Swadeshi Cotton Mills

Vs

Union of India

National Textile Corporation

Vs

Swadeshi Cotton Mills

Union of India

Vs

Swadeshi Cotton Mills

Civil Appeals Nos. 1629, 1857 and 2087 of 1979

(R. S. Sarkaria, D.A. Desai, O. Chinnappa Reddy JJ)

13.01.1981

JUDGMENT

R. S. SARKARIA, J.

1. (for himself and Desai, J.) - These appeals arise out of a judgment, dated May 1, 1979, of the High Court of Delhi, in the following circumstances :

2. Appellant 1 in Civil Appeal 1629 of 1979 is Swadeshi Cotton Mills Co. Ltd. (hereinafter referred to as 'the Company'). it was incorporated as a private company with an authorised capital of Rs. 30 lakhs in 1921 by the Horseman family by converting their partnership business into a Private Joint Stock Company. Its capital was raised in 1923 to Rs. 32 lakhs and thereafter in 1945 to Rs. 52.50 lakhs by issue of bonus shares. In 1946, the Jaipuria family acquired substantial holding in the Company Jaipuria family is the present management. By issue of further bonus in 1946, the capital of the Company was increased to Rs. 122.50 lakhs. In 1948, the paid-up capital of the Company was raised to Rs. 210 lakhs by the issue of further bonus shares. The subscribed and issued capital consisting mainly of the bonus shares has since remained constant at Rs. 210 lakhs.

3. In the year 1946, the Company had only one undertaking, a Textile Unit at Kanpur, known as "The Swadeshi Cotton Mills, Kanpur". Between 1956 and 1973, the Company set up and/or acquired five further Textile Units in Pondicherry, Naini, Udaipur, Maunath Bhanjan and Rae Bareilly. Each of these six units or undertaking of the Company was separately registered in accordance with the provisions of Section 10 of the Industries (Development and Regulation) Act, 1951 (hereinafter called 'the IDR Act').

4. In addition to these six industrial undertakings, the Company (it is claimed) had other distinct business and assets. It holds inter alia 97 per cent. shares in the subsidiary, Swadeshi Mining and

Manufacturing Company Ltd., which owns two sugar mills. The Company claims, it has substantial income from other businesses and activity including investments in its subsidiary and in other shares and securities which include substantial holding of Rs. 10,00,000 Equity Shares of Rs. 10 each in Swadeshi Polytex Ltd., representing 30 per cent. of the total equity capital value of Swadeshi Polytex Ltd., the intrinsic value whereof exceeds Rs. 5 crores.

5. The Company made considerable progress during the years 1957 to 1973. The reserves and surplus of the Company increased from Rs. 2.3 crores in 1957 to Rs. 4.3 crores in 1973-74, but declined to Rs. 2.8 crores in 1976-77. The fixed assets of the Company increased from 5.8 crores in 1957 to 19 crores in 1973-74, but declined to Rs. 18 crores, registering a marginal decrease of Rs. 1 crore in 1976-77.

6. The Company maintained separate books of accounts for each of its six industrial undertakings. From and after April 1973, the Company maintained separate sets of books of accounts of the business and assets other than of the said six industrial undertakings. Annual accounts of the six industrial undertakings were first prepared separately in seven sets which were separately audited. The consolidated annual accounts of the Company were then prepared from such annual accounts at the registered office of the Company at Kanpur, and after audit, were placed before the shareholders of the Company. The Company made overall profits up to the year 1969 and even thereafter up to 1975. The Balance Sheet showed that the Company suffered a loss of Rs. 86.23 lakhs after providing depreciation of Rs. 93.93 lakhs and gratuity of Rs. 48.79 lakhs, though the trading results showed a gross profit of Rs. 56.49 lakhs. During the year ending March 31, 1976, the Company again suffered a loss of Rs. 294.82 lakhs after providing for depreciation. The last Balance Sheet and Profit & Loss Account adopted by the shareholders and published by the Company relates to the year ending March 31, 1977. It shows that the Company suffered a loss of Rs. 200.34 lakhs after taking into account depreciation of Rs. 73.27 lakhs which was not provided in accounts.

7. Between 1975 and 1978, the Company created the undernoted encumbrances on the fixed assets :

#---------- Unit As on As on As on As on Remarks 31-3-75 31-3-76 31-3-77 31-3-78 (in lakhs) (in lakhs)---------- 1 2 3 4 5 6----------(i) Pondi- 2.40 Nil Nil Nil On fixed cherry assets of Pondicherry Unit.(ii) Maunath 11.40 Nil Nil Nil On fixed Bhanjan assets of Maunath Bhanjan Unit.(iii) Udai- 2.76 Nil Nil Nil On fixed pur assets of Udaipur Unit.(iv) Kanpur 13.44 9.75 5.95 2.00 On fixed (ICICI) asset of Kanpur Unit.(v) Kanpur Nil 150.00 150.00 150.00 On fixed (New assets of encumbrace) Kanpur, Maunath Bhanjan & Pondicherry Units for wages and Bank dues.(vi) Company 67.53 68.45 59.44 59.44 On diesel generating sets of Kanpur, Naini, Pondicherry, Maunath Bhanjan and Rae Bareilly Units.(vii) Udai- Nil 25.00 25.00 25.00 On fixed pur (New assets of encumbrace) Udaipur Unit for gratuity fund.(viii) Naini Nil Nil 70.00 70.00 On fixed (No new assets of encumbrace) Naini for gratuity.(ix) Kanpur, 106.20 75.31 50.67 15.97 On new Rae machinery Bare- of Kanpur, illy Rae Barrei- and lly and Naini Naini Units ------ ----- ------ ------ under deferred 203.73 334.22 361.06 322.41 payment credit.----------##

8. The borrowings of the Kanpur, Pondicherry, Naini, Udaipur, Maunath Bhanjan and Rae Bareilly Units of the Company as on March 31, 1978 against current assets were Rs. 256.78, 183.92, 271.05, 70.72, 47.98 and 55.82 lakhs respectively. All the encumbrances on fixed assets (except the encumbrance of Rs. 70 lakhs on the fixed assets of Naini Unit for gratuity funding to get the benefit of Section 44-A of the Income Tax Act) were created prior to March 31, 1976.

9. In the accounting year 1976-77, only one new encumbrance was created by the Company on its fixed assets. The following are statistics of production in each of the six units of the Company during the years 1975-76, 1976-77 and 1977-78 :

#----------Name of the Unit 1975-76 1976-77 1977-78 (figure in lakhs)----------Naini 66.13 kgs. 65.76 kgs. 72.35 kgs.Udaipur 18.51 kgs. 18.50 kgs. 18.60 kgs.Maunath Bhanjan 15.59 kgs. 16.63 kgs. 18.49 kgs.Rae Bareilly 12.09 kgs. 13.58 kgs. 14.00 kgs.Pondicherry 170.52 Mtrs. 178.77 Mtrs. 176.54 Mtrs.Kanpur 318.75 Mtrs. 472.12 Mtrs. 238.22 Mtrs.----------##

10. On April 13, 1978, the Government of India in exercise of its power under clause (a) of sub-section (1) of Section 18-AA of the IDR Act, passed an order (hereinafter referred to as 'the impugned Order') which reads as follows :

So 265(E)/18AA/IDRA/78 - Whereas the Central Government is satisfied from the documentary and other evidence in its possession, that the persons in charge of the industrial undertakings namely.

(i) M/s. Swadeshi Cotton Mills, Kanpur,

(ii) M/s. Swadeshi Cotton Mills, Pondicherry,

(iii) M/s. Swadeshi Cotton Mills, Naini,

(iv) M/s. Swadeshi Cotton Mills, Maunath Bhanjan,

(v) M/s. Udaipur Cotton Mills, Udaipur, and

(vi) Rae Bareilly Textile Mills, Rae Bareilly

of M/s. Swadeshi Cotton Mills Company Ltd., Kanpur (hereinafter referred to as 'the said industrial undertakings'), have, by creation of encumbrances on the assets of the said industrial undertakings, brought about a situation which has affected and is likely to further affect the production of articles manufactured or produced in the said industrial undertakings and that immediate action is necessary to prevent such a situation;

Now, therefore, in exercise of power conferred by clause (a) of sub-section (1) of Section 18-AA of the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Central Government hereby authorises the National Textile Corporation Limited (hereinafter, referred to as 'the authorised person') to take over the management of the whole of the said industrial undertakings, subject to the following terms and conditions, namely :-

(i) The authorised person shall comply with all the directions issued from time to time by the Central Government;

(ii) the authorised person shall hold office for a period of five years from the date of publication of this order in the official Gazette;

(iii) the Central Government may terminate the appointment of the authorised person earlier if it considers necessary to do so.

This Order shall have effect for a period of five years commencing from the date of its publication in the official Gazette.

Sd/- (R. Ramakrishna) Joint Secretary to the Government of India. (Seal)##

11. On April 19, 1978, three petitioners, namely, the Company through its Joint Secretary, Shri Bhim Singh Gupta, its Managing Director, Dr. Rajaram Jaipuria, and its subsidiary company, named Swadeshi Mining and Manufacturing Company, through its Directors and Shareholders filed a writ petition under Article 226 of the Constitution in the Delhi High Court against the Union of India and the National Textile Corporation to challenge the validity of the aforesaid Government Order dated April 13, 1978. The writ petition was further supplemented by subsequent affidavits and rejoinders.

12. The Union of India and the National Textile Corporation Ltd., who has been authorised to assume management of the undertakings concerned, were impleaded, as respondents. The writ petition first came up for hearing before a Division Bench who by its order dated August 11, 1978, requested the Chief Justice to refer it to a large Bench. The case was then heard by a three-Judge Bench who by their order dated October 12, 1978, requested the Hon'ble the Chief Justice to constitute a still larger Bench to consider the question whether a prior hearing is necessary to be given to the persons affected before the order under Section 18-AA is passed. Ultimately, the reference came up for consideration before a Full Bench of five Judges to consider the question, which was reframed by the Bench as under :

> Whether in construing Section 18-AA of the Industries Development and Regulation Act, 1951, as a pure question of law, compliance with the principle of audi alteram partem is to be implied. If so,
>
> (a) whether such hearing is to be given to the parties who would be affected by the order to be passed under the said Section prior to the passing of the order; or
>
> (b) whether such hearing is to be given after the passing of the order; and
>
> (c) if prior hearing is to be normally given and the order passed under the said Section is vitiated by not giving of such hearing, whether such vice can be cured by the grant of subsequent hearing.

13. The Bench, by a majority (consisting of Deshpande, C. J., R. Sacher and M. L. Jain, JJ.) answered this three-fold question as follows :

> (1) Section 18-AA(1)(a), (b) excludes the giving of prior hearing to the party who would be affected by order thereunder.
>
> (2) Section 18-F expressly provides for a post-decisional hearing to the owner of the industrial undertaking, the management of which is taken over under Section 18-AA to have the order made under Section 18-AA cancelled on any relevant ground.
>
> (3) As the taking over of management under Section 18-AA is not vitiated by the failure to grant prior hearing, the question of any such vice being cured by a grant of a subsequent hearing does not arise.

H. L. Anand and N. N. Goswamy, JJ. however dissented. In the opinion of the minority, in compliance with the principles of natural justice, a prior hearing to the owner of the undertaking was required to be given before passing an order under Section 18-AA, that the second question did not arise as the denial of a prior hearing would not cure the vice by the grant of subsequent hearing, but it would be open to the court to moderate the relief in such a way that the order is kept alive to the extent necessary until the making of the fresh order to subserve public interest, and to make appropriate directions to ensure that the subsequent hearing would be a full and complete review of the circumstances of the take-over and for the preservation and maintenance of the property during the interregnum.

14. After the decision of the reference, the case was reheard on merits by a Bench of three learned Judges (consisting of Deshpande, C.J., Anand and M. L. Jain, JJ.) who by their judgment, dated May 1, 1979, disposed of the writ petition. The operative part of the judgment reads as under :

> In the result, the writ petition succeeds in part, the challenge to the validity of the impugned Order fails and to that extent the petition is dismissed. The petition succeeds insofar as it seeks to protect from the impugned Order the corporate entity of the company, the corporate entity of the subsidiary and its assets, the holding of the Company in Polytex and the assets and property of the Company which are not referable to any of the industrial undertakings. The respondents are hereby restrained from in any manner interfering with the corporate entity, the assets and property which are outside the impugned order. The respondents would release from its control and custody and/or deliver possession of any assets or property of the Company, which are not referable to the industrial undertakings in terms of the observations made in paras 46 and 47 of the judgment, within a period of three months from todays (May 1, 1979). In the peculiar circumstances the parties would bear their respective costs.

15. On the application of the Company, the Delhi High Court certified under Article 133 of the Constitution that the case was fit for appeal to this Court. Subsequently, on July 12, 1979, a similar certificate was granted by the High Court to the Union of India and the National Textile Corporation Ltd. Consequently, the Company, the Union of India and the National Textile Corporation have filed Civil Appeals 1629, 2087 and 1857 of 1979, respectively, in this Court. All the three appeals will be disposed of by this judgment.

16. The primary, two-fold proposition posed and propounded by Shri F. S. Nariman, learned counsel for the appellant-Company in Civil Appeal 1629 of 1979, is as follows :

> (a) Where it is necessary to observe the rules of natural justice before issuing a notified order under Section 18-AA, or enforcing a decision under Section 18-AA, or
>
> (b) Whether the provisions of Section 18-AA and/or Section 18-F impliedly exclude rules of natural justice relating to prior hearing.

17. There were other contentions also which were canvassed by the learned counsel for the parties at considerable length. But for reasons mentioned in the final part of this judgment, we do not think it necessary, for the disposal of these appeals, to deal with the same.

18. Thus, the first point for consideration is whether, as a matter of law, it is necessary, in

accordance with the rules of natural justice, to give a hearing to the owner of an undertaking before issuing a notified order, or enforcing a decision of its take-over under Section 18-AA.

19. Shri Nariman contends that there is nothing in the language, scheme or object of the provisions in Section 18-AA and/or Section 18-F which expressly or by inevitable implication, excludes the application of the principles of natural justice or the giving of a pre-decisional hearing, adapted to the situation, to the owner of the undertaking. It is submitted that mere use of the word "immediate" in sub-clause (a) of Section 18-AA(1) does not show a legislative intent to exclude the application of audi alteram partem rule, together. It is maintained that according to the decision of this Court in Keshav Mills Company Ltd. v. Union of India ((1973) 3 SCR 22 : (1973) 1 SCC 380), even after a full investigation has been made under Section 15 of the IDR Act, the government has to observe the rules of natural justice and fair play, which in the facts of a particular case, may include the giving of an opportunity to the affected owner to explain the adverse findings against him in the investigation report. In support of his contention, that the use of the word "immediate" in Section 18-AA(1)(a) does not exclude natural justice, learned counsel has advanced these reasons :

> (i) The word "immediate" in clause (a) has been used in contradistinction to 'investigation'. It only means that under Section 18-AA action can be taken without prior investigation under Section 15, if there is evidence in the possession of the government, that the assets of the company owning the undertaking are being frittered away by doing any of the three things mentioned in clause (a); or, the undertaking has remained closed for a period of not less than three months and the condition of the plant and machinery is such that it is possible to restart the undertaking. This construction, that the use of the word "immediate" in Section 18-AA(1)(a) only dispenses with investigation under Section 15 and not with the principle of audi alteram partem altogether, is indicated by the marginal heading of Section 18-AA and para 3 of the Statement of Objects and Reasons of the Amendment Bill which inserted Section 18-AA, in 1971.
>
> (ii) The word 'immediate' occurs only in clause (a) and not in clause (b) of Section 18-AA(1). It would be odd if intention to exclude this principle of natural justice is spelt out in one clause of the sub-section, when its other clause does not exclude it.
>
> (iii) Section 18-F does not exclude a pre-decisional hearing. This Section was there, when in Keshav Mills case ((1973) 3 SCR 22 : (1973) 1 SCC 380), it was held by this Court, that even at the post-investigation stage, before passing an order under Section 18-A, the government must proceed fairly in accordance with the rule of natural justice. The so-called post-decisional hearing contemplated by Section 18-F cannot be - and is not intended to be - a substitute for a pre-decisional hearing. Section 18-F, in terms, deals with the power of Central Government to cancel and order of take-over under two conditions, namely : First when "the purpose of an order Section 18-A has been fulfilled, or, second, when "for any other reason it is not necessary that the order should remain in force". "Any other reason" has reference to post-"take-over" circumstances only, and does not cover a reason relatable to pre-"take-over" circumstances. An order of cancellation under Section 18-F is intended to be prospective. This is clear from the plain meaning of the expression "remain in force", "necessary" etc. used in the section.

Section 18-F incorporates only a facet, albeit qualified, of Section 21 of the General Clauses Act

(Kamala Prasad Khetan v. Union of India (1957 SCR 1052 : AIR 1957 SC 676 : (1958) 2 LLJ 461), referred to). Therefore, the illusory right given by Section 18-F to the aggrieved owner of the undertaking, to make an application for cancellation of the order, is not a full right of appeal on merits. The language of the section impliedly prohibits an enquiry into circumstances that led to the passing of the order of "take-over", and under it, the aggrieved person is not entitled to show that on merits, the order was void ab initio.

As held by a Bench (consisting of Bhagwati and Vakil, JJ.) of the Gujarat High Court, in Dosabhai Ratanshah Keravale v. State of Gujarat ((1970) 2 Guj LR 361), a power to rescind or cancel an order, analogous to that under Section 21, General Clauses Act, has to be construed as a power of prospective cancellation, and not of retroactive obliteration. It is only the existence of a full right of appeal on the merits or the existence of a provision which unequivocally confers a power to reconsider, cancel and obliterate completely the original order, just as in appeal, which may be construed to exclude natural justice or a pre-decisional hearing in an emergent situation. (reference on this point has been made to Wade's ADMINISTRATIVE LAW, 4th Edition, pp. 464 to 468)

> (iv) 'Immediacy', does not exclude a duty to act fairly, because, even an emergent situation can coexist with the canons of natural justice. The only effect of urgency on the application of the principle of fair hearing would be that the width, form and duration of the hearing would be tailored to the situation and reduced to the reasonable minimum so that it does not delay and defeat the purpose of the contemplated action.
>
> (v) Where the civil consequences of the administrative action - as in the instance case - are grave and its effect is highly prejudicial to the rights and interest of the person affected and there is nothing in the language and scheme of the statute which unequivocally excludes a fair pre-decisional hearing and the post-decisional hearing provided therein is not a real remedial hearing equitable to a full right of appeal, the court should be loath to infer a legislative intent to exclude even a minimal fair hearing at the pre-decisional stage merely on ground of urgency. (reference in this connection has been made to Wade's ADMINISTRATIVE LAW, ibid., page 468 bottom)

20. Applying the proposition propounded by him to the facts of the instant case, Shri Nariman submits that there was ample time at the disposal of the government to give a reasonably short notice to the Company to present its case. In this connection, it is pointed out that according to para 3 of the further affidavit filed by Shri Daulat Ram on behalf of the Union of India and other respondents, the Central Government had in its possession two documents, namely : (a) copy of the Survey Report on M/s. Swadeshi Cotton Mills Company Ltd., covering the period from May to September 1977 prepared by the office of the Textile Commissioner, and (b) Annual Report (dated September 30, 1977) of the Company for the year ending March 31, 1971. In addition, the third circumstance mentioned in the affidavit of Shri Daulat Ram is, that by a order dated January 28, 1978, the Central Government appointed four Government officials, including one from the office of the Textile Commissioner, to study the affairs of the Company and to make recommendation. This Official Group submitted its report on February 16, 1978. It is submitted that this evidence on the basis of which the impugned Order was passed, was not disclosed to the appellant-Company till May 1978, only after it had filed the writ petition in the High Court to challenge the impugned Order. It is emphasised that if the Survey Report was assumed to contain something adverse to the appellants, there was time enough - about six weeks between the submission of the Survey Report

and the passing of the impugned Order for giving a short, reasonable opportunity to the appellants to explain the adverse findings against them. It is urged that even if there was immediacy, situational modifications could be made to meet the requirements of fairness, by reducing the period of notice; that even the manner and form of such notice could be simplified to eliminate delay; that telephonic notice or short opportunity for furnishing their explanation to the Company might have satisfied the requirements of natural justice. Such an opportunity of hearing could have been given after the passing of a conditional tentative order and before its enforcement under Section 18-AA. For the interregnum suitable interim action as freezing the assets of the Company or restraining the Company from creating further encumbrances, etc. could be taken under Section 16.

21. Reference in this connection has been made to Keshav Mills case ((1973) 3 SCR 22 : (1973) 1 SCC 380); Mohinder Singh Gill v. Election Commissioner of India ((1978) 2 SCR 272 : (1978) 1 SCC 405); Maneka Gandhi v. Union of India ((1978) 2 SCR 621 : (1978) 1 SCC 248); Sukhdev Singh v. Bhagatram Sardar Singh ((1975) 3 SCR 619 : (1975) 1 SCC 421 : 1975 SCC (L&S) 101); A. K. Kraipak v. Union of India ((1970) 1 SCR 457 : (1969) 2 SCC 262); Ridge v. Baldwin ((1964) AC 40, 196 : (1963) 2 All ER 66 (HL)); Healthy v. Tasmanian Racing & Gaming Commission (14 Aus LR 519); Commissioner of Police v. Tanos ((1958) 98 CLR 383); Secretary of State for Education & Science v. Metropolitan Borough of Tameside ((1976) 3 All ER 665); Wiseman v. Romeman ((1971) AC 297; Wade : ADMINISTRATIVE LAW, p.465); Nawabkhan Abbaskhan v. State of Gujarat ((1974) 3 SCR 427 : (1974) 2 SCC 121 : 1974 SCC (Cri) 467) and State of Orissa v. Dr. Bina Pani Dei ((1967) 2 SCR 625 : AIR 1967 SC 1269).

22. As against this, Shri Soli Sorabjee, learned Solicitor-General appearing on behalf of respondent 1, contends that the presumption in favour of audi alteram partem rule stands impliedly displaced by the language, scheme, setting, and the purpose of the provision in Section 18-AA. It is maintained that Section 18-AA, on its plain terms, deals with situations where immediate preventive action is required. The paramount concern is to avoid serious problems which may be caused by fall in production. The purpose of an order under Section 18-AA is not to condemn the owner but to protect the scheduled industry. The issue under Section 18-AA is not solely between the government and the management of the industrial undertaking. The object of taking action under this Section is to protect other outside interests of the community at large and the workers. On these premises, it is urged, the context, the subject-matter and the legislative history of Section 18-AA negative the necessity of giving a prior hearing; that Section 18-AA does not contemplate any interval between the making of an order thereunder and its enforcement, because it is designed to meet and emergent situation by immediate preventive action. Shri Sorabjee submits that this rule of natural justice in a modified form has been incorporated in Section 18-F which gives an opportunity of a post-decisional hearing to the owner of the undertaking who, if he feels aggrieved, can, on his application, be heard to show that even the original order under Section 18-AA was passed on invalid grounds and should be cancelled or rescinded. Thus, Shri Sorabjee does not go to the length of contending that the principles of natural justice have been fully displaced or completely excluded by Section 18-AA. On the contrary, his stand is that on a true construction of Section 18-AA read with Section 18-F, the requirements of natural justice and fair play can be read into the statute only "insofar as conformance to such canons can reasonably and realistically be required of it", by the provision for a remedial hearing at a subsequent stage.

23. Shri Sorabjee further submits that since Section 18-F does not specify any period of time within which the aggrieved party can seek the relief thereunder, the opportunity of full, effective and post-decisional hearing has to be given within a reasonable time. It is stressed that under Section 18-F, the Central Government exercise curial functions, and that Section confers on the aggrieved owner a

right to apply to the government to cancel the order of take-over. On a true construction, this Section casts an obligation on the Central Government to deal with and dispose of an application filed thereunder with reasonable expedition. Shri Sorabjee further concedes that on the well settled principle of implied and ancillary powers, the right of hearing afforded by Section 18-F carries with it the right to have inspection and copies of all the relevant books, documents, papers etc. and the section obligates the Central Government to take all steps which are necessary for the effective hearing and disposal of an application under Section 18-F.

24. Shri Sorabjee has in connection with his arguments cited these authorities : Mohinder Singh Gill v. Chief Election Commissioner ((1978) 2 SCR 272 : (1978) 1 SCC 405); In re H. K. (Infants) v. K. (1965 AC 201 (HL) : (1963) 2 All ER 191 (Official Solicitor v. K.) : (1963) 2 WRL 408); Collymore v. Attorney-General ((1969) 2 All ER 1207); Union of India v. Col. J. N. Sinha ((1970) 2 SCC 458 : AIR 1971 SC 40 : (1971) 1 SCR 791); JUDICIAL REVIEW, 3rd End. (by DeSmith (Pages 162, 167, 169 & 170); Queen v. Davey ((1899) 2 QB 301); Gaiman v. National Association for Internal Revenue ((1930) 283 US 589); John H. Fahey v. Paul Millonee (332 US 248); Schwartz's ADMINISTRATIVE LAW (1976 Ed p. 210, para 74); Madhav Hayawadanrao Hoskot v. State of Maharashtra ((1979) 1 SCR 192 : (1978) 3 SCC 544 : 1978 SCC (Cri) 468); Vijay Kumar Mundhra v. Union of India (ITR (1972) 2 Del 483 (FB)); Joseph Kuruvilla Vellukunnel v. R. B. I. (1962 Supp 3 SCR 632 : AIR 1962 SC 1371 : (1962) SC 1371 : (1962) 31 Com Cas 514); Corporation of Calcutta v. Calcutta Tramways Co. Ltd. ((1964) 5 SCR 25 : AIR 1964 SC 1279 : (1964) 2 Cri LJ 354) and Furnell v. Whangarei High Schools Board ((1973) 1 All ER 400).

25. Before dealing with the contentions advanced on both side, it will be useful to have a general idea of the concept of "natural justice" and the broad principles governing its application or exclusion in the construction or administration of statutes and the exercise of judicial or administrative powers by an authority or tribunal constituted thereunder.

26. Well then, what is "natural justice" ? The phrase is not capable of a static and precise definition. It cannot be imprisoned in the straiht-jacket of a cast-iron formula. Historically, "natural justice" has been used in a way "which implies the existence of moral principles of self-evidence and unarguable truth". (Paul Jackson : NATURAL JUSTICE, 2nd Edn., p. 1) In course of time, judges nurtured in the traditions of British jurisprudence, often involved it in conjunction with a reference to "equity and good conscience". Legal experts of earlier generations did not draw any distinction between "natural justice" and "natural law". "Natural justice" was considered as "that part of natural law which relates to the administration of justice". Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules.

27. But two fundamental maxims of natural justice have now become deeply and indelibly ingrained in the common consciousness of mankind, as pre-eminently necessary to ensure that the law is applied impartially, objectively and fairly. Described in the form of Latin tags these twin principles are : (i) audi alteram partem and (ii) nemo judex in re sua. For the purpose of the question posed above, we are primarily concerned with the first. This principle was well-recognised even in the ancient world. Seneca, the philosopher, is said to have referred in Medea that it is unjust to reach a decision without a full hearing. In Maneka Gandhi Case ((1978) 2 SCR 621 : (1978) 1 SCC 248), Bhagwati, J. emphasised that audi alteram partem is a highly effective rule devised by the courts to ensure that a statutory authority arrives at a just decision and it is calculated to act as a healthy check on the abuse or misuse of power. Hence its reach should not be narrowed and its applicability circumscribed.

28. During the last two decades, the concept of natural justice has made great strides in the realm of administrative law. Before the epoch-making decision of the House of Lords in Ridge v. Baldwin ((1964) AC 40, 196 : (1963) 2 All ER 66(HL)), it was generally thought that the rules of natural justice apply only to judicial or quasi-judicial proceedings; and for that purpose, whenever a breach of the rule of natural justice was alleged, courts in England used to ascertain whether the impugned action was taken by the statutory authority or tribunal in the exercise of its administrative or quasi-judicial power. In India also, this was the position before the decision, dated February 7, 1967, of this Court in Dr. Bina Pani Dei case ((1967) 2 SCR 625 : AIR 1967 SC 1269); wherein it was held that even an administrative order or decision in matters involving civil consequences, has to be made consistently with the rules of natural justice. This supposed distinction between quasi-judicial and administrative decisions, which was perceptibly mitigated in Dr. Bina Pani Dei case ((1967) 2 SCR 625 : AIR 1967 SC 1269), was further rubbed out to a vanishing point in A. K. Kraipak v. Union of India ((1970) 1 SCR 457 : (1969) 2 SCC 262), thus : (SCC p. 272, para 20)

If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries .... Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far-reaching effect than a decision in a quasi-judicial enquiry.

29. In A. K. Kraipak case ((1970) 1 SCR 457 : (1969) 2 SCC 262), the court also quoted with approval the observations of Lord Parker from the Queens' Bench decision in In re H. K. (Infants) (1965 AC 201 (HL) : (1963) 2 All ER 191 (Official Solicitor v. K.) : (1963) 3 WRL 408); which were to the effect, that good administration and an honest or bona fide decision require not merely impartiality or merely bringing one's mind bear on the problem, but acting fairly. Thus irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial, a duty to act fairly, that is, in consonance with the fundamental principles of substantive justice is generally implied, because the presumption is that in a democratic policy wedded to the rule of law, the State or the Legislature does not intend that in the exercise of their statutory powers its functionaries should act unfairly or unjustly.

30. In the language of V. R. Krishna Iyer, J. (vide Mohinder Singh Gill case ((1978) 2 SCR 272 : (1978) 1 SCC 405) : "... subject to certain necessary limitations natural justice is now a brooding omnipresence although varying in its play .... Its essence is good conscience in a given situation; nothing more - but nothing less." (SCC p. 434, paras 47 and 48)

31. The rules of natural justice can operate only in areas not covered by any law validly made. They can supplement the law but cannot supplant it (per Hedge, J. in A. K. Kraipak ((1970) 1 SCR 457 : (1969) 2 SCC 262)). If a statutory provision either specifically or by inevitable implication excludes the application of the rules of natural justice, then the court cannot ignore the mandate of the legislature. Whether or not the application of the principles of natural justice in a given case has been excluded, wholly or in part, in the exercise of statutory power, depends upon the language and basic scheme of the provision conferring the power, the nature of the power, the purpose for which it is conferred and the effect of the exercise of that power. (see Union of India v. Col. J. N. Sinha ((1970) 2 SCC 458 : AIR 1971 SC 40 : (1971) 1 SCR 791)).

32. The maxim audi alteram partem has many facets. Two of them are : (a) notice of the case to be met; and (b) opportunity to explain. This rule is universally respected and duty to afford a fair

hearing in Lord Loreburn's oft-quoted language, is "a duty lying upon everyone who decides something", in the exercise of legal power. The rule cannot be sacrificed at the altar of administrative convenience or celerity; for, "convenience and justicel" - as Lord Atkin felicitously put it - "are often not on speaking terms" (General Medical Council v. Spackman, 1943 AC 627, 638).

33. The next general aspect to be considered is : Are there any exceptions to the application of the principles of natural justice, particularly the audi alteram partem rule ? We have already noticed that the statute conferring the power, can by express language exclude its application. Such cases do not present any difficulty. However, difficulties arise when the statute conferring the power does not expressly exclude this rule but its exclusion is sought by implication due to the presence of certain factors : such as, urgency, where the obligation to give notice and opportunity to be heard would obstruct the taking of prompt action of a preventive or remedial nature. It is proposed to dilate a little on this aspect, because in the instant case before us, exclusion of this rule of fair hearing is sought by implication from the use of the word 'immediate' in Section 18-AA(a). Audi alteram partem rule may be disregarded in an emergent situation where immediate action brooks no delay to prevent some imminent danger or injury or hazard to paramount public interests. Thus, Section 133 of the Code of Criminal Procedure, empowers the magistrates specified therein to make an ex parte conditional order in emergent cases, for removal of dangerous public nuisances. Action under Section 17, Land Acquisition Act, furnishes another such instance. Similarly, action on grounds of public safety, public health may justify disregard of the rule of prior hearing.

34. Be that as it may, the fact remains that there is no consensus of judicial opinion on whether mere urgency of a decision is a practical consideration which would uniformly justify non-observance of even an abridged form of this principle of natural justice. In Durayappah v. Fernando ((1967) 2 AC 337) Lord Upjohn observed that "while urgency may rightly limit such opportunity timeously, perhaps severely, there can never be a denial of that opportunity if the principles of natural justice are applicable.

35. These observations of Lord Upjohn in Durayappah case ((1967) 2 AC 337) were quoted with approval by this Court in Mohinder Singh Gill case ((1978) 2 SCR 272 : (1978) 1 SCC 405). It is therefore, proposed to notice the same here.

36. In Mohinder Singh Gill case ((1978) 2 SCR 272 : (1978) 1 SCC 405), the appellant and the third respondent were candidates for election in a Parliamentary Constituency. The appellant alleged that when at the last hour of counting it appeared that he had all but won the election, at the instance of the respondent, violence broke out and the Returning Officer was forced to postpone declaration of the result. The Returning Officer reported the happening to the Chief Election Commissioner. An officer of the Election Commission who was an observer at the counting, reported about the incidents to the Commission. The appellant met the Chief Election Commissioner and requested him to declare the result. Eventually, the Chief Election Commissioner issued a notification which stated that taking all circumstances into consideration the Commissioner was satisfied that the poll had been vitiated, and therefore in exercise of the powers under Article 324 of the Constitution, the poll already held was cancelled and a repoll was being ordered in the constituency. The appellant contended that before making the impugned order, the Election Commission had not given him a full and fair hearing an all that he had was a vacuous meeting where nothing was disclosed. The Election Commission contended that a prior hearing had, in fact, been given to the appellant. In addition, on the question of application of the principles of natural justice, it was urged by the respondents that the tardy process of notice and hearing would thwart the conducting of elections

with speed, that unless civil consequences ensued, hearing was not necessary and that the right accrues to a candidate only when he is declared elected. This contention, which had found favour with the High Court, was negatived by this Court. Delivering the judgment of the Court, V. R. Krishna Iyer, J., lucidly explained the meaning and scope of the concept of natural justice and its role in a case where there is a competition between the necessity of taking speedy action and the duty to act fairly. It will be useful to extract those illuminating observations, in extenso : (SCC p. 434, para 48)

> Once we understand the soul of the rule as fair play in action - and it is so - we must hold that it extends to both the fields. After all, administrative power in a democratic set-up is not allergic to fairness in action and discretionary executive justice cannot degenerate into unilateral injustice. Nor is there ground to be frightened of delay, inconvenience and expense, if natural justice gains access. For fairness itself is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction. It is not a bull in a china shop, nor a bee in one's bonnet. Its essence is good conscience in a given situation; nothing more - but nothing less. The 'exceptions' to the rules of natural justice are a misnomer or rather are but a shorthand form of expressing the idea that in those exclusionary cases nothing unfair can be inferred by not affording an opportunity to present or meet a case.

37. After referring to several decisions, including the observation of Lord Upjohn in Durayappah v. Fernando ((1967) 2 AC 337), the court explained that mere invocation or existence of urgency does not exclude the duty of giving a fair hearing to the person affected : (SCC p. 437, paras 56 & 57)

> It is untenable heresy, in our view, to lock-jaw the victim or act behind his back by tempting invocation of urgency, unless the clearest case of public injury flowing from the least delay is self-evident. Even in such cases a remedial hearing as soon as urgent action has been taken is the next best. Our objection is not to circumscription dictated by circumstances, but to annihilation as an easy escape from a benignant, albeit inconvenient obligation. The procedural pre-condition of fair hearing, however minimal, even post-decisional, has relevance to administrative and judicial gentlemanliness ....
>
> We may not be taken to ... say that situational modifications to notice and hearing are altogether impermissible .... The glory of the law is not that sweeping rules are laid down but that it tailors principles to practical needs, doctors remedies to suit the patient, promotes, not freezes, life's processes, if we may mix metaphors ...

38. The court further emphasised the necessity of striking pragmatic balance between the competing requirements of acting urgently and fairly, thus : (SCC p. 439, paras 62-63)

> Should the cardinal principle of 'hearing' as condition for decision-making be martyred for the cause of administrative immediacy ? We think not. The full panoply may not be there but a manageable minimum may make-do.

In Wiseman v. Borneman ((1971) AC 297; Wade : ADMINISTRATIVE LAW, p. 465) there was a hint of the competitive claims of hurry and hearing. Lord Reid said : "Even where the decision has to be reached by a body acting judicially, there must be a balance between the need for expedition and the need to give full opportunity to the defendant to see material against him".

We agree that the elaborate and sophisticated methodology of a formalised hearing may be injurious to promptitude so essential in an election under way. Even so, natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances. To burke it altogether may not be a stroke of fairness except in very exceptional circumstances.

The court further pointed out that the competing claims of hurry and hearing can be reconciled by making situational modifications in the audi alteram partem rule : (SCC pp. 439 & 440, paras 63 & 66)

> (Lord Denning M. R., in Howard v. Borneman, summarised the observations of the Law Lords in this form.) No doctrinaire approach is desirable but the court must be anxious to salvage the cardinal rule to the extent permissible in a given case. After all, it is not obligatory that counsel should be allowed to appear nor is it compulsory that oral evidence should be adduced. Indeed, it is not even imperative that written statements should be called for disclosure of the prominent circumstances and asking for an immediate explanation orally or otherwise may, in many cases be sufficient compliance. It is even conceivable that an urgent meeting with the concerned parties summoned at an hour's notice, or in a crisis, even a telephone call, may suffice. If all that is not possible as in the case of a fleeing person whose passport has to be impounded lest he should evade the course of justice or a dangerous nuisance needs immediate abatement, the action may be taken followed immediately by a hearing for the purpose of sustaining or setting aside the action to the extent feasible. It is quite on the cards that the Election Commission, if pressed by circumstances may give a short hearing. In any view, it is not easy to appreciate whether before further steps got under way he could have afforded and opportunity of hearing the parties, and revoke the earlier directions .... All that we need emphasize is that the content of natural justice is a dependent variable, not on easy casualty.

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.

39. In Maneka Gandhi ((1978) 2 SCR 621 : (1978) 1 SCC 248), it was laid down that where in an emergent situation, requiring immediate action, it is not practicable to give prior notice or opportunity to be heard, the preliminary action should be soon followed by a full remedial hearing.

40. The High Court of Australia in Commissioner of Police v. Tanos ((1958) 98 CLR 383) held that some urgency, or necessity of prompt action does not necessarily exclude natural justice because a true emergency situation can be properly dealt with by short measures. In Healthy v. Tasmanian Racing & Gaming Commission (14 Aus LR 519) the same High Court held that without the use of unmistakable language in a statute, one would not attribute to Parliament an intention to authorise the commission to order a person not to deal in shares or attend a stock exchange without observing natural justice. In circumstances of likely immediate detriment to the public, it may be appropriate for the commission to issue a warning-off notice without notice or stated grounds but limited to a particular meeting, coupled with a notice that the commission proposed to make a long-term order on stated grounds and to give an earliest practicable opportunity to the person affected to appear before the commission and show why the proposed long-term order be not made.

41. As pointed out in Mohinder Singh Gill v. Chief Election Commissioner ((1978) 2 SCR 272 :

(1978) 1 SCC 405) and in Maneka Gandhi v. Union of India ((1978) 2 SCR 621 : (1978) 1 SCC 248) such cases where owing to the compulsion of the fact-situation or the necessity of taking speedy action, no pre-decisional hearing is given but the action is followed soon by a full post-decisional hearing to the person affected, do not, in reality, constitute an 'exception' to the audi alteram partem rule. To call such cases an 'exception' is a misnomer because they do not exclude 'fair play in action', but adapt it to the urgency of the situation by balancing the competing claims of hurry and hearing.

42. "The necessity for speed", writes Paul Jackson : "may justify immediate action, it will, however, normally allow for a hearing at a later stage." The possibility of such a hearing - and the adequacy of any later remedy should the initial action prove to have been unjustified - are considerations to borne in mind when deciding whether the need for urgent action excludes a right to rely on natural justice. Moreover, however, the need to act swiftly may modify or limit what natural justice requires, it must not be thought "that because rough, swift or imperfect justice only is available that there ought to be no justice" : Pratt v. Wanganui Education Board.

43. Prof. de Smith, the renowned author of JUDICIAL REVIEW (3rd Edn.) has at page 170, expressed his views on this aspect of the subject, thus : "Can the absence of a hearing before a decision is made be adequately compensated for by a hearing ex post facto ? A prior hearing may be better than a subsequent hearing, but a subsequent hearing is better than no hearing at all; and in some cases the courts have held that statutory provision for an administrative appeal or even full judicial review on the merits are sufficient to negative the existence of any implied duty to hear before the original decision is made. The approach may be acceptable where the original decision does not cause serious detriment to the person affected, or where there is also a paramount need for prompt action, or where it is impracticable to afford antecedent hearings."

44. In short, the general principle - as distinguished from an absolute rule of uniform application - seems to be that where a statute doe not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely, if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative progress or frustrate the need for utmost promptitude. In short, this rule of fair play "must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands". The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, to recall the words of Bhagwati, J., the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.

45. Keeping the general principles stated above, let us now examine the scheme, content, object and legislative history of the relevant provisions of the IDR Act.

46. The IDR Act (65 of 1951) came into force on May 8, 1952. The Statement of Objects and Reasons published in the Gazette of India, dated march 26, 1949, says that its object is to provide the Central Government with the means of implementing their industrial policy which was

announced in their resolution, dated April 6, 1948, and approved by the Central Legislature. The Act brings under Central Control the development and regulation of a number of important industries, specified in its First Schedule, the activities of which affect the country as a whole and the development of which must be governed by economic factors of all-India import. The requirement with regard to registration, issue or revocation of licences of these specific industrial undertakings has been provided in Chapter II of the Act. Section 3(d) defines an 'industrial undertaking' to mean "any undertaking pertaining to a scheduled industry carried on in one or more factories by any person or authority including government". Clause (f) of the same section defines 'owner' in relation to an undertaking.

47. Section 15 gives power to the Central Government to cause investigation to be made into a scheduled industry or industrial undertaking. The section reads as follows :

> 15. Where the Central Government is of the opinion that -
>
> (a) in respect of any scheduled industry or industrial undertaking or undertakings -
>
> (i) there has been, or is likely to be, a substantial fall in the volume of production in respect of any article or class of articles relatable to that industry or manufactured or produced in the industrial undertaking or undertakings, as the case may be, for which, having regard to the economic conditions prevailing, there is no justification; or
>
> (ii) there has been, or is likely to be, a marked deterioration in the quality of any article or class of articles relatable to that industry or manufactured or produced in the industrial undertaking or undertakings, as the case may be, which could have been or can be avoided; or
>
> (iii) there has been or is likely to be a rise in the price of any article or class of articles relatable to that industry or manufacturing or produced in the industrial undertaking or undertakings, as the case may be, for which there is no justification; or
>
> (iv) it is necessary to take any such action as is provided in this Chapter for the purpose of conserving any resource of national importance which are utilised in the industry or the industrial undertaking or undertakings, as the case may be; or
>
> (b) any industrial undertaking is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest;

the Central Government may make or cause to be made a full and complete investigation into the circumstances of the case by such person or body of persons as it may appoint for the purpose.

48. Section 16 empowers the Central Government to issue appropriate directions to the industrial undertaking concerned on completion of investigation under Section 15. Such directions may be for all or any of the following purposes :

> (a) regulating the production of any article or class of articles by the industrial undertaking or undertakings and fixing the standards of production;

(b) requiring the industrial undertaking or undertakings to take such steps as the Central Government may consider necessary to stimulate the development of the industry to which the undertaking or undertakings relates or relate;

(c) prohibiting the industrial undertaking or undertakings from resorting to any act or practice which might reduce its or their production, capacity or economic value;

(d) controlling the prices, or regulating the distribution, of any article or class of articles which have been the subject-matter of investigation.

Sub-section (2) enables the Central Government to issue such directions to the industrial undertakings pending investigation.

49. In the course of the working of IDR Act, certain practical difficulties came to light. One of them was that "government cannot take over the management of any industrial undertaking, even in a situation calling for emergent action without first issuing directions to it and waiting to see whether or not they are obeyed". In order to remove such difficulties, the Amending Act 26 of 1953 inserted Chapter III-A containing Sections 18-A to 18-F in the IDR Act. Section 18-A confers power on the Central Government to assume management or control of an industrial undertaking in certain cases. The material part of the section reads as under :

18. (1) If the Central Government is of opinion that -

(a) and industrial undertaking to which directions have been issued in pursuance of section 16 has failed to comply with such directions, or

(b) an industrial undertaking in respect of which an investigation has been made under Section 15 (whether or not any directions have been issued to the undertaking in pursuance of Section 16), is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest, the Central Government may, by notified order, authorise any person or body of persons to take over the management of the whole or any part of the undertaking or to exercise in respect of the whole or any part of the undertaking such functions of control as may be specified in the order.

(2) Any notified order issued under sub-section (1) shall have effect for such period not exceeding five years as may be specified in the order.

Section 18-B specifies the effect of notified order under Section 18-A. Sub-section (1) of the section reads thus :

(1) On the issue of a notified order under Section 18-A authorising the taking over of the management of an industrial undertaking, -

(a) all persons in charge of the management, including persons holding office as managers or directors of the industrial undertaking immediately before the issue of the notified order, shall be deemed to have vacated their offices as such;

(b) any contract of management between the industrial undertaking and any managing agent or any director thereof holding office as such immediately before the issue of the notified order shall be deemed to have been terminated;

> (c) the managing agent, if any, appointed under Section 18-A shall be deemed to have been duly appointed as the managing agent in pursuance of the Indian Companies Act, 1913 (7 of 1913), and the memorandum and articles of association of the industrial undertaking, and the provisions of the said Act and of the memorandum and articles shall, subject to the other provisions contained in this Act, apply accordingly, but no such managing agent shall be removed from office except with the previous consent of the Central Government;
>
> (d) the person or body of persons authorised under Section 18-A to take over the management shall take all such steps as may be necessary to take into his or their custody or control all the property, effects and actionable claims to which the industrial undertaking is or appears to be entitled, and all the property and effects of the industrial undertaking, shall be deemed to be in the custody of the person or, as the case may be, the body of persons as from the date of the notified order; and
>
> (e) the persons, if any, authorised under Section 18-A to take over the management of an industrial undertaking which is a company shall be for all purposes the directors of industrial undertaking duly constituted under the Indian Companies Act, 1913 (7 of 1913), and shall alone be entitled to exercise all the powers of the directors of the industrial undertaking, whether such powers are derived from the said Act or from the memorandum or articles of association of the industrial undertaking or from any other source.

Section 18-D provides that a person whose office is lost under clause (a) or whose contract of management is terminated under clause (b) of Section 18-B shall have no right to compensation for such loss or termination. Section 18-F is material. It reads thus :

> If at any time it appears to the Central Government on the application of the owner of the industrial undertaking or otherwise that the purpose of the order made under Section 18-A has been fulfilled or that for any other reason it is not necessary that the order should remain in force, the Central Government may, by notified order, cancel such order and on the cancellation of any such order the management or the control, as the case may be, of the industrial undertaking shall vest in the owner of the undertaking.

50. By the Constitution Fourth Amendment Act, 1955, Chapter III-A of the IDR Act was included as Item 19 in the Ninth Schedule of the Constitution.

51. Before we may come to Section 18-AA, we may notice here the legislative policy with regard to Cotton Textile Industry, as adumbrated in the Cotton Textile Companies Management of Undertakings and Liquidation or Reconstruction Act, 1967 (Act 29 of 1967). The Statement of Objects and Reasons for enacting this statute, inter alia, says :

> The cotton textile industry provides one of the basic necessities of life and affords gainful employment to millions of people. Over the last few years, this vital industry has been passing through difficult times. Some mills have already had to close down and the continuing economic operation of may others is beset with many difficulties. These difficulties have been aggravated in many cases by the heavy burden of past debts. The taking over of the management of these mills for a limited time and then

> restoring them to original owners has not remedied the situation. Steps are, therefore, necessary to bring about a degree of rationalisation of the financial and managerial structure of such units with a view to their rehabilitation, so that production and employment may not suffer.

Textile industry is also among the industries, included in the First Schedule to the IDR Act.

52. The Amendment Act 72 of 1971 inserted Section 18-AA in the original IDR Act. The material part of the Statement of Objects and Reasons for introducing this Bill of 1971 published in the Gazette of India Extra-ordinary, is as follows :

> The industries included in the First Schedule ... not only substantially contribute to the Gross National Product of the country, but also afford gainful employment to millions of people. For diverse reasons a number of industrial undertakings engaged in these industries have had to close down and the continuing economic operation of many others is beset with serious difficulties affecting industrial production and employment .... During the period of take over government has to invest public funds in such undertakings and it must be able to do so with a measure of confidence about the continued efficient management of the undertaking at the end of the period of take over. In order to ensure that at the end of the period of take over by government, the industrial undertaking is not returned to the same hands which were responsible for its earlier misfortune, it has been provided in the Bill that in relation to an undertaking taken over by them, government will have the power to move for (i) the sale of the undertaking at a reserve price or higher (government purchasing it at the reserve price if no offer at or above the reserve price is received), action being taken simultaneously for the winding up of the company owning the industrial undertaking; or (ii) the reconstruction of the company owning the industrial undertaking with a view to giving the government a controlling interest in it .... With a view to ensuring speedy action by government, it has been provided in the Bill that if the government has evidence to the effect that the assets of the company owning the industrial undertaking are being frittered away or the undertaking has been closed for a period not less than three months and such closure is prejudicial to the concerned scheduled industry and that the financial condition of the company owning the industrial undertaking and the condition of the plant and machinery installed in the undertaking is such that it is possible to restart the undertaking and such restarting is in the public interest, government may take over the management without an investigation.

53. With the aforesaid objects in view, Section 18-AA was inserted by the Amendment Act 72 of 1971. The marginal heading of the section is to the effect : "Power to take over industrial undertakings without investigation under certain circumstances". This marginal heading, it will be seen, accords with the Objects and Reasons extracted above. Section 18-AA runs as under :

> (1) Without prejudice to any other provision of this Act, if, from the documentary or other evidence in its possession, the Central Government is satisfied, in relation to an industrial undertaking, that -
>
> (a) the persons incharge of such industrial undertaking have, by reckless investments or creation of encumbrances on the assets of the industrial undertaking, or by diversion of funds, brought about a situation which is likely to affect the production

of articles manufactured or produced in the industrial undertaking and that immediate action is necessary to prevent such a situation; or

(b) it has been closed for a period or not less than three months (whether by reason of the voluntary winding up of the company owning the industrial undertaking or for any other reason) and such closure is prejudicial to the concerned scheduled industry and that the financial condition of the company owning the industrial undertaking and the condition of the plant and machinery of such undertaking are such that it is possible to re-start the undertaking and such re-starting is necessary in the interests of the general public, it may, by a notified order, authorise any person (hereinafter referred to as the 'authorised person') to take over the management of the whole or any part of the industrial undertaking or to exercise in respect of the whole or any part of the undertaking such functions of control as may be specified in the order.

(2) The provisions of sub-section (2) of Section 18-A shall, as far as may be, apply to a notified order made under sub-section (1) as they apply to a notified order made under sub-section (1) of Section 18-A.

(3) Nothing contained in sub-section (1) and sub-section (2) shall apply to an industrial undertaking owned by a company which is being wound up by or under the supervision of the court.

(4) Where any notified order has been made under sub-section (1), the person or body of persons having, for the time being, charge of the management or control of the industrial undertaking, whether by or under the orders of any court or any contract, instrument or otherwise, shall notwithstanding anything contained in such order, contract, instrument or other arrangement, forthwith make over the charge of management or control, as the case may be, of the industrial undertaking to the authorised person.

(5) The provisions of Sections 18-B to 18-E (both inclusive) shall, as far as may be, apply to, or in relation to, the industrial undertaking, in respect of which a notified order has been made under sub-section (1), as they apply to an industrial undertaking in relation to which a notified order has been issued under Section 18-A.

54. A comparison of the provisions of Section 18-A(1)(b) and Section 18-AA(1)(a) would bring out two main points of distinction : First, action under Section 18-A(1)(b) can be taken only after an investigation had been made under Section 15; while under Section 18-AA(1)(a) or (b) action can be taken without such investigation. The language, scheme and setting of Section 18-AA read in the light of the Objects and Reasons for enacting this provision make this position clear beyond doubt. Second, before taking action under Section 18-A(1)(b), the Central Government has to form an opinion on the basis of the investigation conducted under Section 15, in regard to the existence of the objective fact, namely : that the industrial undertaking is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest; while under Section 18-AA(1)(a) the government has to satisfy itself that the persons in charge of the undertaking have brought about a situation likely to cause fall in production, by committing any of the three kinds of acts specified in that provision. This shows that the preliminary objective fact attributable to the persons in charge of the management or affairs of the undertaking, on the basis of which action may be taken under Section 18-A(1)(b), is of far wider amplitude than the circumstances, the existence

of which is a sine qua non for taking action under Section 18-AA(1). The phrase "highly detrimental to the scheduled industry or public interest" in Section 18-A is capable of being construed to cover a large variety of acts or things which may be considered wrong with the manager of running the industry by the management. In contract with it, action under Section 18-AA(1)(a) can be taken only if the Central Government is satisfied with regard to the existence of the twin conditions specifically mentioned therein, on the basis of evidence in its possession.

55. From an analysis of Section 18-AA(1)(a), it will be clear that as a necessary preliminary to the exercise of the power thereunder, the Central Government must be satisfied "from documentary or other evidence in its possession" in regard to the coexistence of two circumstances :

> (i) that the persons in charge of the industrial undertaking have by committing any of these acts, namely, reckless investments, or creation of incumbrances on the assets of industrial undertaking, or by diversion of funds, brought about a situation, which is likely to affect the production of the article manufactured or produced in the industrial undertaking, and
>
> (ii) that immediate action is necessary to prevent such a situation.

56. Speaking for the High Court (majority), the learned Chief Justice (Deshpande, C.J.) has observed that only with regard to the fulfilment of condition (i) the satisfaction of the government is required to be objectively reached on the basis of relevant evidence in its possession; while with regard to condition (ii), that is, the need for immediate action, it is purely subjective, and therefore, the satisfaction of the government with regard to the immediacy of the situation is outside the scope of judicial review.

57. Shri Sorabjee has in his arguments, forcefully supported this opinion of the High Court. He maintains that the satisfaction of the government with regard to the existence of the immediacy is not justiciable. Reliance has been placed on the following passage in the judgment of Channell, J. in Queen v. Davey ((1899) 2 QB 301, 305-06 : 80 LT 798 : 19 Cox CG 365) :

> The general principle of law is that an order affecting his liberty or property cannot be made against anyone without giving him an opportunity of being heard; the result is that, if general words used in a statute empowering the making of such an order as this, it must be made on notice to the party affected. There are, however, exceptions to this rule, which arise where it can be seen on the words of the statute that it was intended that the order should be made on an ex parte application, and the case in which it is easiest to see the propriety of the exception is where, looking at the scope and object of the legislation it was clearly intended that the parties putting the law in force should act promptly. Such a case is an order for the destruction of unsound meat, which clearly may be made ex parte, because it is desirable in the interest of the public health that it should be acted upon at once. The case of removing an infectious persons, likely to spread abroad the infection, to an infectious hospital is obviously of the same character.

According to the learned Solicitor-General, the power conferred on the Central Government is in the nature of an emergency power, that the necessity for taking immediate action is writ large in Section 18-AA(1)(a) - the provision being a legislative response to deal with an economically emergent situation fraught with national repercussions. The object of the exercise of this power is not to

punish anyone to take immediate preventive action in the public interest.

58. On the other hand, Shri Nariman submits that the High Court was clearly in error in holding that the satisfaction of the Central Government with regard to the necessity of taking immediate action was not open to judicial review at all. It is emphasised that the very language of the provision shows that the necessity for taking immediate action is a question of fact, which should be apparent from the relevant evidence in the possession of the government.

59. We find merit in this contention. It cannot be laid down as a general proposition that whenever a statute confers a power on an administrative authority and makes the exercise of that power conditional on the formation of an opinion by that authority in regard to the existence of an immediacy, its opinion in regard to that preliminary fact is not open to judicial scrutiny at all. While it may be conceded that an element of subjectivity is always involved in the formation of such an opinion, but, as was pointed out by this Court in Barium Chemicals (Barium Chemicals v. Company Law Board, 1966 Supp SCR 311 : AIR 1967 SC 295 : 1966 Com Cas 639), the existence of the circumstances from which the inference constituting the opinion, as the sine qua non for action, are to be drawn, must be demonstrable, and the existence of such "circumstances", if questioned, must be proved at least prima facie.

60. Section 18-AA(1)(a), in terms, requires that the satisfaction of the government in regard to the existence of the circumstances of conditions precedent set out above, including the necessity of taking immediate action, must be based on evidence in the possession of the government. If the satisfaction of the government in regard to the existence of any of the conditions, (i) and (ii), is based on no evidence, or on irrelevant evidence or on an extraneous consideration, it will vitiate the order of 'take-over', and the court will be justified in quashing such an illegal order on judicial review in appropriate proceedings. Even where the statute conferring the discretionary power does not, in terms, regulate or hedge around the formation of the opinion by the statutory authority in regard to the existence of preliminary jurisdictional facts with express checks, the authority has to form that opinion reasonably like a reasonable person.

61. While spelling out by a construction of Section 18-AA(1)(a) the proposition that the opinion or satisfaction of the government in regard to the necessity of taking immediate action could not be the subject of judicial review, the High Court (majority) relied on the analogy of Section 17 of the Land Acquisition Act, under which, according to them, the government's opinion in regard to the existence of the urgency is not justiciable. This analogy holds good only up to a point. Just as under Section 18-AA of the IDR Act, in case of a genuine 'immediacy' or imperative necessity of taking immediate action to prevent fall in production and consequent risk of imminent injury to paramount public interest, an order of 'take-over' can be passed without prior, time-consuming investigation under Section 15 of the Act, under Section 17(1) and (4) of the Land Acquisition Act, also, the preliminary inquiry under Section 5-A can be dispensed with in case of an urgency. It is true that the grounds on which the government's opinion as to the existence of the urgency can be challenged are not unlimited, and the power conferred on the government under Section 17(4) of that Act has been formulated in subjective terms; nevertheless, in cases, where an issue is raised, that the government's opinion as to urgency has been formed in a manifestly arbitrary or perverse fashion without regard to patent, actual and undeniable facts, or that such opinion has been arrived at on the basis of irrelevant considerations or no material at all, or on materials so tenuous, flimsy, slender or dubious that no reasonable man could reasonably reach that conclusion, the court is entitled to examine the validity of the formation of that opinion by the government in the context and to the extent of that issue.

62. In Narayan Govind Gavate v. State of Maharashtra (AIR 1977 SC 183 : (1977) 1 SCC 133 : 1977 SCC (Cri) 49), this Court held that while exercising the power under Section 17(4) of the Land Acquisition Act, the mind of the officer or authority concerned has to be applied to the question whether there is an urgency of such a nature that even the summary proceedings under Section 5-A of the Act should be eliminated. It is not just the existence of an urgency but the need to dispense with an inquiry under Section 5-A of the Act which has to be considered. If the circumstances on the basis of which the government formed its opinion with regard to the existence of the urgency and the other conditions precedent, recited in the notification, are deficient or defective, the court may look beyond it. At that stage, Section 106, Evidence Act can be invoked by the party assailing the notification and if the government or the authority concerned does not disclose such facts or circumstances especially within its knowledge, without even disclosing a sufficient reason for their abstention from disclosure, they have to take the consequences with flow from the non-production of the best evidence which could be produced on behalf of the State of its stand was correct.

63. Again, in Dora Phalauli v. State of Punjab (AIR 1979 SC 1594 : (1979) 4 SCC 485), this Court held that where the purported order does not recite the satisfaction of the government with regard to the existence of urgency, nor the fact of the land being waste or arable land, the order was liable to be struck down and the mere direction, therein, to the Collector to take action on ground of urgency was not a legal and complete fulfilment of the requirement of the law.

64. Recently, in State of Punjab v. Gurdial Singh (AIR 1980 SC 319 : (1980) 2 SCC 471), V. R. Krishna Iyer, J., speaking for the court, made the apposite observations : (SCC p. 477, para 16)

> ..... it is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons. Save in real urgency where public interest does not brook even the minimum time needed to give a hearing, land acquisition authorities should not, having regard to Articles 14 (and 19), burke an enquiry under Section 17 of the Act.

65. Form these decisions, it is abundantly clear that even under Section 17 of the Land Acquisition Act, the satisfaction or opinion of government/ authority in regard to the urgency of taking action thereunder, is not altogether immune from judicial scrutiny.

66. For the reasons already stated, it is not possible to subscribe to the proposition propounded by the High Court that the satisfaction of the Central Government in regard to condition (ii), i.e. the existence of 'immediacy', though subjective, is not open to judicial review at all.

67. From a plain reading of Section 18-AA, it is clear that it does not expressly in unmistakable and unequivocal terms exclude the application of the audi alteram partem rule at the pre- decisional stage. The question, therefore, is narrowed down to the issue, whether the phrase "that immediate action is necessary" excludes absolutely, by inevitable implication, the application of this cardinal canon of fair play in all cases where Section 18-AA(1)(a) may be invoked. In our opinion, for reasons that follow, the answer to this question must be in the negative.

68. Firstly, as rightly pointed out by Shri Nariman, the expression "immediate action" in the said phrase, is to be construed in the light of the marginal heading of the section, its context and the Objects and Reasons for enacting this provision. Thus, construed, the expression only means

"without prior investigation" under Section 15. Dispensing with the requirement of such prior investigation does not necessarily indicate an intention to exclude the application of the fundamental principles of natural justice or the duty to act fairly by affording to the owner of the undertaking likely to be affected, at the pre-decisional stage, wherever practicable, a short-measure fair hearing adjusted, attuned and tailored to the exigency of the situation.

69. At this stage, it is necessary to examine two decisions of this Court, viz., Ambalal M. Shah v. Hathisingh Manufacturing Co. Ltd. ((1962) 3 SCR 171 : AIR 1962 SC 588); and Keshav Mills Co. Ltd. v. Union of India ((1973) 1 SCC 380 (1973) 3 SCR 22), because according to the High Court (as per Deshpande, C.J., who wrote the leading opinion) these two decisions - which are binding on the High Court - conclusively show that :

> The only prior hearing consisted of the investigation under Section 15 read with Rule 5 before action under Section 18-A is taken. The very object of Section 18-AA is to enable action to be taken thereunder without being preceded by the investigation under Section 15. On the authority of the two Supreme Court decisions in Ambalal M. Shah ((1962) 3 SCR 171 : AIR 1962 SC 588) and Keshav Mills ((1973) 3 SCR 22 : (1973) 1 SCC 380) that the only hearing prior to action under Section 18-A was the investigation under Section 15, it would follow that action under Section 18-AA is to be taken without the investigation under Section 15 and, therefore, without a prior hearing.

70. Shri Nariman maintains that the High Court has not correctly construed these decisions. According to the learned counsel, the corollary deduced by the High Court, viz., that exclusion of the investigation under Section 15 includes exclusion of the audi alteram partem rule at the pre-take-over stage, is just the contrary of what was laid down by this Court in Keshav Mills ((1973) 1 SCC 380 (1973) 3 SCR 22) in which Ambalal case ((1962) 3 SCR 171 : AIR 1962 SC 588) was also noticed. Indeed, Shri Nariman strongly relies on this decision in support of his argument that if the application of this rule of natural justice at the pre-decisional stage is not excluded even where a full investigation has been made, there is stronger reason to hold that it is to be observed in a case where there has been no investigation at all.

71. We will first notice the case of Keshav Mills ((1973) 1 SCC 380 (1973) 3 SCR 22) because that is a later decision in which Ambalal case ((1962) 3 SCR 171 : AIR 1962 SC 588) was referred to. In that case, the validity of an order passed by the Central Government under Section 18-A was challenged. By that impugned order the Gujarat State Textile Corporation Ltd. (hereinafter referred to as 'the corporation') was appointed as authorised controller of the company for a period of five years. The Company was the owner of a cotton textile mill. Till 1965, the company made flourishing business. After the year 1964-65, the company fell on evil days and the textile mill of the company was one of the 12 sick textile mills in Gujarat, which had to be closed down during 1960 and 1968. On May 31, 1969, the Central Government passed an order appointing a committee for investigation into the affairs of the company under Section 15 of the IDR Act. After completing the inquiry, the investigating committee submitted its report to the government who thereafter on November 24, 1970, passed the impugned order under Section 18-A authorising the corporation to take over the management of the company for a period of five years. The company challenged the order of 'take-over' by a writ petition in the High Court of Delhi. The High Court dismissed the petition. The main contention of the company before the High Court was that the government was not competent to proceed under Section 18-A against the company without supplying before hand, a copy of the report of the investigating committee to the company. It was further contended that the

government should also have given a hearing to the company before finally deciding upon take-over under Section 18-A. This contention was passed on behalf of the company in spite of the fact that an opportunity had been given by the investigating committee to the management and the employees of the company for adducing evidence and for making representation before the completion of the investigation. On the contentions raised by the company and resisted by the respondent, in that case, the court formulated the following questions :

> (1) Is it necessary to observe the rules of natural justice before enforcing a decision under Section 18-A of the Act ?
>
> (2) What are the rules of natural justice in such a case ?
>
> (3)(a) In the present case, have the rules to be observed once during the investigation under Section 15 and then again, after the investigation is completed and action on the report of the investigating committee taken under Section 18-A ?
>
> (b) Was it necessary to furnish a copy of the investigating committee's report before passing an order of take-over ?

72. Mukherjea, J. speaking for the court, answered these questions, thus : (SCC pp. 386-87, paras 7, 8 & 9)

> (1) The first of these questions does not present any difficulty. It is true that the order of the Government of India that has been challenged by the appellants was a purely executive order embodying an administrative decision. Even so, the question of natural justice does arise in this case. It is too late now to contend that the principles of natural justice need not apply to administrative order or proceedings, in the language of Lord Denning M. R. in Regina v. Gaming Board ex parte Beniam ((1970) 2 WLR 1009 : (1970) 2 All ER 528 (CA)) "that heresy was scotched in Ridge v. Baldwin ((1964) AC 40, 196 : (1963) 2 All ER 66 (HL))".
>
> (2) The second question, however, as to what are the principles of natural justice that should regulate an administrative act or order is a much more difficult one to answer. We do not think it either feasible or even desirable to lay down any fixed or rigorous yard-stick in this manner. The concept of natural justice cannot be put into a strait-jacket. It if futile, therefore, to look for definitions or standards of natural justice from various decisions and then try to apply them to the facts of any given case. The only essential point that has to be kept in mind in all cases is that the person concerned should have a reasonable opportunity of presenting his case and that the administrative authority concerned should act fairly, impartially and reasonably. Where administrative officers are concerned, the duty is not so much to act judicially as to act fairly. See, for instance, the observations of Lord Parker in In re H. K. (an infant) (1965 AC 201 (HL) : (1963) 3 All ER 191 (Official Solicitor v. K.) : (1963) 3 WLR 408). It only means that such measure of natural justice should be applied as was described by Lord Reid in Ridge v. Baldwin ((1964) AC 40, 196 : (1963) 2 All ER 66 (HL)) as insuspectible of exact definition but what a reasonable man would regard as a fair produce in particular circumstances. However, even the application of the concept of fair play requires real flexibility. Everything will depend on the actual facts and circumstances of a case.

> (3)(a) For answering that question we shall keep in mind ..... and examine the nature and scope of the inquiry that had been carried out by the investigating committee set up by the government, the scope and purpose of the Act and rules under which the investigating committee was supposed to act, the matter that was being investigated by the committee and finally the opportunity that was afforded to the appellants for presenting their case before the investigating committee.
>
> (After noticing the object, purpose and content of the relevant provisions, the judgment proceeded) : (SCC pp. 390, 391 and 393, paras 12, 14, 16 & 21)

In fact, it appears from a letter addressed by appellant 2 Navinchandra Chandulal Parikh on behalf of the Company to Shri H. K. Bansal, Deputy Secretary, Ministry of Foreign Trade and Supply on September 12, 1970 that the appellants had come to know that the Government of India was in fact considering the question of appointing an authorised controller under Section 18-A of the Act in respect of the appellants' undertaking. In that letter a detailed account of the facts and circumstances under which the mill had to be closed down was given. There is also an account of the efforts made by the Company's Directors to restore the mill. There is no attempt to minimise the financial difficulties of the company in that letter ..... The letter specifically mentions the company's application to the Gujarat State Textile Corporation Ltd., for financial help ..... the corporation untimely failed to come to the succour of the company. Parikh requested government not to appoint an authorised controller and further prayed that the Government of India should ask the State Government and the Gujarat State Textile Corporation Ltd., to give a financial guarantee to the company ..... Only a few days before this letter had been addressed, Parikh, it appears, had an interview with the Minister of Foreign Trade on August 26, 1970, when the Minister gave him, as a special case, four weeks' time with effect from August 26, 1970 to obtain the necessary financial guarantee from the State or the Gujarat State Textile Corporation without which the company had expressed its inability to reopen and run the mill. In a letter of September 22, 1970, Bansal informed Parikh in clear language that if the company failed to obtain the necessary guarantee by September 26, 1970, government was proceeding to take action under the Act. It is obvious, therefore, that the appellants were aware all long that as a result of the report of the investigating committee the company's undertaking was going to be taken up by government, Parikh had not only made written representations but had also seen the Minister of Foreign Trade and Supply. He had requested the minister not to take over the undertaking and, on the contrary, to lend his good offices so that the company could set financial support from the Gujarat State Textile Corporation or from the Gujarat State Government.

All these circumstances leave in no manner of doubt that the company had full opportunities to make all possible representations before the government against the proposed take-over of its mill under Section 18-A. In this connection, it is significant that even after the writ petition had been filed before the Delhi High Court the Government of India had given the appellants at their own request one month's time to obtain the necessary funds to commence the working of the mill. Even then, they failed to do so .....

> There are at least five features of the case which make it impossible for us to give any weight to the appellants' complaint that the rules of natural justice have not been observed. First, on their own showing they were perfectly aware of the grounds on which government had passed the order under Section 18-A of the Act. Secondly, they are not in a position to deny (a) that the company has sustained such heavy losses that its mill had to be closed down indefinitely, and (b) that there was not only

> loss of production of textiles but at least 1,200 persons had been thrown out of employment. Thirdly, it is transparently clear from the affidavits that the company was not in a position to raise the resources to recommence the working of the mill. Fourthly, the appellant were given a full hearing at the time of the investigation held by the Investigating Committee and were also given opportunities to adduce evidence. Finally, even after the investigation committee had submitted its report, the appellants were in constant communion with the government and were in fact negotiating with government for such help as might enable them to reopen the mill and to avoid a take-over of their undertaking by the government. Having regard to these features it is impossible for us to accept the contention that the appellants did not get any reasonable opportunity to make out a case against the take-over of their undertaking or that the government has not treated the appellants fairly. There is not the slightest justification in this case for the complaint that there has been denial of natural justice.

In our opinion, since the appellants have received a fair treatment and also all reasonable opportunities to make out their own case before government they cannot be allowed to make any grievance of the fact that they were not given a formal notice calling upon them to show cause why their undertaking should not be taken over or that they had not been furnished with a copy of the report. They had made all the representations that they could possibly have made against the proposed take-over. By no stretch of imagination, can it be said that the order for take-over took them by surprise. In fact, government gave them ample opportunity to reopen and run the mill on their own if they wanted to avoid the take-over. The blunt fact is that the appellants just did not have the necessary resources to do so. Insistence on formal hearing in such circumstances is nothing but insistence on empty formality.

> (3)(b) In our opinion it is not possible to lay down any general principle on the question as to whether the report of an investigating body or an inspector appointed by an administrative authority should be made available to the persons concerned in any given case before the authority takes a decision upon that report. The answer to this question also must always depend on the facts and circumstances of the case. It is not at all unlikely that there may be certain cases where unless the report is given the party concerned cannot make any effective representation about the action that government takes or proposes to take on the basis of that report. Whether the report should be furnished or not must therefore depend in every individual case on the merits of that case. We have no doubt that in the instant case, non-disclosure of the report of the investigating committee has not caused any prejudice whatsoever to the appellants.

73. It will be seen from what has been extracted above that in Keshav Mills case ((1973) 1 SCC 380 (1973) 3 SCR 22), this Court did not lay it down as an invariable rule that where a full investigation after notice to the owner of the industrial undertaking has been held under Section 14, the owner is never entitled on grounds of natural justice, to a copy of the investigation report and to an opportunity of making a representation about the action that the government proposes to take on the basis of that report. On the contrary, it was clearly said that the rule of natural justice will apply at that stage in cases "where unless the report is given the partly concerned cannot make any effective representation about the action that government takes or proposes to take on the basis of that report" (SCC p. 393, para 21). It was held that the application or non-application of this rule depends on the facts and circumstances of the particular case. In the facts of that case, it was found that the non-

disclosure of the investigation report had not caused any prejudice whatever because the company were "aware all along that as a result of the report of the investigating committee the company's undertaking was going to be taken (over) by government", and had full opportunities, to make all possible representations before the government against the proposed take-over of the mill.

74. Shri Sorabjee submitted that the observations made by this Court in Keshav Mills case ((1973) 3 SCR 22 : (1973) 1 SCC 380), to the effect, that in certain cases even at the post-investigation stage before making an order of take-over under Section 18-A, it may be necessary to give another opportunity to the affected owner of the undertaking to make a representation, appear to be erroneous. The argument is that the legislature has provided in Sections 15 and 18-A of the Act and Rule 5 framed thereunder, its measure of this principle of natural justice and the stage at which it has to be observed. The High Court, therefore, was not right in engrafting any further application of the rule of natural justice at the post- investigation stage. According to the learned Solicitor-General for the decision of the case, it was not necessary to go beyond the ratio of Shri Ambalal M. Shah v. Hathisingh Manufacturing Co. Ltd. ((1962) 3 SCR 171 : AIR 1962 SC 588), which was followed in Keshav Mills case. ((1973) 1 SCC 380 (1973) 2 SCR 22)

75. In our opinion, the observations of this Court in Keshav Mills ((1973) 1 SCC 380 (1973) 2 SCR 22) in regard to the application of this rule of natural justice at the post-investigation stage, cannot be called obiter dicta. There is nothing in those observations, which can be said to be inconsistent with the ratio decidendi of Ambalal case ((1962) 3 SCR 171 : AIR 1962 SC 588). The main ground on which the order of take-over under Section 18-A was challenged in Ambalal case ((1962) 3 SCR 171 : AIR 1962 SC 588) was that on a proper construction of Section 18-A, the Central Government had the right to make the order under that Section on the ground that the company was being managed in a manner highly detrimental to public interest, only where the investigation made under Section 15 was initiated on the basis of the opinion as mentioned in Section 15(b), whereas in the present case (i.e. Ambalal Case ((1962) 3 SCR 171 : AIR 1962 SC 588)), the investigation ordered by the Central Government was initiated on the formation of an opinion as mentioned in clause (a)(i) of Section 15. It was urged that, in fact, the committee appointed to investigate had not directed its investigation into the question whether the industrial undertaking was being managed in the manner mentioned above. The High Court came to the conclusion that on a correct construction of Section 18-A(1)(b) it was necessary before any order could be made thereunder that the investigation should have been initiated on the basis of the opinion mentioned in Section 15(b) of the Act. It also accepted the petitioner's contention that no investigation had, in fact, been held into the question whether the undertaking was being managed in a manner highly detrimental to public interest.

76. On appeal by special leave, this Court reserved the decision of the High Court, and held that the words used by the legislature in Section 18-A(1)(b) "in respect of which an investigation has been made under Section 15" could not be cut down by the restricting phrase "based on an opinion that the industrial undertaking is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest"; that Section 18-A(1)(b) empowers the Central Government to authorise a person to take over the management of an industrial undertaking if the one condition of an investigation made under Section 15 had been fulfilled irrespective of on what opinion that investigation was initiated and the further condition is fulfilled that the Central Government was of opinion that such undertaking was being managed in a manner highly detrimental to the scheduled industry concerned or to public interest. In this Court, it was urged on behalf of the company that absurd results would follow if the words "investigation has been made under Section 15" are held to include investigation based on any of the opinions mentioned in

Section 15(a). Asked to mention what the absurd results would be, the counsel could only say that an order under Section 18-A(1)(b) would be unfair and contrary to natural justice in such cases, as the owner of an industrial undertaking would have no notice that the quality of management was being investigated. The court found no basis for this assumption because in its opinion, the management could not but be aware that investigation would be directed in regard to the quality of management, also. It is to be noted that the question of natural justice was casually and half-heartedly raised in a different context, as a last resort. It was negatived because in the facts and circumstances of that case, the company was fully aware that the quality of the management was also being inquired into and it had full opportunity to meet the allegations against it during investigation.

77. The second reason - which is more or less a facet of the first - for holding that the mere use of the word "immediate" in the phrase "immediate action is necessary", does not necessarily and absolutely exclude the prior application of the audi alteram partem rule, is that immediacy or urgency requiring swift action is a situational fact having a direct nexus with the likelihood of adverse effect on fall in production. And, such likelihood and the urgency of action to prevent it, may vary greatly in degree. The words "likely to affect ..... production" used in Section 18-AA(1)(a) are flexible enough to comprehend a wide spectrum of situations ranging from the one where the likelihood of the happening of the apprehended event is imminent to that where it may be reasonably anticipated to happen sometime in the near future. Cases of extreme urgency where action under Section 18-AA(1)(a) to prevent fall in production and consequent injury to public interest, brooks absolutely no delay, would be rare. In most cases, where the urgency is not so extreme, it is practicable to adjust and strike a balance between the competing claims of hurry and hearing.

78. The audi alteram partem rule, as already pointed out, is a very flexible, malleable and adaptable concept of natural justice. To adjust and harmonise the need for speed and obligation to act fairly, it can be modified and the measure of its application cut short in reasonable proportion to the exigencies of the situation. Thus, in the ultimate analysis, the question (as to what extent and in what measure), this rule of fair hearing will apply at the pre-decisional stage will depend upon the degree of urgency, if any, evident from the facts and circumstances of the particular case.

79. In the instant case, so far as Kanpur Unit is concerned, it was lying closed for more than three months before the passing of the impugned order. There was no 'immediacy' in relation to that unit, which could absolve the government from the obligation of complying fully with the audi alteram partem rule at the pre-decisional or pre-take-over stage. As regards the other five units of the company, the question whether on the basis of the evidential matter before the government at the time of making the impugned order, any reasonable person could reasonably form an opinion about a likelihood of fall in production and the urgency of taking immediate action, will not be discussed here. For the purpose of the question under consideration we shall assume that there was a likelihood of fall in production. Even so, the undisputed facts and figures of production of 2 or 3 years preceding the take-over, relating to these units, show that on the average, production in these units has remained fairly constant. Rather, in some of these units, an upward trend in production was discernible. Be that as it may, the likelihood of fall in production or adverse effect on production in these five units, could not, by any stretch of prognostication or feat of imagination, be said to be imminent, or so urgent that it could not permit the giving of even a minimal but real hearing to the Company before taking over these units. There was an interval of about six weeks between the Official Group's Report, dated February 16, 1978 and the passing of the impugned order, dated April 13, 1978. There was thus sufficient time available to the government to serve a

copy of that report on the appellant-Company and to give them a short-measure opportunity to submit their reply and representation regarding the findings and recommendations of the Group Officers and the proposed action under Section 18-AA(1).

80. The third reason for our forbearance to imply the exclusion of the audi alteram partem rule from the language of Section 18-AA(1)(a) is, that although the power thereunder is of a drastic nature and the consequences of a take-over are far-reaching and its effect on the rights and interests of the owner of the undertaking is grave and deprivatory, yet the Act does not make any provision giving a full right of a remedial hearing equitable to a full right of appeal, at the post-decisional stage.

81. The High Court seems to be of the view that Section 18-F gives a right of full post-decisional remedial hearing to the aggrieved party. Shri Soli Sorabjee also elaborately supported that view of the High Court. In the alternative, the learned counsel has committed himself on behalf of his client, to the position, that the Central Government will, if required, give the Company a full and fair hearing on merits, including an opportunity to show that the impugned order was not made on adequate or valid grounds.

82. Shri Nariman on the other hand contends - and we think rightly - that the so-called right of a post-decisional hearing available to the aggrieved owner of the undertaking under Section 18-F is illusory as in its operation and effect the power of review, if any, conferred thereunder, is prospective, and not retroactive, being strictly restricted to and dependent upon the post-take-over circumstances.

83. By virtue of sub-section (2) of Section 18-AA, the reference to Section 18-A in Section 18-F will be construed as a reference to Section 18-AA, also. The power of cancellation under Section 18-F can be exercised only on any of these grounds : (i) "that the purpose of the order made under Section 18-A has been fulfilled", or (ii) "that for any other reason it is not necessary that the order should remain in force". These 'grounds' and the language in which they are couched is clear enough to show that the cancellation contemplated thereunder cannot have the effect of annulling, rescinding or obliterating the order of take-over with retroactive force; it can have only a prospective effect. Section 18-F embodies a principle analogous to that in Section 21 of the General Clauses Act. The first 'ground' in Section 18-F for the exercise of the power, obviously does not cover a review of the merits or circumstances preceding and existing at the date of passing the order of 'take-over' under Section 18-AA(1). The words "for any other reason" if read in isolation, no doubt, appear to be of wide amplitude. But their ambit has been greatly cut down and circumscribed by the contextual phrase "no longer necessary that it should remain in force". Construed in this context, the expression "for any other reason" cannot include a ground that the very order of take-over was invalid or void ab initio. Thus, the post-decisional hearing available to the aggrieved owner of the undertaking is not an appropriate substitute for a fair hearing at the pre-decisional stage. The Act does not provide any adequate remedial hearing or right of redress to the aggrieved party even where his undertaking has been arbitrarily taken over on insufficient grounds. Rather, the plight of the aggrieved owner is accentuated by the provision in Section 18-D which desentitles him and other persons whole offices are lost or whose contract of management is terminated as a result of the 'take-over', from claiming any compensation whatever for such loss or termination.

84. Before we conclude the discussion on this point, we may notice once more argument that has been advanced on behalf of the respondents. It is argued that this was a case where a prior hearing to the Company could only be a useless formality because the impugned action has been taken on the basis of evidence, consisting of the balance sheet, account books and other records of the Company

itself, the correctness of which could not have been disputed by the Company. On these premises, it is submitted that non-observance of the rule of audi alteram partem would not prejudice the Company, and thus make no difference.

85. The contention does not appear to be well founded. Firstly, this documentary evidence, at best, shows that the Company was in debt and the assets of some of its 'units' had been hypothecated or mortgaged as security for those debts. Given an opportunity the Company might have explained that as a result of this indebtedness there was no likelihood of fall in production, which is one of the essential conditions in regard to which the government must be satisfied before taking action under Section 18-AA(1) (a). Secondly, what the rule of natural justice required in the circumstances of this case, was not only that the Company should have been given in opportunity to explain the evidence against it, but also an opportunity to be informed of the proposed action of take-over and to represent why it be not taken.

86. In the renowned case Ridge v. Baldwin ((1964) AC 40, 196 : (1963) 2 All ER 66 (HL)), it is contended before the House of Lords that since the appellant police officer had convicted himself out of his own mouth, a prior hearing to him by the Watch Committee could not have made any difference; that on the undeniable facts of that case, no reasonable body of men could have reinstated the appellant. This contention was rejected by the House of Lords for the reason that if the Watch Committee had given the police officer a prior hearing they would not have acted wrongly or unreasonably if they had in the exercise of their discretion decided to take a more lenient course than the one they had adopted.

87. A similar argument was advanced in S. L. Kapoor v. Jagmohan ((1980) 4 SCC 379) to which decision two of us (Sarkaria and Chinnappa Reddy, JJ.) were parties. In negativing this argument, this Court, inter alia, quoted with approval the classical passage, reproduced below, from the judgment of Megarry, J. in John v. Ress ((1970) 1 Ch 345, 402 : (1969) 2 All ER 274, 309) :

> 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. (SCC p. 392, para 19)

88. In General Medical Council v. Spackman ((1955) 1 KB 24 : [sic (1973) 2 All ER 337 (HL) : 1943 AC 627]), Lord Wright condemned the oft-adopted attitude by tribunals to refuse relief on the ground that a fair hearing could have made no difference to the result. Made in his ADMINISTRATIVE LAW, 4th Edn., page 454, has pointed out that "in principle it is vital that the procedure and the merits should be kept strictly apart, since otherwise the merits may be prejudged unfairly".

89. In Maxwell v. Department of Trade and Industry (1974 QB 523, 540 : (1974) 2 All ER 122, 132), Lawton L. J. expressed in the same strain that "doing what is right may still result in unfairness if it is done in the wrong way". This view is founded on the cardinal canon that justice must not only be done but also manifestly seen to be done.

90. Observance of this fundamental principle is necessary if the courts and the tribunals and the administrative bodies are to command public confidence in the settlement of disputes or in taking quasi-judicial or administrative decisions affecting civil rights or legitimate interest of the citizens. The same proposition was propounded in R. v. Thames Magistrates' Court ex p. Polemis (1974) 1 WLR 1371 : (1974) 2 All ER 1219 (QBD)), by Lord Widgery C.J. at page 1375; and by the American Supreme Court in Margarita Fuentes v. Tobert L. Shevin (32 L Ed 2d 556, 574).

91. In concluding the discussion in regard to this aspect of the matter, we can do no better than reiterate what was said by one of us (Chinnappa Reddy, J.) in S. L. Kapoor v. Jagmohan ((1980) 4 SCC 379) : "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 had been denied justice is not prejudiced." (SCC p. 395, para 24)

92. We, therefore, overrule this last contention.

93. In sum, for all the reasons aforesaid, we are of the view that it is not reasonably possible to construe Section 18-AA(1) as universally excluding, either expressly or by inevitable intendment, the application of the audi alteram partem rule of natural justice at the pre-take-over stage, regardless of the facts and circumstances of the particular case. In the circumstances of the instant case, in order to ensure fair play in action it was imperative for the government to comply substantially with this fundamental rule of prior hearing before passing the impugned order. We therefore, accept the two-fold proposition posed and propounded by Shri Nariman.

94. The further question to be considered is : What is the effect of the non-observance of this fundamental principle of fair play ? Does the non-observance of the audi alteram partem rule, which in the quest of justice under the rule of law, has been considered universally and most spontaneously acceptable principle, render an administrative decision having civil consequences, void or viodable ? In England, the outfall from the watershed decision, Ridge v. Baldwin (1964 AC 40 : (1963) 2 All ER 66 (HL)) brought with it a rash of conflicting opinion on this point. The majority of the House of Lords in Ridge v. Baldwin (1964 AC 40 : (1963) 2 All ER 66 (HL)) held that the non-observance of this principle, had rendered the dismissal of the Chief Constable void. The rationale of the majority view is that where there is a duty to act fairly, just like the duty to act reasonably, it has to be enforced as an implied statutory requirement, so that failure to observe it means that the administrative act or decision was outside the statutory power, unjustified by law, and therefore ultra vires and void (see Wade's ADMINISTRATIVE LAW, ibid., page 448). In India, this Court has consistently taken the view that a quasi-judicial or administrative decision rendered in violation of the audi alteram partem rule, wherever it can be read as an implied requirement of the law, is null and void (e.g. Maneka Gandhi case ((1978) 1 SCC 248), and S. L. Kapoor v. Jagmohan ((1980) 4 SCC 379)). In the facts and circumstances of the instant case, there has been a non-compliance with such implied requirement of the audi alteram partem rule of natural justice at the pre-decisional stage. The impugned order therefore, could be struck down as invalid on that score alone. But we refrain from doing so, because the learned Solicitor-General in all fairness, has both orally and in his written submissions dated August 28, 1979, committed himself to the position that under Section 18-F, the Central Government in exercise of its curial functions, is bound to give the affected owner of the undertaking taken over, a "full and effective hearing on all aspects touching the validity and/or correctness of the order and/or action/of take-over", within a reasonable time after the take-over. The learned Solicitor-General has assured the court that such a hearing will be afforded to the

appellant-Company if it approaches the Central Government for cancellation of the impugned order. It is pointed out that this was the conceded position in the High Court that the aggrieved owner of the undertaking had a right to such a hearing.

95. In view of this commitment/or concession fairly made by the learned Solicitor-General, we refrain from quashing the impugned order, and allowing Civil Appeal 1629 of 1979 send the case back to the Central Government with the direction that it shall, within a reasonable time, preferably within three months from today, give a full, fair and effective hearing to the aggrieved owner of the undertaking, i.e., the Company, on all aspects of the matter, including those touching the validity and/or correctness of the impugned order and/or action of take-over and then after a review of all the relevant meterials and circumstances including those obtaining on the date of the impugned order, shall taken such fresh decision, and/or such remedial action as may be necessary, just, proper and in accordance with law.

96. In view of the above decision, no separate order is necessary in Civil Appeals 1857 and 2087 of 1979.

97. All the three appeals are disposed of accordingly with no order as to costs. Since the appeals have been disposed of on the first and foremost point canvassed before us, in the manner indicated above, it is not necessary to burden this judgment with a discussion of the other points argued by the counsel for the parties.

Chinnappa Reddy, J. (dissenting) -

I have the misfortune to be unable to agree with the erudite opinion of my learned brother Sarkaria on the question of the applicability of the principles of natural justice. I do so with diffidence and regret.

99. The first of the submissions of Shri F. S. Nariman, learned counsel for the appellant-Company was that there was a violation of the principles of natural justice. He submitted that the provisions of the Industries (Development and Regulation) Act did not rule out natural justice and that there were several occasions in the march of events that led to the passing of the order under Section 18-AA when an opportunity could have been given to the Company and the principles of natural justice observed but the Government of India refrained from doing so. He urged that the immediate action contemplated by Section 18-AA(1)(a) was not to be construed as negating natural justice but as intended merely to distinguish it from action under Section 18-A which was to be taken only after investigation under Section 15. He drew inspiration for this argument from the marginal note to Section 18-AA which is "power to take over industrial undertakings without investigation under certain circumstances". He also urged that 18-F contemplated a post-decisional situation necessitating cancellation of the order of take-over but did not contemplate cancellation of the order of take-over on the ground that such order ought never to have been made. He urged that the scope of Section 18-F was very narrow and did not entitle the party affected to a fair hearing. In any case he urged that the remedy such as it was provided by Section 18-F was not an answer to the claim to pre-decisional natural justice. His submission was that natural justice was not to be excluded except by the clear and unmistakable language of the statute, though the 'quantum' of natural justice to be afforded in an individual case might vary from case to case.

100. Shri Soli J. Sorabjee, learned Solicitor-General, while conceding that statutory silence on the question of natural justice should ordinarily lead to an implication by presumption that natural

justice was to be observed, urged that the presumption might be displaced by necessary implication, as for instance where compliance with natural justice might be inconsistent with the demands of promptitude, and delayed action might lead to disaster. The presumption of implication of natural justice was very weak where action was of a remedial or preventive nature or where such action concerned property rights only. In appropriate situations post-decisional hearing might displace pre-decisional natural justice. The state itself might well provide for a post-decisional hearing as substitute for pre-decisional natural justice in situations requiring immediate action. Section 18-F of the Industries Development and Regulation Act expressly provided for such a post-decisional hearing and the urgency of the situation contemplated by Section 18-AA necessarily excluded pre-decisional natural justice. There was no reason to belittle the scope of Section 18-F, so, to exclude a fair post-decisional hearing at the instance of the party affected and, consequently, to imply pre-decisional natural justice.

101. Both the learned counsel invited our attention to considerable case-law. I do not propose to discuss the case-law as my brother Sarkaria has referred to all the cases in great detail. Before I consider the submissions of the learned counsel as to the applicability of the principles of natural justice, a few prefatory remarks, however, require to be made.

102. Natural justice, like Ultra Vires and Public Policy, is a branch of the Public Law and is a formidable weapon which can be wielded to secure justice to the citizen. It is productive of great goods as well as much mischief. While it may be used to protect certain fundamental liberties, civil and political rights, it may be used, as indeed it is used more often than not, to protect vested interests and to obstruct the path of progressive change. In the context of modern welfare legislation, the time has perhaps come to make an appropriate distinction between natural justice in its application to fundamental liberties, civil and political rights and natural justice in its application to vested interest. Our Constitution, as befits the Constitution of a Socialist Secular Democratic Republic, recognises the paramountcy of the public weal over the private interest. Natural justice, Ultra Vires, Public Policy, or any other rule or interpretation must therefore, conform, grow and be tailored to serve the public interest and respond to the demands of an evolving society.

103. In Ridge v. Baldwin (1964 AC 40 : (1963) 2 All ER 66 (HL)), it was thought by Lord Reid that Natural justice had no easy application where questions of public interest and policy were more important than the rights of individual citizens. He observed :

> If a Minister is considering whether to make a scheme for, say, an important new road, his primary concern will not be with the damage which its construction will do to the rights of individual owners of land. He will have to consider all manner of questions of public interest and, it may be, a number of alternate schemes. He cannot be prevented from attaching more importance to the fulfilment of his policy than to the fate of individual objectors, and it would be quite wrong for the courts to say that the minister should or could act in the same kind of way as a board of works deciding whether a house should be pulled down.

And, as pointed out by a contributor in 1972-A Cambridge Law Journal at page 14 : "..... the safeguarding of existing rights can after all in some circumstances amount to little more than the fighting of a rearguard action by the reactionary element in society seeking only to preserve its own vested position."

104. The United States Supreme Court has recognised the distinction between cases where only

property rights are involved and cases where other civil and political rights are involved. In cases where only property rights are involved postponement of enquiry has been held not to be a denial of due process, vide : Annie G. Phillips v. Commissioner of Internal Revenue (75 L Ed 1289); John H. Fahey v. Paul Mallonee (91 L Ed 2030); Margarita Fuentes v. Tobert L. Shevin (32 L Ed 2d 556) and Lawrence Mitchell v. W. T. Grant Co. (40 L Ed 2d 406)

105. In the first case (75 L Ed 1289), Brandeis, J. observed :

> Where only property rights are involved, mere postponement of the judicial inquiry is not a denial of due process, if the opportunity given for the ultimate judicial determination of the liability is adequate. Delay in the judicial determination of property rights is not uncommon where it is essential that governmental needs be immediately satisfied. For the protection of public health, a State may order the summary destruction of property by administrative authorities without antecedent notice or hearing. Because of the public necessity the property of citizens may be summarily seized in wartime. And at any time, the United States may acquire property by eminent domain, without paying, or determining the amount of the compensation before the taking.

106. The principles of natural justice have taken deep root in the judicial conscience of our people, nurtured by Dr. Bina Pani ((1967) 2 SCR 625 : AIR 1967 1269), Kraipak ((1969) 2 SCC 262 : (1970) 2 SCR 457), Mohinder Singh Gill ((1978) 1 SCC 405 : (1978) 2 SCR 272), Maneka Gandhi ((1978) 1 SCC 248). They are now considered so fundamental as to be 'implicit in the concept of ordered liberty' and, therefore, implicit in every decision-making function, call it judicial, quasi-judicial or administrative. Where authority functions under a statute and the statute provides for the observance of the principles of natural justice in a particular manner, natural justice will have to be observed in that manner and in no other. No wider right than that provided by statute can be claimed nor can the right be narrowed. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice. The implication of natural justice being presumptive it may be excluded by express words of statute or by necessary intendment. Where the conflict is between the public interest and the private interest, the presumption must necessarily be weak and may, therefore, be readily displaced. The presumption is also weal where what are involved are mere property rights. In cases of urgency, particularly where the public interest is involved, pre-emptive action may be a strategic necessity. There may then be no question of observing natural justice. Even in cases of pre-emptive action, if the statute so provides or if the courts so deem fit in appropriate cases, a postponed hearing may be substituted for natural justice. Where natural justice is implied, the extent of the implication and the nature of the hearing must vary with the statute, the subject and the situation. Seeming judicial ambivalence on the question of the applicability of the principles of natural justice is generally traceable to the readiness of judges to apply the principles of natural justice where no question of the public interest is involved, particularly where rights and interests other than property rights and vested interests are involved and the reluctance of judges to apply the principles of natural justice where there is suspicion of public mischief and only property rights and vested interests are involved.

107. In the light of these prefatory remarks, I will proceed to consider the relevant statutory provisions. The Industries (Development and Regulation) Act, 1951, was enacted pursuant to the power given to Parliament by Entry 52 of List I of the Seventh Schedule to the Constitution. As required by that Entry Section 2 of the Act declares that it is expedient in the public interest that the

Union should taken under its control the industries specified in the First Schedule to the Act. Item 23 of the First Schedule to the Act relates to textiles of various categories. Section 3(d) defines "industrial undertaking" to mean "any undertaking pertaining to a scheduled industry carried on in one or more factories by any person or authority including government". The expression "undertaking" is not, however, defined. Section 3(f) defines "owner", "in relation to an industrial undertaking" as "the person who, or the authority which, has the ultimate control over the affairs of the undertaking, and, where the said affairs are entrusted to a manager, managing director or managing agents, such manager, managing director or managing agent shall be deemed to be the owner of the undertaking". Section 3(j) provides that words and expressions not defined in the Act but defined in the Companies Act shall have the meaning assigned to them in that Act. Section 10 obliges the owner of an industrial undertaking to register the undertaking in the prescribed manner. Section 10-A authorises the revocation of registration after giving an opportunity to the owner of the undertaking in certain circumstances. Section 11 provides for the licensing of the new industrial undertaking and Section 11-A provides for the licensing of the production and manufacture of the new articles. Section 13 provides, among other things, that, except under, and in accordance with, a licence issued in that behalf by the Central Government, no owner of an industrial undertaking shall effect any substantial expansion or change the location of the whole or any part of an industrial undertaking. Section 14 provides for a full and complete investigation in respect of applications for the grant of licence or permission under Sections 11, 11-A, 13 or 29-B. Section 15 authorises the Central Government to make or cause to be made a full and complete investigation into the circumstances of the case if the Central Government is of the opinion that -

> (a) in respect of any scheduled industry or industrial undertaking or undertakings -
>
> (i) there has been, or is likely to be, a substantial fall in the volume of production ..... for which, having regard to the economic conditions prevailing, there is no justification; or
>
> (ii) there has been, or is likely to be, a marked deterioration in the quality of any article ..... which could have been or can be avoided; or
>
> (iii) there has been or is likely to be a rise in the price of any article ..... for which there is no justification; or
>
> (iv) it is necessary to take any such action for the purpose of conserving any resources of national importance; or
>
> (b) any industrial undertakings is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest.

After the investigation is made under Section 15, Section 16(1) provides, if the Central Government is satisfied that such action is desirable, it may issue appropriate directions for -

> (i) regulating the production of any article ..... and fixing the standards of production;
>
> (ii) requiring the industrial undertaking to take such steps as the Central Government may consider necessary, to stimulate the development of the industry;
>
> (iii) prohibiting resort to any act or practice which might reduce the undertaking's

production, capacity or economic value;

(iv) controlling the prices, or regulating the distribution of any article.

Section 16(2) also provides for the issue of interim directions by the Central Government pending investigation under Section 15. Such directions are to have effect until validly revoked by the Central Government.

108. Chapter III-A consisting of Sections 18-A, 18-AA, 18-B, 18-C, 18-D, 18-E and 18-F deals with "Direct management or control of industrial undertakings by Central Government in certain cases". Section 18-A which is entitled "Power of Central Government to assume management or control of an industrial undertaking in certain cases" provides that the Central Government may, by notified order, authorise any person or body of persons to take over the management of the whole or any part of an industrial undertaking or to exercise in respect of the whole or any part of the undertaking such functions of control as may be specified in the order, if the Central Government is of opinion that -

(a) an industrial undertaking to which directions have been issued in pursuance of Section 16 has failed to comply with such directions, or

(b) an industrial undertaking in respect of which an investigation has been made under Section 15 is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest.

Section 18-AA refers to "Power to take over industrial undertakings without investigation under certain circumstances". It enables the Central Government by a notified order to authorise any person or body of persons to take over the management of the whole or any part of an industrial undertaking or to exercise in respect of whole or any part of the undertaking such functions of control as may be specified in the order, if, without prejudice to any other provision of the Act, from the documentary or other evidence in its possession, the Central Government is satisfied in relation to the industrial undertaking, that -

(a) the persons in charge of such industrial undertaking have, by reckless investments or creation of encumbrances on the assets of the industrial undertaking, or by diversion of funds, brought about a situation which is likely to affect the production of articles manufactured or produced in the industrial undertaking, and that immediate action is necessary to prevent such a situation; or

(b) it has been closed for a period of not less than three months (whether by reason of the voluntary winding up of the company owning the industrial undertaking or for any other reason) and such closure is prejudicial to the concerned scheduled industry and that the financial condition of the company owning the industrial undertaking and the condition of the plant and machinery of such undertaking are such that it is possible to restart the undertaking and such restarting is necessary in the interests of the general public.

Section 18-AA(5) stipulates that the provisions of Sections 18-B to 18-E shall be applicable to the industrial undertaking in respect of which an order has been made under Section 18-AA even as they apply to an industrial undertaking taken over under Section 18-A. Section 18-B specifies the effect of a notified order under Section 18-A. Section 18-C empowers the court to cancel or vary

contracts made in bad faith etc. by the management of an undertaking before such management was taken over by the Central Government. Section 18-D provides that there shall be no right to compensation for termination of office or contract as a result of the 'take-over'. Section 18-E deprives the shareholders and the company of certain rights under the Indian Companies Act, if the industrial undertaking whose management is taken over is a company. Section 18-F empowers the Central Government on the application of the owner of the industrial undertaking or otherwise to cancel the order made under Section 18-A if it appears to the Central Government that the purpose of the order has been fulfilled or that for any other reason it is not necessary that the order should remain in force. Section 18-FD(3) enables the Central Government to exercise the powers under Section 18-F in relation to an undertaking taken over under Section 18-AA.

109. The question for consideration is whether Section 18-AA excludes natural justice by necessary implication. The development and regulation of certain key industries was apparently considered so basic and vital to the economy of our country that Parliament, in its wisdom, thought fit to enact the Industries (Development and Regulation) Act, after making the declaration required by Entry 52 of List I of the Seventh Schedule to the Constitution that it as expedient, in the public interest, that the Union should take under its control the industries specified in the schedule to the Act, as earlier mentioned by us. Apart from making provision for the establishment of a Central Advisory Council and other Development Councils, and the licensing of scheduled industries, the Act empowers the Central Government to cause a full and complete investigation to be made where there is a substantial fall in the volume of production for which there is no justification having regard to the prevailing economic conditions or there is marked deterioration in the quality of the goods produced or the price of the goods produced is rising unjustifiably or where conservation of resources of national importance is necessary or the industrial undertaking is being managed in a manner highly detrimental to the scheduled industry or to public interest (Section 15) and thereafter to issue necessary and appropriate directions to the industrial undertaking to mend matters suitably (Section 16). Where the instructions issued under Section 16 are not complied with or where the investigation reveals that the industrial undertaking is being managed in a manner highly detrimental to the scheduled industry or to the public interest the Central Government may take over the industry under Section 18-A. Whether there is an investigation or not, the Central Government may also 'take over' the management of the industry under Section 18-AA, if consequent on certain wilful acts of commission on the part of the management the production is likely to be affected but immediate action may prevent such a situation, or the industrial undertaking has been closed for a period of not less than three months and the closure is prejudicial to the scheduled industry. Action under Section 18-AA is thus preventive and remedial. Where there is an apprehension that production is likely to be affected as a result of the wilful acts of the management or where the production has already come to a standstill because of the closure of the undertaking for a period of not less than three months of the Central Government is authorised to intervene to restore production. The object clearly is to take immediate action to prevent a situation likely to affect production or to restore production. There was some argument at the Bar that the expression 'immediate action' was not to be found in Section 18-AA(1)(b). I do not think that the absence of the expression 'immediate action' in Section 18-AA(1)(b) makes any difference. Section 18-AA(1)(a) refers to a situation where immediate preventive action may avert a disaster, whereas Section 18-AA(1)(b) contemplates a situation where the disaster has occurred and action is necessary to restore normalcy. Restoration of production where production has stopped in a key industry or industrial undertaking is as important and urgent, in the public interest, as prevention of a situation where production may be affected. Immediate action is, therefore, as necessary in the situation contemplated by Section 18-AA(1)(b) as in the situation contemplated by Section 18-AA(1)(a).

110. It is true that the marginal note refers to the power to take over without investigation but there is no sufficient reason to suppose that the word 'immediate' is used only to contra-distinguish it from the investigation contemplated by Section 15 of the Act, though, of course of consequence of immediate action under Section 18-AA may be to dispense with the enquiry under Section 15. In fact, facts which come to light during the course of an investigation under Section 15 may form the basis of action under Section 18-AA(1)(a). Where in the course of an investigation under Section 15 it is discovered that the management have, by reckless investments or creation of encumbrances on the assets of the industrial undertaking or by diversion of funds brought about a situation which is likely to affect the production of the articles manufactured or produced in the industrial undertaking, if the government is satisfied that immediate action is necessary to prevent such a situation, there is no reason why the Central Government may not straight away taken action under Section 18-AA(1)(a) without waiting for completion of investigation under Section 15. Parliament apparently contemplated a situation where immediate action was necessary, and having contemplated such a situation, there is no reason to assume that Parliament did not contemplate situations which brooked not a moment's delay. If Parliament also contemplated situations which did not brook a moment's delay, it would be difficult to read natural justice into Section 18-AA. The submission of Shri Nariman was that the immediacy of the situation would be relevant and relatable to the quantum of natural justice and not to a total denial of natural justice. According to him the scope and extent of the opportunity to the given to the party against whom action is taken may depend upon the situation but nothing would justify a negation of natural justice. He pointed out that in a situation of great urgency which brooked no delay, an order under Section 18-AA might be made, the situation could be so frozen that the persons in charge of the industrial undertaking might do no more mischief and the government could the, without giving further effect to the order under Section 18-AA, give a notice to the person in charge to show cause why the order under Section 18-AA should not be given effect. In another given case, according to Shri Nariman, notice of, say two weeks, might be given before making an order, if the making of an order was not so very urgent. He suggested that the opportunity to be given might vary from situation to situation but opportunity there must be, either before the decision was arrived at or so shortly after the decision was arrived at and before any great mischief might result from the order. The argument of Shri Nariman would vest in the government a power to decide from case to case the extent of opportunity to be given in each individual case and, as a corollary, a corresponding right in the aggrieved party to claim that the opportunity provided was not enough. Such a procedure may be possible, practicable and desirable in situations where there is no statutory provision enabling the decision-making authority to review or reconsider its decision. Where there is a provision in the statute itself for revocation of the order by the very authority making the decision, it appears to us to be unnecessary to insist upon a pre-decisional observance of natural justice. The question must be considered by regard to the terms of the statute and by an examination, on the terms of the statute, whether it is possible, practicable and desirable to observe pre-decisional natural justice and whether a post-decisional review or reconsideration provided by the statute itself is not a sufficient substitute.

111. The likelihood of production being jeopardized or the stoppage of production in a key industrial undertaking is a matter of grave concern affecting the public interest. Parliament has taken so serious a view of the matter that it has authorised the Central Government to take over the management of the industrial undertaking if immediate action may prevent jeopardy to production or restore production where it has already stopped. The necessity for immediate action by the Central Government, contemplated by Parliament, is definitely indicative of the exclusion of natural justice. It is not as if the owner of the industrial undertaking is left with no remedy. He may move the Central Government under Section 18-F to cancel the order made under Section 18-AA. True

some mischief affecting the management and top executive may have already been done. On the other hand, greater mischief affecting the public economy and the lives of many a thousand worker may have been averted. While on the one hand mere property rights are involved, on the other vital public interest is affected. This again, in the light of the need for immediate action contemplated by Parliament, is a clear pointer to the exclusion of natural justice. It was submitted by the learned counsel that Section 18-F did not provide any remedy but merely provided for cancellation of an order of take-over on the fulfilment of the purpose of the order of take-over or for any other reason which rendered further continuance in force of the order unnecessary because of the happening of subsequent events. According to the learned counsel the basic assumption of Section 18-F was the validity of the order under Section 18-A or Section 18-AA. All that Section 18-F did was to prescribe conditions for the exercise of the general power which every authority had under Section 21 of the General Clauses Act to cancel its own earlier order. It was said that if Section 18-F could be said to impliedly exclude natural justice there is no reason to hold that Section 21 of the General Clauses Act similarly excluded natural justice in every case. I am unable to agree with these submissions of the learned counsel. Neither Section 18-F of the Industries (Development and Regulation) Act nor Section 21 of the General Clauses Act, by itself, excludes natural justice. The exclusion of natural justice, where such exclusion is not express, has to be implied by reference to the subject, the statute and the statutory situation. Where an express provision in the statute itself provides for a post-decisional hearing the other provisions of the statute will have to be read in the light of such provision and the provision for post-decisional hearing may then clinch the issue where pre-decisional natural justice appears to be excluded on the other terms of the statute. That a post-decisional hearing may also be had by the terms of Section 21 of the General Clauses Act may not necessarily help in the interpretation of the provisions of the statute concerned. On the other hand even the general provision contained in Section 21 of the General Clauses Act may be sufficient to so interpret the terms of a given statute as to exclude natural justice. As I said it depends on the subject, statute and the statutory situation.

112. I am, therefore, satisfied that the principles of natural justice are not attracted to the situations contemplated by Section 18-AA of the Industries (Development and Regulation) Act. In view of the order proposed by my learned brothers Sarkaria & Desai, JJ. I do not propose to consider the other questions.

ORDER OF THE COURT

113. As per majority decision, the appeals are allowed.

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