to pay interest at the rate of 9% per annum and to give a bank guarantee to cover the advance as well as the interest. While the question of the grant of approval by the Lt. Governor was under consideration, Mohinder Singh, the original contractor appears to have submitted a representation to the Government of India about the award of the contract to Tarapore & Co. On February 11, 1980, the Deputy Secretary, Ministry of Works & Housing, Government of India, forwarded a copy of the representation to Shri S. C. Chhabra, President, New Delhi Municipal Committee and requested him "(a) to send a factual report on the subject, and (b) not to make further payments, commitments or arrangements or to do anything irrevocable till the New Delhi Municipal Committee hears from this Ministry". The President of the Delhi Municipal Committee submitted the factual report on February 13, 1980, and on February 19, 1980 wrote a letter to Shri M. K. Mukherjee, Secretary, Ministry of Works & Housing, pointing out that a serious situation and stalemate had been created because of the direction contained in the Deputy Secretary's letter dated February 11, 1980 not to make further payments to the contractors until they again heard from the Government of India. The circumstances under which the contract had been awarded to Tarapore & Co. were explained and the Government of India requested to communicate their decision at an early date. A copy of the letter was also sent to the Lt. Governor and to the Secretary, Local Self-Government, Delhi Administration. On February 19, 1980 the Deputy Secretary, Ministry of Works & Housing, Government of India wrote to Shri Shaiza, Secretary, Local Self-Government, Delhi Administration pointing to the letter from him (the Deputy Secretary, Government of India) to the President, New Delhi Municipal Committee, a copy of which had been sent to Shri Shaiza and referring to a subsequent telephonic conversation between the two of them, and mentioning that a report had since been received from the New Delhi Municipal Committee. The Deputy Secretary, Ministry of Works & Housing also reminded Shri Shaiza that he had given him to understand that the Lt. Governor had not agreed to the grant of mobilisation advance of Rs. 15 lakhs by the New Delhi Municipal Committee to M/s. Tarapore & Co. He requested Shri Shaiza to expedite the views of the Delhi Administration on Mohinder Singh & Co's. representation and the modalities of the grant of the contract for the remainder of the work to M/s. Tarapore & Co. It is to be noted here that though according to this letter Shri Shaiza had already informed the Deputy Secretary, Government of India, that the Lt. Governor had not agreed to the grant of the mobilisation advance, the New

Delhi Municipal Committee themselves had not been so informed by the Delhi Administration until then, nor even later. What is even more curious is the circumstance that after receiving Shri Shaiza's letter, the Deputy Secretary, Government of India, on February 22, 1980, wrote to the President, New Delhi Municipal Committee informing him that the Ministry of Works & Housing had considered the position and that the New Delhi Municipal Committee might deal with the matter according to law and that the request made in sub-para (b) of his D.O. letter of even number dated February 11, 1980, addressed to the President, New Delhi Municipal Committee might be treated as withdrawn. This was to be without prejudice to any action that the Ministry of Home Affairs and/or the Delhi Administration might like to take in the matter. This was how the matter stood when the impugned order was passed on February 27, 1980, by the Lt. Governor. The order was signed by Shri Shaiza, Secretary, Local Self-Government, Delhi Administration. It appears that Shri Shaiza had made a notice on the file on February 12, 1980, apparently for the consideration of the Lt. Governor. However, that was entirely an internal matter about which the New Delhi Municipal Committee could have had no knowledge. This is the entire material placed before us in support of the claim made by the learned Attorney-General on behalf of the Delhi Administration that the Committee had the opportunity of making its representation in regard to the first of the allegations made in the impugned order. It is difficult to sustain the claim of the learned Attorney-General even in a remote way. In the first place the correspondence that passed was between the Government of India and the New Delhi Municipal Committee and not between the Delhi Administration and the New Delhi Municipal Committee. The authority competent to take action under Section 238(1) of the Punjab Municipal Act was the Delhi Administration and not the Government of India. It cannot, therefore, be contended that the Delhi Administration ever gave any opportunity to the New Delhi Municipal Committee to make any representation about this matter. In the second place the correspondence that passed between the Government of India and the New Delhi Municipal Committee was in regard to the representation of Mohinder Singh & Co. about the award of the contract to Tarapore & Co. The letter dated February 11, 1980, from the Deputy Secretary, Ministry of Works & Housing to the President, New Delhi Municipal Committee does not even mention the mobilisation advance. In the third place, throughout the correspondence, there is not a hint or whisper about any proposal to take action under Section 238. On the material before us we find it impossible to hold that the New Delhi Municipal Committee was ever put on notice of any proposed action by the Delhi Administration in regard to first of the allegations made in the impugned order. If any information was sought from the New Delhi Municipal Committee and if any information was given by the Committee such information was furnished and gathered in the course of an exploratory or fact-finding expedition and was never intended to be an answer to an action-inspired notice.

13. The second of the charges or allegations in the notice was that one B. K. Mittal had been re-employed despite the advice of the Central Vigilance Commission that proceedings for the imposition of a major penalty should be initiated against him. Our attention was invited to a letter dated November 20, 1979, from the Delhi Administration to the New Delhi Municipal Committee in which the Delhi Administration took to task the (sic and) reprimanded the New Delhi Municipal Committee for re-employing B. K. Mittal. This letter cannot be construed as a notice to the New Delhi Municipal Committee to come forward with its explanation. The letter was peremptory and final and the indication was that the chapter was closed with the reprimand. Here again, there was nothing to indicate that any other action was contemplated against the Municipal Committee and that the Municipal Committee could offer its explanation if so minded.

14. In regard to the third of the allegations in the impugned order the High Court found that the Municipal Committee had no opportunity to meet the same. It is, therefore, unnecessary for us to

consider the matter.

15. The fourth charge or allegation was that the Municipal Committee created a number of posts including that of a Director (Horticulture) and also appointed one Sharma to that post, notwithstanding the directive of the Lt. Governor that no post should be created until the staffing pattern was studied by the Administrative Reforms Department. The Municipal Committee sought the sanction of the Lt. Governor for its budget estimates. The Delhi Administration in its comments addressed to the President, New Delhi Municipal Committee pointed out that there was an ad hoc provision for additional staff amounting to Rs. 33 lakhs without indicating the details of posts. A directive was issued that until the Administrative Reforms Department made a study of the staffing pattern the ad hoc provision of Rs. 33 lakhs should not be utilised. Correspondence ensued between the New Delhi Municipal Committee and the Delhi Administration, the former requesting the latter to withdraw the directive and the latter insisting upon the directive. Shri Sharma was however, appointed as Director (Horticulture), by the New Delhi Municipal Committee in spite of the directive. Though the Delhi Administration objected to the irregular appointments made by the Municipal Committee the correspondence does not reveal that any action was proposed against the Municipal Committee.

16. Thus on a consideration of the entire material placed before us we do not have any doubt that the New Delhi Municipal Committee was never put on notice of any action proposed to be taken under Section 238 of the Punjab Municipal Act and no opportunity was given to the Municipal Committee to explain any fact or circumstance on the basis that action was proposed. If there was any correspondence between the New Delhi Municipal Committee and any other authority about the subject-matter of any of the allegations, if information was given and gathered it was for entirely different purposes. In our view, the requirements of natural justice are met only if opportunity to represent is given in view of proposed action. The demands of natural justice are not met even if the very person proceeded against has furnished the information on which the action is based, if it is furnished in a casual way or for some other purpose. We do not suggest that the opportunity need be a 'double opportunity' that is, one opportunity on the factual allegations and another on the proposed penalty. Both may be rolled into one. But the person proceeded against must know that he is being required to meet the allegations which might lead to a certain action being taken against him. If that is made known the requirements are met. We disagree with the finding of the High Court that the Committee had the opportunity to meet the allegations contained in the order of supersession.

17. Linked with this question is the question whether the failure to observe natural justice does at all matter if the observance of natural justice would have made no difference, the admitted or indisputable facts speaking for themselves. Where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it approves the non-observance of natural justice but because courts do not issue futile writs. But it will be a pernicious principle to apply in other situations where conclusions are controversial, however, slightly, and penalties are discretionary.

18. In Ridge v. Baldwin (1964 AC 40, 68 : (1963) 2 All ER 66, 73), one of the arguments was that even if the appellant had been heard by the watch committee nothing that he could have said could have made any difference. The House of Lords observed (at p. 68) :

It may be convenient at this point to deal with an argument that, even if as a general rule a watch committee must hear a constable in his own defence before dismissing him, this case was so clear

that nothing that the appellant could have said could have made any difference. It is at least very doubtful whether that could be accepted as an excuse. But, even if it could, the watch committee would, in my view, fail on the facts. It may well be that no reasonable body of men could have reinstated the appellant. But as between the other two courses open to the watch committee the case is not so clear. Certainly, on the facts, as we know them, the watch committee could reasonably have decided to forfeit the appellant's pension rights, but I could not hold that they would have acted wrongly or wholly unreasonably if they had in the exercise of their discretion decided to take a more lenient course.

> 19. Megarry, J., discussed the question in John v. Rees ((1970) 1 Ch D 345, 402). He said (at p. 402) :
>
> It may be that there are some who would decry the importance which the courts attach to the observance of the rules of natural justice. 'When something is obvious', they may say, 'why force everybody to go through the tiresome waste of time involved in framing charges and giving an opportunity to be heard ? The result is obvious from the start'. Those who take this view do not, I think, do themselves justice. As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change. Nor are those with any knowledge of human nature who pause to think for a moment likely to underestimate the feelings of resentment of those who find that a decision against them has been made without their being afforded any opportunity to influence the course of events.

20. In Annamunthodo v. Oilfields Workers' Trade Union ((1961) 3 All ER 621, 625 (HL), Lord Denning, in his speech said (at p. 625) :

Counsel for the respondent Union did suggest that a man could not complain of a failure of natural justice unless he could show that he had been prejudiced by it. Their Lordships cannot accept this suggestion. If a domestic tribunal fails to act in accordance with natural justice, the person affected by their decision can always seek redress in the courts. It is a prejudice to any man to be denied justice.

21. In Margarita Fuentes v. Tobert L. Shevin (32 L Ed 556, 574), it was paid (at p. 574) :

But even assuming that the appellants had fallen behind in their installment payments, and that they had no other valid defenses; that is immaterial here. The right to be heard does not depend upon an advance showing that one will surely prevail at the hearing. 'To one who protests against the taking of his property without due process of law, it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits.'

22. In Chintapalli Agency Taluk Arrack Sales Cooperative Society Ltd. v. Secretary (Food & Agriculture), Govt. of A. P. ((1978) 1 SCR 563, 567, 569-70 : (1977) 4 SCC 337, 341, 343-344) there was a non-compliance with Section 77(2) of the Cooperative Societies Act which provided that no order prejudicial to any person shall be passed unless such person had been given an opportunity of making his representation. The argument was that since the facts were clear the non-

compliance did not matter. It was also said that the appellant had of his own motion made some representation in the matter. This Court rejected the arguments observing (at pp. 567, 569-570) : (SCC pp. 341 & 343-344, paras 11 & 21-22)

> ... It is submitted that the government did not afford any opportunity to the appellant for making representation before it. The High Court rejected this plea on the ground that from a perusal of the voluntary applications filed by the appellant it was clear that the appellant had anyhow met with the points urged by the respondents in their revision petition before the government. We are, however, unable to accept the view of the High Court as correct . . . .

As mentioned earlier in the judgment the government did not give any notice communicating to the appellant about entertainment of the application in revision preferred by the respondents. Even though the appellant had filed some representations in respect of the matter, it would not absolve the government from giving notice to the appellant to make the representation against the claim of the respondents. The minimal requirement under Section 77(2) is a notice informing the opponent about the application and affording him an opportunity to make his representation against whatever has been alleged in his petition. It is true that a personal hearing is not obligatory but the minimal requirement of the principles of natural justice which are ingrained in Section 77(2) is that the party whose rights are going to be affected and against whom some allegations are made and some prejudicial orders are claimed should have a written notice of the proceedings from the authority disclosing grounds of complaint or other objection preferably by furnishing a copy of the petition on which action is contemplated in order that a proper and effective representation may be made. This minimal requirement can on no account be dispensed with by relying upon the principle of absence of prejudice or imputation of certain knowledge to the party against whom action is sought for.

It is admitted that no notice whatever had been given by the government to the appellant. There is, therefore, clear violation of Section 77(2) which is a mandatory provision. We do not agree with the High Court that this provision can be by-passed by resort to delving into correspondence between the appellant and the government. Such non-compliance with a mandatory provision gives rise to unnecessary litigation which must be avoided at all costs.

23. The observations of this Court in Chintapalli Agency Taluk Arrack Sales Cooperative Society v. Secy. ((1978) 1 SCR 563, 567, 569-70 : (1977) 4 SCC 337, 341, 343-344) are clearly against the submissions of the learned Attorney-General.

24. The matter has also been treated as an application of the general principle that justice should not only be done but should be seen to be done. JACKSON'S NATURAL JUSTICE (1980 Edn.) contains a very interesting discussion of the subject. He says :

> The distinction between justice being done and being seen to be done has been emphasised in many cases . . . .
>
> The requirement that justice should be seen to be done may be regarded as a general principle which in some cases can be satisfied only by the observance of the rules of natural justice or as itself forming one of these rules. Both explanations of the significance of the maxim are found in Lord Widgery C.J.'s judgment in R. v. Home Secretary ((1977) 1 WLR 766, 772), ex. p. Hosenball, where after saying that "the principles of natural justice are those fundamental rules, the breach of which will

prevent justice from being seen to be done" he went on to describe the maxim as "one of the rules generally accepted in the bundle of the rules making up natural justice".

It is recognition of the importance of the requirement that justice is seen to be done that justifies the giving of a remedy to a litigant even when it may be claimed that a decision alleged to be vitiated by a breach of natural justice would still have been reached had a fair hearing been given by an impartial tribunal. The maxim is applicable precisely when the court is concerned not with a case of actual injustice but with the appearance of injustice or possible injustice. In Altco Ltd. v. Sutherland ((1971) 2 Lloyd's Rep 515) Donaldson, J., said that the court, in deciding whether to interfere where an arbitrator had not given a party a full hearing was not concerned with whether a further hearing would produce a different or the same result. It was important that the parties should not only be given justice, but, as reasonable men, know that they had had justice or "to use the time hallowed phrase" that justice should not only be done but be seen to be done. In R. v. Thames Magistrates' Court, ex. p. Polemis ((1974) 1 WLR 1371), the applicant obtained an order of certiorari to quash his conviction by a stipendiary magistrate on the ground that he had not had sufficient time to prepare his defence. The Divisional Court rejected the argument that, in its discretion, it ought to refuse relief because the applicant had no defence to the charge.

It is again absolutely basic to our system that justice must not only be done but must manifestly be seen to be done. If justice was so clearly not seen to be done, as on the afternoon in question here, it seems to me that it is no answer to the applicant to say : 'Well, even if the case had been properly conducted, the result would have been the same'. That is mixing up doing justice with seeing that justice is done (per Lord Widgery C.J. at page 1375).

In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal.

25. Every wrong action of a municipal committee need not necessarily lead to the inference of incompetence on the part of the committee or amount to an abuse of the powers of the committee. That is a matter to be decided by the State Government on the facts of each case. A committee may admit that what it has done is wrong and yet may plead that its action does not reveal incompetence or an abuse of its powers. It may plead an honest error of judgment, it may plead some misapprehension about the state of facts or state of the law; it may plead that in any event the drastic action contemplated by Section 238(1) is not called for. Therefore, merely because facts are admitted or are indisputable it does not follow that natural justice need not be observed. In fact in the present case one of the complaints of the appellant is that relevant facts were not considered by the Lt. Governor. Neither the impugned order nor the note of Shri Shaiza shows that in regard to the first allegation two vital circumstances were considered : (a) The contractor had agreed to pay interest at the rate of 9 per cent on the mobilisation advance; (b) the contractor had agreed to offer bank guarantee to cover the mobilisation advance as well as the interest. It was argued that had these facts been brought to the notice of the Lt. Governor he might not have made the impugned order. If notice had been given to the Committee, the Committee would have certainly brought these facts to

the notice of the Lt. Governor.

26. In the light of the discussion we have no option but to hold that the Order dated February 27, 1980, of the Lt. Governor superseding the New Delhi Municipal Committee is vitiated by the failure to observe the principle audi alteram partem. The question is what relief should be given to the appellant ? The term of the Committee is due to expire on October 3, 1980 which means that just a few days more are left for the term to run out. If now the order is quashed and the Committee is directed to be reinstated with liberty to the Lt. Governor to proceed according to law - this should be our order ordinarily - it may lead to confusion and even chaos in the affairs of the municipality. Shri Sorabjee, learned counsel for the appellant, had relieved us of our anxiety by stating :

> In view of the fact that the term expires on October 3, 1980, and as the appellant is anxious to have the stigma cast on him by the notification removed, the appellant does not press either for reinstatement in office or for striking down the notification so long as there is a just determination of the invalidity of the notification.

We have held that the notification is vitiated by the failure to observe the principles of natural justice and we let the matter rest there. We neither quash the notification nor reinstate the Committee. Nor are we to be understood as having expressed any opinion on the merits of the supersession. We allow the appeal in the manner indicated. The appellant is entitled to his costs.

</html