ALLAHABAD HIGH COURT

Ghanshyam Das Gupta

Vs.

Board of High School

Special Appeal No. 291 of 1955

(Agarwala, J. On Difference Between Raghubar Dayal and Brij Mohan Lall, JJ.)

23.03.1956

JUDGMENT

Brij Mohan Lall, J.

1. This is a special appeal against the decision of a learned single Judge of this Court. The appellants are three examinees, being the students of G.S. Hindu Inter College. Sikandra Rao, district Aligarh, who appeared in the intermediate examination of 1954 conducted by the Board of High School and Intermediate Education. U.P., in March and April of that year. Their college itself was a centre for the purposes of the examination. Some of the examinees were found using unfair means and were expelled from the examination h all. The appellants were not among them. They completed their examination. The results were declared by the aforesaid Board in the Leader of 12-6-1954, and were again published in the U.P. Gazette dated 16-10-1954. In both these notifications the appellants were declared as successful candidates. The mark sheets were also sent to all colleges and therein also the appellants were shown as having passed the examination. They joined B.A. Classes in different colleges.
In December 1954, i.e. eight or nine months-after the examination, their parents received from, the Principal of G.S. Hindu Inter College copies of a resolution No. 83, dated 5-9-1954, of the examinations Committee of the Board wherein it was stated that the appellants'results had been cancelled and that they had been debarred from appearing in the Board's examination of 1955.

2. It is common ground between the parties that before the receipt of the copies of the resolution by their parents the appellants had not been apprised of the charges against them. Nor were they told what evidence the Examinations Committee had before it before recording the above resolution. The appellants were denied the opportunity of cross-examining the witnesses who might have deposed against them. Nor were they permitted to explain or scrutinize the other oral or documentary evidence that might have been, available to the Committee.

3. The appellants filed a writ petition praying that a writ of certiorari or any other suitable writ, direction or order be issued quashing the resolution of the Examinations Committee and that a writ of mandamus be also issued commanding the Board not to give effect to the aforesaid resolution.

4. From the affidavits filed before the learned single Judge it appeared that the Examinations Committee received reports that the appellants'answers to question No. 1 in Book-Keeping and Accountancy Paper agreed with each other word for word and also agreed with a typed copy that was distributed among the examinees. The Examinations Committee appointed a sub-committee to enquire into this matter.
The sub-committee did not give any notice to the appellants, conducted ex parte proceedings and submitted a report to the Examinations Committee. This report also was not disclosed to the appellants. Even we have been denied the privilege of seeing this report. This report was accepted on 5-9-3 954 by the Examinations Committee and it passed the resolution aforesaid.

5. The learned single Judge held that the proceedings conducted by the sub-committee were not judicial proceedings and that there was so statutory obligation on the part of the sub-committee to hear the appellants. He relied on an earlier decision of his own in the case of *Fateh Mohammad Khan v. U.P. Board of High School and Intermediate Education*[1], In that case also the learned Judge had taken the same view, but in that case action was taken by the Examinations Committee before the examination result was declared out.

6. The Board of High School and Intermediate Education has been constituted under Section 3 of the Intermediate Education Act (2 of 1921). Section 7 of the Act defines the powers of the Board and empowers it, inter alia, to do all such other acts and things as may be requisite in order to further the objects of the Board as a body constituted for regulating and supervising High School and Intermediate Education. It is under this power that the Board exercises the right to punish the examinees who use unfair means during the course of an examination. Section 13 empowers the Board to appoint various committees including an Examinations Committee. Section 15 confers authority on the Board to make regulations for the purpose of carrying into effect the provisions of the Act. In exercise of this power the Board has made regulations and Chap. 6 thereof relates to the Examinations Committee. Paragraph 1 (1) defines the power conferred on the Examinations Committee. This clause runs as follows :-

> "1. It shall be the duty of the Examinations Committee, subject to the sanction and control of the Board -
> (1) To consider cases where examinees have concealed any fact or made a false statement in their application forms or a breach of rules and regulations to secure undue admission to an examination or used unfair means or committed fraud (including impersonation) at the examination or are guilty of a moral offence or indiscipline and to award penalty which may be one more of the following;

(1) withdrawal of certification of having passed the examination;
(2) cancellation of the examination;
(3) exclusion from the examination."

7. It will thus appear that the sub-committee which was exercising the powers of the

[1] Civil Misc. Writ No. 620 of 1954, D/d. 11-8-1954 (All)

Examinations Committee had to "consider cases" where examinees had "used unfair means or committed fraud". The appellants 'contention is that inasmuch as a duty was cast on this sub-committee to "consider cases", it was acting judicially. The learned State Counsel, however, maintains that the sub-committee's act was a purely administrative act and it was neither a judicial nor a quasi-judicial one. The question that arises therefore is as to whether or not the sub-committee was acting judicially or quasi-judicially. A Bench of this Court had occasion to consider this question in the case of *Mahabir Prasad v. The District Magistrate, Kanpur*[2], where, after considering the Supreme Court decision in *Province of Bombay v. Khusaldas S. Advani*[3], and the case of *King v. London County Council*[4], as also certain other Allahabad decisions, it arrived at the conclusion that

> "to constitute a quasi-judicial or a judicial order, the authority passing the order should be under an obligation to hear the parties, to make an enquiry, to weigh the evidence and to base its conclusion thereon. Its decision should be based on the result of the enquiry and not on its own discretion."

Since the decision of that case two other weighty pronouncements have been made by the Supreme Court in *T.C. Basappa v. T. Nagappa*[5], and *Hari Vishnu Kamath v. Ahmad Ishaque*[6], But these pronouncements simply affirm the view previously taken by the said Court. The importance of these rulings, however, lies in the fact that they lay down that even in judicial or quasi-judicial cases the Court can interfere if principles of natural justice have been ignored.

8. The Act and the regulations neither make it obligatory on the committee to call for an explanation and to take evidence of the examinees whose cases it is required to enquire into, nor do they prohibit any such procedure. Since the taking of evidence has not been made obligatory, I in accordance with the test laid down in the aforesaid cases, have come to the conclusion that the proceedings were neither judicial nor quasi-judicial. They were purely administrative.

9. But even administrative acts are not immune from interference or scrutiny by Court. Courts can interfere if the said acts violate some principle of natural justice. The Court's jurisdiction is supervisory and not appellate. It cannot weigh evidence and set aside a finding of any particular tribunal or committee on the ground that the decision recorded by that tribunal or committee is against the weight of evidence. It cannot substitute its own wisdom and discretion for those of the tribunal or the committee. But it can certainly see whether rules of natural justice have been violated and it can interfere if it finds that they have been.

10. One of the rules of natural justice is contained in the well-known maxim audi alteram partem, i.e. nobody shall be condemned unheard. The phrase "the principles of natural justice" was explained by Maugham, J. also in *Maclean v. The Workers'Union*[7], in the following terms :-

> "The phrase, 'the principles of natural justice', can only moan in this connection the principles of fair play so deeply rooted in the minds of modern Englishmen that a provision for an inquiry necessarily imports that the accused should be given his chance of defence and explanation." This is a very valuable right which is enjoyed by every one unless that right is expressly taken away by statute. It is this right of which the appellants complain of having been deprived. It is not a mere technicality on which the appellants are insisting. They contend that they had an explanation to offer. According to them they had, like all other examinees, tried to anticipate the questions that were likely to come in the examination paper, had rightly hit at the particular question, had got its answer written out by their Professor and had crammed it up.

[2] 1955 All 501 ((S) AIR V 42) [4](1931) 2 KB 215 [6] AIR 1955 SC 233
[3] AIR 1950 SC 222 CO [5] AIR 1954 SC 440 [7](1929) 1 Ch. 602 (615)

The Professor corroborates them. According to them, this version fits in with the opposite parties story that a typed sheet containing this answer was being circulated among the examinees. They argue that this typed sheet could not have been ready from before unless they had known that this was likely question. Again they contend that had there been free facility for using unfair means in their room, they would have indulged in copying many other questions and would not have confined their unlawful activities to only one question in one paper. They maintain that the circumstance that every one is charged with having copied one particular question only goes to support their theory. These arguments could not be put forward before the Committee and could not have been considered by it. Had they been considered and disbelieved, I would have been the last person to interfere. But if the committee denied to the appellants an opportunity to put forward their version which was by way of explanation for the similarity of their answers and if it denied itself an opportunity of considering this aspect of the case, it certainly departed from the rule of natural justice and fairplay. The result of the decision arrived at by the Examinations Committee entails serious consequences to the appellants. It causes them loss of two years in a very valuable portion of their life. Moreover, it brands them as dishonest persons for ever. This stigma will attach to them throughout their lives. If they seek any employment and if its comes to the knowledge of the employer that they were the persons who were punished for using unfair means in examination, they will never be employed. If they appear before the Public Service Commission, that Commission, as usual, will ask them to state in their applications as to how did they keep themselves occupied in every year subsequent to the passing of the High School examination. They will have to say in their applications that they were detained for two years because the Examinations Committee of the Board of High School and Intermediate Education found them guilty of having used unfair means. After this disclosure they are bound to be rejected by the Public Service Commission even if they otherwise do well in. the interview and

written papers. The decision of the Examinations Committee means to them a ruin of their entire career. This result should not be permitted to be brought about in a light-hearted manner. If the committee acted otherwise than in accordance with the elementary principles of justice and condemned the appellants without affording them as opportunity of submitting an explanation and of cross-examining the witnesses appearing against them, its action must be brushed aside.

11. That administrative acts can also be scrutinized by Courts in order to ascertain as to whether the principles of natural justice nave been complied with is apparent from the following dictum of Mootham, J. (now C.J.) in *Rameshwar Prasad v. District Magistrate*[8]*',* viz :-

> "I venture to think however that the question whether the Licensing Authority acted quasi-judicially or ministerially is one which is somewhat unreal. This Court has power under Article 226 of the Constitution to issue directions and orders, as well as writs, for any purpose; and in exercise of that power it can direct that an administrative order be quashed: see *Smt. Prabhaoati v. District Magistrate, Allahabad*[9]*,* and *Ram Charan Lal v. State of Uttar Pradesh*[10]*,* The question, therefore, which in my opinion really arises is whether the order complained of in this case is an order made in circumstances which run counter to the elementary principles of justice; for if that question be answered in the affirmative I am of the opinion that whether the order be quasi-judicial or administrative the Court would be justified in directing that it be quashed." In that case the Licensing Authority had failed to renew the petitioner's license under the UP. Controlled Cotton Cloth and Yarn Dealers Order "on account of the malpractices indulged in by you (the petitioner) and your bad reputation." No opportunity was given to the petitioner before recording these findings to explain his conduct or to adduce evidence in support of his good conduct. The order was held to be invalid and was set aside because it was passed without observing the principles of natural justice.

12. There is a long series of cases which lay down this principle. But I shall, in this judgment, confine myself to cases of administrative tribunal only. It will be useful in this connection to refer to the case of the King against the Chancellor, Masters and Scholars of the University of Cambridge, (1723) 93 ER 698 popularly known as Dr. Bentley's case. Dr. Bentley held three degrees of Cambridge University, viz. the degrees of Bachelor of Arts, Bachelor of Divinity and Doctor of Divinity. On a certain occasion he uttered certain remarks disparaging of the Vice-chancellor of the said University and questioned his authority to act in a certain matter in which his authority was undoubted. A report of those remarks was conveyed to the University authorities. They took a serous view of Dr. Bentley's conduct and deprived him of all the three degrees. But they did so without calling for an explanation from Dr. Bentley and without giving him an opportunity of making his defense. Dr. Bentley moved a writ and the Court issued a writ of mandamus setting aside the order of the University authorities on the ground that in condemning Dr. Bentley unheard they had acted; contrary to the principles of natural justice. Prom the fact that, mandamus and not certiorari was issued it is obvious that the University

authorities were acting administratively. A passage in the judgment of Foretescue, J. has very often been quoted, and it will bear quotation once more. His Lordship remarked as follows :-

> "Besides, the objection for want of notice can never be got over. 'The laws of God and man both give the party an opportunity to make his defense, if he has

[8]1954 All 144 (149) (AIR, V 41) [10] AIR 1952 All 752
[9] AIR 1952 All 836

> any. I remember to have heard it observed by a very learned man upon such an occasion, that even God himself did not pass sentence upon Adam, before he
> was called upon to make his defense. Adam (says God) where art thou ? Hast thou not eaten of the tree, whereof I commanded thee that thou should at not eat ? And the same question was put to Eve also."

It will thus appear that in England also it has been recognized even in the cases of University authorities that they cannot impose penalties without giving an opportunity to the condemned person to make a defense. This principle was extended to the University of Cambridge which had undoubtedly a domestic forum of its own and was otherwise competent to deal with the matter.

13. Another case on the point is that of *B.C. Das Gupta v. Bijoyranjan*[11], In that case the Governing Body of the State Medical Faculty arrived at the conclusion that 51 candidates had used unfair means in answering questions and that the proper punishment was that the examination should be cancelled. But it did so without giving notice to the candidates of the charges against them and without affording them an opportunity of showing that the allegations made against them were untrue.
It was held by a Division Bench of the Calcutta High Court that, although the Governing Body of the State Medical Faculty was acting administratively, its decision contravened the principles of natural justice and was invalid. The decision was therefore set aside.

14. Next comes the case of *Cooper v. The Board of Works for the Wandsworth District*[12], In that case Cooper had started making certain constructions. The law required that he should have given one week's notice to the District Board before starting the constructions. In case of default the Board and the power to pull down his constructions. It was a matter of dispute between Cooper and the Board as to whether notice had or had not been given. But it was conceded by Cooper that he had started the constructions before the expiry of seven days after the giving of notice. Therefore, he should not have started constructions at the time at which he did and the Board had undoubtedly power to pull down the construction provided it proceeded according to law. The Board got the constructions demolished but without giving any notice to Cooper. Thereupon Cooper raised an action for trespass against the Board. It was held that, inasmuch as the Board had acted without notice to Cooper and without allowing him an opportunity to show cause as to why the constructions should not be demolished, the Board's action was illegal. Willes, J. remarked as follows :

> "I apprehend that a tribunal which is by law invested with power to affect the property of one of Her Majesty's subjects, is bound to give such subject an opportunity of being heard before it proceeds and that rule is of universal "application, and founded upon the plainest principles of justice."

This is an extreme case in which the Board's power was undisputed. But it was precluded from exercising that power on the ground that it had failed to comply with
the principles of natural justice.

[11] AIR 1953 Calcutta 212

[12](1863) 14 CB (NS) 180

15. Another similar case is to be found in *Masters v. Pontypool Local Govt. Board*[13], In that case the owner of a house had got a plan of an intended new building approved by the Board. Later on the Board altered its decision, but it did so without notice to the owner. In case of its revised decision being disobeyed it had undoubtedly power to pull down the constructions. But it was held that it could not exercise that power because it had failed to give previous notice to the owner.

16. Another very similar case is to be found in *Hopkins v. Smethwick Local Board of Health*[14], where it was held that a building erected in contravention of the bye-laws of the Local Board Health could not be pulled down by the Board without giving the owner an opportunity of showing cause why it should not be pulled down.

17. Another important case which recognizes the principles of natural justice as a sine qua non to the exercise of power to impose penalty is to be found in the case of *General Council of Medical Education v. Spackman*[15], In that case a registered medical practitioner, who was co-respondent in a divorce suit, was found by the Divorce Court to have committed adultery with the respondent of that case to whom he stood in professional relationship and a decree nisi was pronounced which was afterwards made absolute. The General Medical Council gave him notice that a meeting of the council would be held to decide whether his name should be removed from the medical register for infamous conduct in a professional respect. At the hearing he desired to call on the issue of adultery evidence which had not been called on the hearing of the petition although it was then available. The council declined to hear the fresh evidence, but accepted the decree nisi as prima facie proof of adultery, and directed that the practitioner's name should be erased from the register. It was held that, while the council was entitled to regard the decree in the divorce suit as prima facie evidence of adultery, it was bound to hear any evidence tendered by the petitioner and that, having refused to hear such evidence, its action could not be maintained. This was an extreme case inasmuch as it recognized the right of the person proceeded against to adduce evidence even after a finding had been recorded by a Court of law against him. A failure to give to the person sought to be punished an opportunity to lead evidence in defense was found to vitiate the action of the punishing authority.

18. The same principle has been recognized in a number of club cases. In the case of *Labouchere v. Earl of Wharncliffe*[16], the rules of a club provided that in case the conduct of any member should, in the opinion of the committee, after inquiry, be injurious to the welfare and interests of the club, the committee should call upon him to resign, and in the event of his refusal to do so, should call a general meeting, which was to be called on giving a fort-night's notice, at which it should be competent for the votes of two-thirds of those present to expel such member. The committee called on the plaintiff, a member of the club, to resign on the alleged ground that his conduct was injurious to its interests. But the plaintiff refused to do so. A general meeting, was then summoned and a resolution was passed

[13](1878) 9 Ch. D. 677 (N) [15]1943 AC 627
[14](1890) 24 QBD 712 [16](1879) 13 Ch. D. 346

expelling the plaintiff.'

The decision of the committee was set aside by Court oil several grounds, one of which was that it had failed to give the plaintiff notice of any definite charge. It may be pointed out that, although the committee had informed the plaintiff that his conduct had been, in the opinion of the committee injurious to the welfare and interests of the club, that was not considered sufficient. Jessel M.R. remarked at page 351 as follows : -

> "But they (members of the committee; did not tell Mr. Labouchere (plaintiff) that his conduct was to be brought before them; and though they adjourned their meeting to a future day, and sent him a communication in the meantime, they did not inform him that his conduct was to do investigated at the adjourned meeting, and that it would then be considered whether he ought to be turned out of the club."

The communication which had been sent to the plaintiff stated that a counter charge which he has brought against another member of the club would be investigated, but it did not tell him that his own conduct would be investigated. The action of the committee expelling the plaintiff was set aside.

19. Another very important case is to be found in *Ambalal Sarabhai v. Phiroz H. Antia*[17], In that case the rule providing for expulsion of a member from a club was that

> "the General Committee may by a two-third majority for sufficient reasons, exclude any member whose presence in the duo they may consider to be detrimental to its interest without assigning any particular reason for their so does, from the membership of the club."

At a meeting of the General Committee of which due notice was given to all the members of the club including the plaintiff, a resolution was moved and duly passed, that the plaintiff should be excluded from the membership of the club. The reasons for the expulsion were not allowed to be discussed by the Chairman. The plaintiff deliberately remained absent from the meeting. The requisition for the meeting gave no reasons whatever for the expulsion nor was there any

correspondence between the plaintiff and the Managing Committee, or Honorary Secretary, or any member with respect to the reasons for the expulsion. The plaintiff brought a suit for a declaration that the resolution was illegal and for an injunction restraining the members of the club or its officers from excluding him from the club. It was held that the action on the part of the members of the club offended against the elementary principle of natural justice and, reason and justified interference by a civil court, and the plaintiff was entitled to the relief claimed by him.

20. The same principle is found laid down in paragraph 122 of Halsbury's Laws of England, Third Edition, Volume 11, at page 66. The passage runs as follows :

> "Where, however, a tribunal, which has power to make such inquiry as it thinks fit, decides a case on a matter of fact discovered by the tribunal itself on
> inspecting the premises in question, it will be a breach of natural justice if it

[17] AIR 1939 Bom 35

> does not inform the parties and give them a chance of dealing with it. If a tribunal receives from a third party a document relevant to the subject-matter of the proceedings, it should give both parties an opportunity of commenting on it. A decision of an inferior tribunal will be quashed if the party against whom it is given was not given notice of the hearing."

21. To the same effect are the dicta to be found in the case of *Dawkins v. Antrobus*[18], wherein the learned Judges held that the giving of notice was absolutely necessary before action could be taken against a member for expulsion from a club. But it was held on facts that notice had, in fact been given. I have purposely refrained from referring to the case of *Fisher v. Keans*[19], which has frequently been cited in most of the cases because the finding in that case was that the committee, which was dealing with the case, was acting in a quasi-judicial manner. But even excluding that case from consideration, there is abundance of authority in support of the principle discussed above.

22. It is necessary at this stage to take notice of and to distinguish a recent decision of this Court in *Ram Chander Roy v. University of Allahabad*[20]. In that case some students had committed acts of rowdyism on the occasion of the Allahabad University Convocation and had uttered in the presence of Chancellor in the Convocation Pandal slogans which were highly derogatory to the Chancellor.
The Vice-Chancellor took a serious view of the conduct of the students and appointed a committee of enquiry. Notice was issued, among others, to the petitioner and he admitted having uttered objectionable slogans. He was rusticated. Thereafter he moved a writ petition in this Court and challenged the decision of the enquiry committee on the ground that, while other students against whom also the enquiry was pending, were allowed opportunities to cross-examine witnesses, he was denied such an opportunity. A Division Bench of this Court held that,

since he had confessed his guilt, it was not necessary to afford him an opportunity to cross-examine witnesses. Further, it held that in such disciplinary proceedings it was not necessary to go through the procedure applicable to judicial or quasi-judicial proceedings. With this decision I respectfully agree. But I find nothing in this decision to lend support to the contention that a person who does not admit his guilt can also be condemned unheard behind his back. The case is, therefore, distinguishable.

23. It is also necessary to dispose of another argument that may possibly be raised, i.e. that if it is necessary to give notice even in administrative proceedings, a District Magistrate would be bound to give notice to a defendant in dealing with an application for permission to sue under Section 3 of the U.P. Control of Rent and Eviction Act. It may be pointed out that, in practice, the District Magistrate generally gives notice to a defendant, but it may be conceded that he is not bound to do so.
The point of distinction lies in the fact that while giving permission to sue, the District Magistrate does not find the defendant guilty of any misbehavior or any other act which might condemn him in the eyes of the public. The plaintiff had a right under

[18](1881) 17 Ch. D. 315 [20]1956 All 46 ((S) AIR V 43)
[19](1878) 11 Ch. D. 353

the general law to institute a suit against a tenant for ejectment but the Special Act has placed a ban on the exercise of that right which the District Magistrate removes. Such
an order is distinguishable from an order of penal nature which cannot be imposed without giving a right to the person condemned to be heard in his defense.

24. Reference was made to Broom's Legal Maxims, Eighth Edition, page 91, where in the opening paragraph it is stated that no one is to be condemned, punished, or deprived of his property in any judicial proceeding, unless he has had an opportunity of being heard. It was argued that this maxim would not apply to non-judicial proceedings. This is certainly not the intention of the author. The author, to begin with, was dealing with judicial proceedings and he naturally thought that the maxim applied to those proceedings. Later on, on pages 92 and 93, the author has discussed, the non-judicial or administrative cases and has made this maxim applicable to those proceedings us well. He has cited with approval some of the cases discussed above which had applied this maxim to administrative tribunals or bodies. I am, therefore, not prepared to accept the contention that this maxim does not apply to proceedings of administrative tribunals or bodies.

25. Lastly, it was contended that the Board of High School and Intermediate Education examines a very large number of candidates and it cannot function properly if it is called upon to give opportunities to examinees whom it wishes to punish of making their defense. This argument carries no weight. The circumstances that the punishing authority is busy or is short of time is no ground for depriving the party sought to be punished of his just rights. If the Board has to deal with cases of a large number of examinees, it should employ a sufficient number of examiners

and should enlarge the personnel of the Examinations Committee. It cannot be heard to say that because its hands are full it will refuse to follow the principles of natural justice.

26. I am, therefore, of the opinion that the Examinations Committee of the Board of High School and Intermediate Education has, in this case, failed to follow the principles of natural justice and, on that ground alone, apart from anything else that may be pointed out hereafter, its action is liable to be set aside.

27. There is yet another ground totally independent of what has been said above which vitiates the action of the Examinations Committee. As has been pointed out above, it can impose the following three penalties and none else, viz.

> (1) withdrawal of certificate of having passed the examination-; (2) cancellation of the examination; (3) exclusion from the examination.

The Examinations Committee, for reasons best known to itself, has not purposed to award the first punishment, viz. withdrawal of certificate of having passed the examination. Perhaps it thought that the certificates had not till then been delivered to the examinees and therefore this was not an appropriate punishment to impose. Whether this or any other reason led the said committee to refrain from inflicting his punishment, the fact remains that it did not think it proper to impose this punishment.

The second punishment which it could impose was the cancellation of the examination which meant declaring the examination already held null and void and holding a fresh examination. This punishment also the Examinations Committee has not purported to impose. It has, however, purported to cancel not the examination, but the 'result of the examination'. This punishment it has no power to impose. It was, however, contended that the cancellation of the result of the examination was the same thing as the withdrawal of certificate of having passed the examination. But, as already stated, the committee has not purported to impose this latter punishment. It has purported to exercise the power of imposing a punishment which is not mentioned in paragraph 1(1) of Chapter VI of the Regulations,

28. Another argument which was put forward was that the order cancelling the result of examination can be split up into two punishments, viz., cancellation of the examination and the exclusion of the candidates from the fresh examination which normally should have been held. This argument is also fallacious. The Examinations Committee has not excluded the appellants from the examination of 3954 which should normally have been held after cancelling the previous examination. It excluded the appellants from the examination of 1955, and from the examination of 1954. Therefore, the order which it made cannot be justified even on the assumption that it is a combination of two punishments viz. cancellation of examination and exclusion from examination. I am, therefore, of the opinion that the Examinations Committee has purported to impose a punishment which it had no power to inflict and, on that ground also, its

action must be set aside.

29. Once the punishment of cancellation of result is declared void, the appellant's success in the Intermediate Examination stands unaffected, and the subsequent punishment of exclusion from the 1955 examination becomes meaningless. It must, therefore, fall through ipso facto.

30. Even assuming that, although the Examinations Committee purported to inflict the punishment of cancelling the result of examination, it meant, in fact, to withdraw the certificate of having passed the examination, the question is whether it could do so. The moment the result was declared the Beard certified that the appellants had passed the examination. This certificate was a property which the appellants had a fundamental right to hold under Article 19(1)(f) of the Constitution of India. Under clause (5) of Article 19, a law "can be made to impose "reasonable restrictions" on the aforesaid right. But if clause 1(1) of Chapter VI of the Regulations made by the Board is to be interpreted as empowering the Board to impose a penalty on the examinees without giving them information about the charges against them and without offering them an opportunity of showing cause and leading evidence in their defense, I shall have no hesitation in holding that this clause is void because it imposes restrictions which are not reasonable. Any law which empowers an authority to act contrary to rules of natural justice imposes un-reasonable restrictions on the rights of the persons affected. I am, therefore, of the opinion that the decision of the Examinations Committee must be let aside on this ground as well.

31. Needless to say that after its decision is set aside, it will be open to the Examinations Committee to hold an enquiry once again, to communicate to the appellants the substance of the charge brought against them, to hear them, to take such evidence as they wish to produce and thereafter to come to any decision.

32. In view of what has been stated above, I will allow the appeal, set aside the decision of the learned single Judge of this Court and issue a writ of mandamus directing the opposite parties to forbear from enforcing resolution No. 86, dated 5-9-1954. The appellants shall get their costs of both hearings from the opposite parties.

Dayal, J.

33. I have read the judgment of my brother Brij Mohan Lall and agree that the Examinations Committee is not required to act judicially or quasi-judicially when it considers cases falling under Clause (1) of Paragraph 1, Chapter VI, of the Regulations made by the Board of High School and Intermediate Education, U.P., and which cases include a case where examinees have used unfair means at an examination. It follows, therefore, that the Examinations Committee acts administratively when it considers cases of examinees using unfair means at an examination.

34. I am, however, not in agreement with the view that the action of the Examinations

Committee be set aside for these reasons :

> (1) It acted in violation of the principle of natural justice requiring that none shall be condemned unheard;
> (2) The penalty imposed is beyond the powers of the Examinations Committee; and
> (3) The certificate of having passed the examination is property; and that Clause 1(f) Ch. VI of the Regulations is void as it imposes unreasonable restriction on the exercise of the successful candidate's fundamental right to hold property.

35. I doubt whether the appellants can be said to have acquired any property by the mere fact that they were declared successful at the Intermediate Examination. Even if it can be said so, and it can be said that the resolution of the Examinations Committee deprives them of that property. I am of opinion that that does not infringe the fundamental right of the appellants under Article 19(1) (f) of the Constitution as that deals with the right to acquire, hold and dispose of property. The case of deprivation of property is covered by Article 31 of the Constitution. One can be deprived of property under authority of law. If the view that the Examinations Committee could order the penalty without giving notice to the appellant be correct, the appellants had been deprived of the property under the authority of law which did authorize the Committee to take that action. It follows that in view of my opinion that the Committee had that power, the appellants cannot complain that they have been deprived of property without the authority of law.

36. It is contended for the appellants that the order of the Committee that the result of the appellants be cancelled and they be debarred from the examination of 1955 was not within the powers of the Examinations Committee to pass.

37. It is really the Board which has taken the impugned action against the appellants and not the Examinations Committee. Section 7 of the Intermediate Education Act, 1921, empowers the Board to take certain action. Section 14 of the Act is :

> "All matters relating to the exercise by the Board of powers conferred upon it by this Act which have by regulation been delegated by the Board to any one of its committees shall stand referred to that Committee, and the Board, before exercising any such powers, shall receive and consider the report of the Committee with respect to the matter in question."

The consideration of the matter about the use of unfair means by candidates at an examination is delegated to the Examinations Committee by Clause (1), para. 1 Chap. VI of the Regulations. It is the duty of the Examinations Committee to consider it. The Board considers the report of the Examinations Committee and exercises the power conferred on it by the Act. No power is conferred on the Committee by the Act and reference to the awarding of penalty in Clause (1), para. 1, Chap. VI of the Regulations means that the Committee is to propose the penalties to be

imposed and the proposals should be in accordance with the penalties mentioned Therein. Clause 12 of Section 7 of the Act empowers the Board to do all such other acts and things as may tie requisite in order to further the objects of the Board as a body constituted for regulating and supervising High School and Intermediate Education." This power is subject to the provisions of the Act. There is no provision in the Act which restricts the nature of penalty to be imposed on a candidate who uses unfair mean's at an examination. The Board can, therefore, impose any suitable penalty.

38. It may, however, be said that the Board itself has limited its powers of imposing penalty to the penalties mentioned in Clause (1), para. 1, Chapter VI of the Regulations I am, therefore, to consider whether the penalty imposed on the appellants comes within such penalties.

39. Chapter VI, R. 1, Clause (1) of the Regulations of Board of High School and Intermediate Education, Uttar Pradesh, authorize the Examination Committee to award one or more of the following penalties.

> "(1) Withdrawal of certificate of having passed the examination;
> (2) Cancellation of the examination;
> (3) Exclusion from the examination." There can be no doubt, that debarring the appellants from the examination of 1955 corresponds to the penalty of excluding them from the 1955 examination.

40. The question is whether cancelling their result of the 1954 examination can be said to be the cancellation of the examination or withdrawal of certificate of having passed the examination, I am of opinion that it comes in either of the two, if not in both.

41. If a candidate is not excluded from an examination and has taken the examination, there can be no more occasion for cancelling it de facto. The examination has been taken. It is during the examination that a candidate uses unfair means. Cancellation of the examination means that the candidate's appearing at the examination and answering question papers have become nugatory and that in essence he has not appeared at the examination. If such action is taken before the results are published, no question of publishing the result of the examination which the candidate had actually taken would arise. If the results are published, the cancellation of the examination must lead to the cancellation of the result published, and the Committee will be right in ordering that the result is cancelled. Such an order is really an order cancelling the examination.

42. If it be considered that once results are published and the stage of cancelling the examination is over, I am of opinion that cancelling the result of the examinee comes within the power of withdrawing of the certificate of having passed the examination.

43. Clause (2) of Section 7 of the Act empowers the Board to grant certificates to certain persons.

Clause (3) authorizes it. to hold examinations; and clause (7) authorizes it to publish the results of the examinations. Section 15 authorizes the Board to make Regulations and Clause (2) (b) specifically authorizes it to make regulations providing for the conferment of certificates. Clause 2 (e) authorizes the Board to make regulations regarding conditions under which candidates shall be admitted to the examinations of the Board and shall be eligible for diplomas and certificates. No such specific Regulations have been to us Para. 6 Chap. III of the Regulations lays down that it is the duty of the Secretary, on behalf of the Board, to issue certificates in the prescribed form to successful candidates of having passed the Board's examinations. By the time the Examinations Committee decided about the penalty to be imposed on the appellants, no such certificate seems to have been issued and therefore the penalty imposed could not have been that the certificate be withdrawn. It would have been futile to pass a resolution that the certificate be first issued to the successful candidate and then immediately withdrawn. The only reasonable resolution which the Examinations. Committee could have passed was to cancel the result of the examination and thus remove the occasion for the actual issue of the certificate to the candidate. I am, therefore, of opinion that the power of withdrawing the certificate does include the lesser power of ordering the non-issue of the certificate-and also the lesser power of cancelling the result, of the examination on the basis of which the certificate could have been issued. In this view of the matter, I do net think that the order passed by the Examinations Committee was beyond its jurisdiction.

44. If any Tribunal is not acting judicially or quasi-judicially and yet it be held that it has to make an enquiry, the natural result of hearing a party against whom action is taken, in accordance with the rules of natural justice before it makes. a certain order, it would mean that such a Tribunal is bound to act judicially even though the statute does not require it to act so and once such a Tribunal is held to be bound to act judicially, it would follow that a writ of 'certiorari ‘can be issued to it. This would, however be contrary to our view that the Examinations Committee does not act judicially or quasi-judicially when it considers the cases of the use of unfair means by candidates because the Intermediate Education Act, 1921, or the Regulations framed by the Board do not make it incumbent on the Examinations Committee to act judicially.
45. 1955 All 46 ((S) AIR V 43) (U) it is observed at page 50 :

> "It is to be noticed that Lord Goddard, in citing the example of a schoolmaster exercising disciplinary powers over his pupils, mentioned that the power of the schoolmaster over his pupils cannot possibly be a judicial or quasi-judicial power.
> Consequently, when disciplinary proceedings were being taken against the petitioner he could not claim any right that the proceedings should be taken only after the procedure necessary for the exercise of judicial or quasi-judicial powers had been gone through unless there was any such provision in law granting a right to the petitioner to claim that that procedure should be adopted.
> We are also not convinced that there is any principle of natural justice under which a person sought to be dealt with by the procedure applicable to judicial or quasi-judicial

proceedings."

46. It follows from these observations that in proceedings which are not judicial or quasi-judicial, the procedure to be followed need not be the procedure applicable to judicial or quasi-judicial proceedings.

47. No case of the Supreme Court has been cited before us in which writs or directions have been issued to any Tribunal in connection with its administrative acts or orders on the ground that it passed the order without hearing a party affected by the orders.

48. It was observed in 1955 SC 233 ((S) AIR V 42) (F) that a writ of 'certiorari 'will also be issued if the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice. It was held in AIR 1954 SC 440 (E) that one of the fundamental principles in regard to the issuing of a writ of 'certiorari'is, that the writ can be availed of only to remove or adjudicate on the validity of judicial acts and that the expression 'judicial acts 'includes the exercise of quasi-judicial functions by administrative bodies or other authorities or persons obliged to exercise such functions and was used in contrast with that what were purely ministerial acts.
When a writ of 'certiorari'is issued in connection with judicial or quasi-judicial acts, it can be issued when the Court or Tribunal decided without giving an opportunity to the parties to be heard or violated the principles of natural justice.
This observation of their Lordships of the Supreme Court in 1955 SC 233 ((S) AIR V 42), therefore, is no guide to hold that any writ can be issued to administrative body for setting aside its administrative order passed without giving an opportunity to the parties to be heard.

49. The maxim "Audi Alteram Partem," i.e., no man should "be condemned unheard, quoted at p. 91 of Broom's Legal Maxims, Eighth Edition, is under the heading "The Mode of Administering Justice." It is the first maxim under this head and the author's note preceding it is :

> "Having in the last Section considered some maxims relating peculiarly to the judicial offices, the reader is here presented with a few which have been selected in order to show the mode in which justice is administered in our Courts, and which relate rather to the rules of practice than to the legal principles observed there."

Against the statement of the Rule, the author says :

> "It has long been a received rule, that no one is to be condemned, punished, or deprived of his property in any judicial proceeding, unless he has had an opportunity of being heard. The authorities quoted in support of this note include (1723) 1 Sir 557 and Per Parke, B. Re. Hammersmith Rent charge, (1849) 4 Ex 87. This rule clearly applies to

judicial proceedings and not to administrative proceedings.

50. In AIR 1954 Allahabad 144 (H) an administrative order was quashed and a writ in the nature of mandamus was issued directing the District Magistrate, Kanpur, to consider the application of the petitioner for the renewal of his. license to buy and sell
controlled cloth on its merits. Mootham, J., as he then was, observed at p. 150.

> "If there be authority as I think there is, founded upon the plainest principles of justice - that (in the absence of statutory provisions to the contrary) a man being not deprived of his property without being heard, I can see no reason why that principle should not be applied to the protection of another fundamental right, namely the light to carry on business."

I am not at present concerned with the correctness of this proposition as the right which the appellant is claiming in the present case cannot be said to be fundamental right under Article 19 of the Constitution. The fundamental right which a person has in connection with the deprivation of his property is contained in Article 31 of the Constitution which says

> "No person shall be deprived of his property save by authority of law."
> "Law" means statutory law and not law as conceived on the principles of natural justice. I, therefore, doubt how far this general principle as applicable in England in connection with the deprivation of property will be applicable to deprivation of property in this country. Whenever a person is to be deprived of his property and he has a grievance of the infringement of his fundamental right, his grievance will be judged on the basis whether the deprivation of property in his case is under the authority of law or not. If it is under the authority of law it will be held good.

51. In AIR 1953 Calcutta 212, it was held that the Governing Body of the State Medical Faculty must not only act in good faith, but also fairly and reasonably and without violation of the principles of natural justice,

> "when it performs the duty of deciding whether candidates have been guilty of unfair means and what punishment should be inflicted".

Reliance was chiefly placed on the observations in 1943 AC 627. The Medical Council was to act "after due enquiry" and was therefore acting quasi-judicially and not judicially.

52. The case on which great reliance is placed for the appellants is (1723) 93 ER 698. The case was not in connection with anything done by the respondents administratively. The Chancellor and Vice-Chancellor of the University used to hold Court for determining all civil causes where one of the parties was a member of the University and they were granted Letters Patent and created a Court. When the process was served on the defendant Dr. Bentley, he behaved in a

manner which was considered to amount to the commission of contempt of court. The Chancellor or Vice-Chancellor then summoned a congregation according to custom and the congregation resolved to deprive Dr. Bentley of the degrees which had been conferred on him. Chief Justice observed at p. 702 :

> "I think the return has fully justified us in sending the mandamus, as it shows the power of the Vice-Chancellor and the congregation is only to deprive for a reasonable cause; and as it is not pretended there is any visitor, or any other jurisdiction, to examine into the reasonableness of the deprivation, but that of this Court.

It is the glory and happiness of our excellent constitution, that to prevent any injustice no man is to be concluded by the first judgment; but that if he apprehends himself to be aggrieved, he has another Court to which he can resort for relief; for this purpose the law furnishes him with appeals, with writs of error and false judgment and lest in this particular case the party should be remediless, it has become absolutely necessary for this Court to require the university to lay the state of their proceedings before us; that if they have erred, the party, may have right done to him, or if they have acted according to the rules of law, that their acts may be confirmed.

> "I cannot think the evidence of this contempt was sufficient :

It does not appear to have been upon oath, as it should have been.
But be these matters how they will, yet surely he could never be deprived without notice". He did not say whether the congregation acted as a court but the use of the word 'judgment ‘with reference to its order implies that he thought that the congregation acted as a court.

53. Eyre, J. observed at page 703 :

> "As to the deprivation, I am not satisfied, that for a contempt to the vice-chancellor's court, the" congregation which is another court can deprive; for it is not a contempt to the university in general, and it is not said in the return, that for contempt’s to the vice-chancellor the congregation can deprive. Every Court has a power to punish contempts to itself, but I never till now heard'of one Court's resenting a contempt to another."

This makes it quite clear that Dr. Bentley was being dealt with for contempt of court and that the Vice-Chancellor and the congregation were acting as a Court.

54. In Broom's Legal Maxims (Eighth Edition) reference is made to this case at page 91 in support of the proposition that no one is to be deprived of his property in any judicial proceeding, unless he has had an opportunity of being heard, and again at page 92 in this context :

> "No person should be punished for contempt of Court, which is a criminal offence, unless

the specific offence charged against him be distinctly stated, and an opportunity of answering it be given to him. 'The laws of God and man'said Fortescue, J. in Dr. Bentley's case, 'both give the party an opportunity to make his defence, if he has any.'"

55. I am, therefore, of opinion that this case is no authority for the proposition that in matters administrative the authority concerned is not to take action adverse to a person unless that person had been given opportunity to be heard. It may be mentioned that this case took place in 1718 and that no Question was raised that proceedings were administrative and therefore it was not necessary to provide a hearing to Dr. Bentley.

56. The next case is (1863) 14 CB N.Section 180 (M). The Board of Works for the Wands-worth District Board under the powers conferred on such a Board under Section 76, Metropolis Local Management Act, 1955, ordered the demolition of Cooper's building as he had constructed it without serving necessary notice to the Board of his intention to build. The Section said that in default of such notice it shall be lawful for the District Board to demolish the house. It was held on Cooper's suit that the action of the Board was illegal as no notice had been given to Cooper to show cause why the order for demolition be not given. It appears from the judgment of Erle, C.J. that the evidence on the record indicated that Cooper, the plaintiff, and the Board had not been quite on amicable terms. He observed at page 183 :

"I think that the power which is granted by the 76th Section is subject to the qualification suggested", that is, subject to the qualification that no man is to be deprived of his property without his having an opportunity of being heard. Such a view was expressed because the power carried with it enormous consequences and the limitation put by the Court was considered necessary in public interest and that the giving of such a notice could cause no harm to the Board though there were many advantages by the restriction imposed by the judgment. He observed at p. 189 :

"It has been said that the principle that no man shall be deprived of his property without an opportunity of being heard, is limited to a judicial proceeding, and that a district board ordering a house to be pulled down cannot be said to be doing a judicial act.

I do not quite agree with that; neither do I undertake to rest my judgment solely upon the ground that the district board is a court exercising judicial discretion upon the point but the law I think, has been applied to many exercises of power which in common understanding would not be at all more a judicial proceeding than would be the act of the district board in ordering a house to be pulled down.

The case of the corporation of the university of Cambridge, who turned out Dr. Bentley, in the exercise of their assumed power of depriving a member of the University of his rights, and a number of other cases which are collected in (1849) 4 Ex. 87(V) in the judgment of Parke, B. show that the principle has been very widely applied".

In (1849) 4 Ex. 87, Parke B. observed at p. 86 :

"But it has long been a received rule in the administration of justice, that no one is to be

> punished in any judicial proceeding, unless he has had an opportunity of being heard. This is laid down in Bogg's case, 11 Co 99, in (1723) 1 Str. 557, in Dr. Bentley's case, 6 TR 198 . . .."

57. Erie, C.J. further observed at page 190 : "I think the appeal clause would evidently indicate that many exercises of the power of a district board would be in the nature of judicial proceedings;"
Willes, J. observed at page 191 :

> "I apprehend it is clear that the powers thus exercised by the board under the act are powers which have always been considered judicial, and which could not be exercised without giving notice to the party who is to be proceeded against. In this very Section 76, the legislature speaks of coming 'under the jurisdiction of the vestry or board'; and it is clear that these boards do exercise judicial powers. The power here is one that, probably more than any, requires that the party to be affected by it should be heard, because of its extent', and because the board may be satisfied with a modification of that which has been, done."

Considering the provision of Section 76 and about appeals and of the saddling of the other party with costs, Willes, J. held that the Board should have given notice before exercising its power to demolish the house.

58. Byles, J. observed at page 194 : "I conceive they acted judicially because they had to determine the offence, and they had to apportion the punishment as well as the remedy. That being so, a long course of decisions, beginning with Dr. Bentley's case, and ending with some very recent cases, establish, that, although there are no positive words in a statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature."
He then observed at page 195 :

> "If, therefore, the board acted judicially, although there are no words in the statute to that effect, it is plain they acted wrongly. But suppose they acted "magisterially, - then it may be they were not bound to give the first sort of notice, viz. the notice of the hearing; but they were clearly -bound, as it seems to me, by the words of the statute, to give notice of their order before they proceeded to execute it."

This makes it very clear that according to Byles, J. it was only when an authority acted judicially that it had to give a notice of hearing. I consider this case again to be an authority for the proposition that no order should be passed against a person in a judicial proceeding without giving him a hearing and not for the proposition that a hearing must be given in cases which are not judicial or quasi-judicial.

59. The next case is (1873) 9 Ch. D. 677 (N). Cooper's case was just followed in this case.

60. These two cases were followed in the next case, (1890) 24 QBD 712. Reference may be made to the remarks of Wills, J. at page 714 :

> "In condemning a man to have his house pulled down, a judicial act is as much implied as in fining him of and as the local board is the only tribunal that can make such an order its act must be a judicial act, and the party to be affected should have a notice given him."

He referred to the judgment of Willes, J. in Cooper's case and observed :

> "It deals with the case on principle; from the nature of the thing done it must be a judicial act and justice requires that the man should be heard." That supports my view of the nature of the aforesaid cases that they deal with proceedings of a judicial nature. He also observed at page 715 :
> "The language of an Act of Parliament may, it is true, be so strong as to show that the act is not a judicial act *Cheetham v. Manchester Corporation*[21], is an authority to that effect;"

In view of our opinion that the Examinations Committee was not required by the Regulations to act judicially or quasi-judicially, it follows that their act was not a judicial act and that therefore no notice was necessary to the candidates using unfair means.

61. The next case referred is 1943 AC 627. A registered medical practitioner was a co-respondent in a divorce suit. The divorce Court held that he had committed adultery with the respondent. The General Medical Council thereafter gave notice to Spaceman, the registered medical practitioner, that it would consider the above-mentioned charge against him, that is, he had been guilty of infamous conduct in a professional respect and would decide whether or not they should direct his name to be removed from the medical register pursuant to Section 29 of the Medical Act, 1858. Spaceman attended the meeting of the Council and desired that he be allowed to call certain evidence which was not before the divorce Court with a view to challenge the correctness of the conclusion of the divorce Court on the issue of adultery. This he was not allowed to. The Council accepted the decree nisi as prima facie proof of adultery and directed that Spackman's name be erased from the register. The House of Lords held that the Council was bound to hear any evidence tendered by the practitioner and that having refused to hear such evidence it had not made due enquiry under Section 29 of the Medical Act, 1853.

[21](1875) 10 CP 249

62. Section 29 of the Medical Act ran as follows :

> "If any registered medical practitioner shall be convicted in England or Ireland of any felony or misdemeanour, or in Scotland of any crime or offence, or shall after due inquiry

> be judged by the General Council to have been guilty of infamous conduct in any professional respect, the General Council may, if they see fit, direct the registrar to erase the name of such medical practitioner from the register."

It will be noticed that the Council was to judge a medical practitioner guilty of infamous conduct in any professional respect after due enquiry. The Council did not make such enquiry as it just accepted the findings of the divorce Court and therefore its order was set aside even though it was not a judicial body as observed by Viscount Simon, L.C., at page 634. He observed at page 635 :

> "Unless Parliament otherwise enacts, the duty of considering the defense of a party accused, before pronouncing the accused to be rightly adjudged guilty, rests on any tribunal, whether strictly judicial or not, which is given the duty of investigating his behavior and taking disciplinary action against him. The form in which this duty is discharged - e.g. whether by hearing evidence viva voce or otherwise - is for the rule of the tribunal to decide. What matters is that the accused should net be condemned without being first given a fair chance of exculpation". These remarks appear to apply to quasi-judicial Tribunals which are not strictly judicial Tribunals and which Tribunals have the duty of investigating certain matter and then to take disciplinary action. This cannot be said in the present case about the Examinations Committee. It was not a judicial or quasi-judicial Tribunal.

No duty was cast on it to investigate any matter. It was just to consider cases of the use of unfair means by examinees and impose certain penalties. It had nothing to investigate. It had merely to consider whether the matters brought to its notice would indicate the use of unfair means by candidates and if it was of the opinion that unfair means had been used it could take the necessary action.

63. Other cases referred to are Club cases. The first case is (1879) 13 Ch. D. 346 (Q). The rules of the club authorized the committee to call upon a member to resign if after enquiry it was of the opinion that the conduct of such a member was injurious to the welfare and interests of the club and in case the member refused to resign to call a general meeting which could expel such member if two-thirds of those present voted for it. The member expelled sued the committee praying for its being restrained from interfering with the plaintiff's enjoyment. It was held that the committee which decided to call upon him to resign acted against the rule in so far that the rule required such an opinion to be formed after enquiry and the notice of the meeting given to the plaintiff did not say that his conduct would be enquired into. The decision of the general meeting was held to be bad because the meeting had been called irregularly. The case, therefore, does not seem to be of any help to the appellant. The Examinations Committee is not required by any rule or regulation to form its opinion after any enquiry.

64. The same can be said about the case reported in AIR 1939 Bombay 35. This was also a case in which a member had been expelled from his club. The relevant rule of the club empowered the general committee by a two-thirds majority for sufficient reason to exclude any member whose presence in the club be considered detrimental to its interest without assigning any particular reason for their doing. The plaintiff did not attend that meeting. At the meeting one of the members asked for reasons for the proposed expulsion. The Chair ruled that the relevant rule did not require reasons to be given. No reasons were given at the meeting, which, however, resolved to expel that member. It was held that the action of the Club offended against the elementary principles of natural justice and reason and justified civil court's interference.
As neither the person proceeded against was given notice of the complaint, nor the members at the meeting were told about it, the members could not be said to have voted in favor of the resolution with the knowledge that there were reasons for a certain opinion, what to say of sufficient reasons.

65. It may also be mentioned in connection with the club cases that the rules of the club do not derive any authority from a statute. They are private bodies and the rights and; liabilities of members would be dependent on their rules which really form the basis of contract between them and that if any wrong is done to any member he can bring an action about it. When no particular law lays down the procedure for such private bodies to follow, the procedure they have to follow will be deemed to be such as is considered fair according to the notions of justice prevailing in that society. One can, therefore, well imagine for the applicability of what may be called the principles of natural justice in considering cases which relate to the proceedings of a club or any authority for whom statute law lays down no procedure but requires an enquiry to be made. If the statute does not require such an authority to make an enquiry the mere notions of natural justice should not lead to force enquiries on such bodies as this would mean the courts adding something to the provisions of the statute concerning the conduct of such bodies. The courts are not to supply lacunas in a statute. If the statute provides for an enquiry the court can only see that the enquiry, in the absence of any procedure laid down, is conducted in a fair and just manner, and in case its procedure is also laid down by the statute, the court will have merely to see whether that procedure is followed or not.

66. In view of the above, I am of opinion that the Examinations Committee of the Board was not bound to give notice to the appellants when it considered whether they had used unfair means at the examination and what penalty should be imposed, that the order cancelling the result of the appellants and debarring them from the examination of 1955 was within its powers and that the order cancelling the result of the examinations did not in any way offend against any fundamental rights, of the appellants under Article 19(1)(f) and Article 31 of the Constitution. The order of the learned single Judge is correct and this appeal should be dismissed. Special Appeal No. 291 of 1955

BY THE COURT

As we are not agreed on the following points we order that those points be heard by another Judge. The case be laid before the Hon'ble the Chief Justice for the hearing of the points by another Judge. The points are :

> "1. Whether the failure of the Examinations Committee or the Board of High School and Intermediate Education, U.P., to provide an opportunity to the appellants of being heard during its consideration of the alleged use of unfair means by them at the Intermediate Examination, of 1954 vitiates their order which is an administrative order.
> 2. Is the penalty imposed by the Examinations Committee or the Board on the appellants within its powers to impose ?
> 3. If the answer to the first question be in the negative, whether the provision empowering the Board or the Examinations Committee to impose the penalty of cancelling the result of the examination infringes the exercise of the appellants 'fundamental right under Article 19(1)(f) of the Constitution ?"

Agarwala, J.

68. This appeal comes to me upon a difference of opinion between my brothers Dayal and Brij Mohan Lall.

69. The appellants were students of G.S. Hindu Inter College, Sikendra Rao, district Aligarh, and appeared in the Intermediate Examination of 1954 conducted by the Board of High School and Intermediate Education, U.P. (hereinafter called the 'Board') in the months of March and April of that year. They completed the examination, and the results were declared by the Board and appeared is the newspaper "Leader" of 12-6-1954, and in the U.P.- Gazette dated 16-10-54. In these results the appellants were declared successful at the examination and were placed in the 2nd division. Their mark sheets were sent to the colleges showing that the appellants had passed the Intermediate Examination. They joined the B.A., classes in different colleges.

70. On account of some complaints against the appellants that they had used unfair means at the examination, the Examinations Committee of the Board appointed a sub-committee to go into the question. The sub-committee found that the answer to question No. 1 in the paper on book-keeping and accountancy in the appellants 'answer books tallied word for word and also agreed with a typed copy which was distributed among the examinees on the date of the examination. The sub-committee in ex parte proceedings came to the conclusion that the appellants had used unfair means at the examination. This was adopted by the Examinations Committee which by a resolution dated 5-9-1954, resolved that the results of the appellants 'examination be cancelled and further that they be debarred from appearing at the Board's examination of 1955. This resolution was placed before the chairman of the Board who in exercise of the powers vested in him under Section 11 of the Intermediate Education Act (No. II of 1921) sanctioned the resolution on. 14-9-1954, and his decision was communicated to the parents of the students in

December 1954. No opportunity was given to the students to explain their conduct when the Examinations Committee considered their cases or when the Chairman of the Board sanctioned the resolution of the Examinations Committee.

71. Thereupon the appellants moved this Court by means of a writ petition under Article 226 of the Constitution praying that a writ of certiorari be issued quashing the resolution of the Examinations Committee and a writ of mandamus be issued to the Board not to give effect to the aforesaid resolution. They challenged the validity of the resolution of the Examinations Committee on the ground that they arrived at a conclusion against the appellants without giving them an opportunity of being heard and further that the penalty imposed by them was beyond their powers.

72. On behalf of the Board of High School and Intermediate Education, U.P., it was alleged that the proceedings were disciplinary and administrative in character and the law did not provide that any opportunity should have been given to the appellants to be heard before they resolved, to impose the penalty upon them, and that the steps taken by them were within their power.

73. The learned single Judge held that the proceedings conducted by the sub-committee were neither judicial nor quasi-judicial but were disciplinary or administrative, and that there was no obligation on the sub-committee to hear the applicants. He further held that the action taken by the Examinations Committee was within its power. In this view of the matter he dismissed the petition.

74. Against this decision, a special appeal was filed by the appellants and as already stated there was difference of opinion between the learned Judges composing the Bench hearing the appeal. Both the Judges were of opinion that the order of the Examinations Committee of the Board was an administrative order and not judicial or quasi-judicial. But while Dayal, J., held that there was no necessity of providing an opportunity to the appellants to be heard before the penalty was imposed upon them, Brij Mohan Lall, J., held that this was necessary on the principle of natural justice. Further, while Dayal, J., held that the penalty imposed by the Examinations Committee of the Board was within their powers, Brij Mohan Lall, J., held that it was not so. Lastly, while Dayal, J., held that the provisions empowering the Board or the Examinations Committee to impose the penalty of cancelling the result of the examination did not infringe the exercise of the appellants ‘fundamental rights under Article 19(1)(f) of the Constitution, Brij Mohan Lall, J., held that the result of the examination was property and that if it could be taken away without giving an opportunity to the appellants to be heard the provision which empowered such a thing to be done was an unreasonable restriction on the exercise of the right conferred by Article 19(1)(f) of the Constitution. Three questions have therefore been referred to me for answers :

> 1. Whether the failure of the Examinations Committee of the Board of High School and Intermediate Education, U.P., to provide an opportunity to the appellants of being heard

during its consideration of the alleged use of unfair means by them at the Intermediate Examination of 1954 vitiates their order which is an administrative order ?

2. Is the penalty imposed by the Examinations Committee of the Board on the appellants within its powers to impose ?

3. If the answer to the first question be in the negative, whether the provision empowering the Board or the Examinations Committee to impose the penalty of cancelling the result of the examination infringes the exercise of the appellants'fundamental right under Article 19(1)(f) of the Constitution ?

75. The powers of the Board of High School and Intermediate Education in U.P., are governed by the Intermediate Education Act (No. II of 1921). Section 7 of the Act defines the powers of the Board. The Board has power to grant diplomas or certificates, to conduct examinations at the end of High School, and Intermediate courses, to admit candidates to examinations and generally to do all such other acts and things as may be requisite in order to further the objects of the Board as a body constituted for regulating and supervising High School and Intermediate Education.

76. Section 13 empowers the Board to appoint committees including an Examinations Committee. Section 14 empowers the Board to delegate its powers to such committees. It runs as follows :

"All matters relating to the exercise by the Board of powers conferred upon it by this Act which have by regulation been delegated by the Board to any one of its committee shall stand referred to that Committee, and the Board, before exercising any such powers, shall receive and consider the report of the Committee with respect to the matter in question."

Section 15 authorizes the Board to make regulations for the purpose of carrying into effect the provisions of the Act. Under this power the Board has made regulations. Para 6 of Chapter III of the Regulations says :

"It shall be the duty of the Secretary, on behalf of the Board, to issue certificates in the prescribed form to successful candidates of having passed the Board's examination."

77. Under para (b) of Chapter IV the Board is authorised to appoint a committee to bring out the results of examinations. Chapter VI lays down the duties and powers of the Examinations Committee. Para 1(1) is the most important. It runs as follows :

"It shall be the duty of the Examinations Committee subject to the sanction and control of the Board to consider cases where examinees have concealed any fact or made a false statement in their application forms or a breach of rules and regulations to secure undue admission to an examination or used unfair means or committed fraud (including impersonation) at the examination or are guilty of a moral offence or indiscipline and to

award penalty which may be one or more of the following :

1. Withdrawal of certificate of having passed the examination;
2. Cancellation of the examination;
3. Exclusion from the examination."

It is in the exercise of this power that the Examinations Committee passed the resolution imposing the penalty complained of against the appellants.

78. The first question that calls for determination is whether the Examinations Committee was bound in law to give the appellants an opportunity of being heard before the penalty was imposed upon them. It was conceded that if the proceedings of the Examinations Committee were judicial or quasi-judicial, then, they were bound to hear the appellants before any penalty was imposed upon them. Both of my learned brothers were unanimous in holding that the proceedings of the Examinations Committee were neither judicial nor quasi-judicial.

79. My learned brother Brij Mohan Lall, J., stated, if I may say so with respect, correctly, the following test in considering what constitutes a judicial or quasi-judicial order :

> "The authority passing the order should be under an obligation to hear the parties, to make an enquiry, to weigh the evidence and to base its conclusion thereon. Its decision should be based on the result of the enquiry and not on its own discretion."

This is substantially the same as I held in *Avadhesh Pratap Singh v. State of Uttar Pradesh*[22],

80. The test has sometimes been put in a different language. It has been said that :

> "A judicial or quasi-judicial act .... implies more than mere application of the mind or the formation of the opinion. It has reference to the mode or manner in which that opinion is formed. It implies a proposal and an opposition and a decision on the issue, "In Re Banwari Lal Roy, 48 Cal WN 736 (800) .

81. An enquiry may be made necessary even in purely administrative acts but if the object of the enquiry is to inform the mind of the authority concerned and not to decide any issue between two persons, one of whom may be the authority concerned itself, it is purely an administrative act and neither judicial nor quasi-judicial see *Franklin v. Minister of Town and Country Planning*[23],

82. After stating the criterion of distinguishing between a judicial or quasi-judicial act on the one hand and an administrative act on the other, my brother Brij Mohan Lall went on to observe that :

> "The Act and the regulations neither make it obligatory on the committee to call for an explanation and to take evidence of the examinees whose cases it is required to enquire into, nor do they prohibit any such procedure. Since the taking of evidence has not been made obligatory, I, in accordance with the test laid down in the aforesaid cases, have come to the conclusion that the proceedings were neither judicial nor quasi-judicial. They

were purely administrative".

[22] AIR 1952 All 33

[23] 1943 AC 87

83. My learned brother Dayal, J., simply agreed with this conclusion of brother Brij Mohan Lall, J., without adding anything of his own. I have to accept the opinion of the learned Judges for the purposes of this reference, but cannot help observing with great respect that the mere fact that taking of evidence has not been made obligatory by the statute in express language is not determinative of the question whether a statutory body acts quasi-judicially or administratively.

84. In (1863) 14 CB (N.S.) 180 : 143 E.R. 414 (M) the 76th Section of the Metropolis Local Management Act, 1855 Clause 120 empowered the District Board to demolish a house constructed, without notice being given to the District Board by the owner of the house. The statute did not provide for any notice being given to the owner or, in other words, any opportunity being given to the owner to be heard before the house was pulled down and yet the Court held that the power given to the Board will not demolish the house without affording an opportunity to the party concerned of showing cause why the Board should not do so. Erie, J., expressed himself thus :

> "I think that the power which is granted by the 76th Section is subject to the qualification suggested. It is a power carrying
> "With it enormous consequences. The house in question was built only to a certain extent. But the power claimed would apply to a complete house. It would apply to a house of any value, and completed to any extent; and it seems to me to be a power which may be exercised most perniciously, and that the limitation which we are going to put upon it is one which ought, according to the decided cases, to be put upon it, and one which is required by a due consideration for the public interest. I think the board ought to have given notice to the plaintiff, and to have allowed him to be heard."

Willes, J., was of the same opinion:

> "I apprehend that a tribunal which is by law invested with power to affect the property of one of Her Majesty's subjects, is bound to give such subject an opportunity of being heard before it proceeds; and that that rule is of universal application, and founded upon the plainest principles of justice."

85. This decision was approved in *Vestry of St. James and St. John, Clerkenwell v. Peary* [24] where Lord Coleridge, C.J. observed :

> "It is contended that there must be some opportunity of questioning the propriety of the

> order made by the Vestry, and I agree the case of *Cooper v. Wandsworth District Board of Works (ubi supra)* is an authority for that proposition. Such an opportunity may be given in one of two ways- in the first place, before the vestry do anything they may give notice to the person whom they require to execute the works, and he may object; or, secondly, they may make the order, and if they do that they must give the person affected notice of such order. It is enough if an opportunity is given of questioning the propriety

[24](1890) 24 QBD 703 (23)

> of the order...."

86. The same was held in (1890) 24 QBD 712 :

> "In considering a man to have his house pulled down, a judicial act is as much implied as in fining him of and as the local board is the only tribunal that can make such an order its act must be a judicial act, and the party to be affected should have a notice given him; and there is no notice, unless notice is given of time when, and place at which the party may appear and show cause."

Referring to the judgment of Willes, J., in *Cooper v. Wandsworth District Board of Works*, the learned Judge observed :

> "the judgment of Willes, J., goes far more upon the nature of the thing done by the board than on the phraseology of the Act itself. It deals "With the case on principle; from the nature of the thing done it must be a judicial act, and justice requires that the man should be heard."

I may further point out that in quasi-judicial proceedings as distinct from judicial proceedings it is not necessary that an opportunity of examining the witnesses must always be given.

87. In the *Board of Education v. Rice*[25], it was laid down that the Board of Education was under a duty to act

> "in good faith and fairly listen to both sides, for that is a duty lying upon every one who decides anything. But I do not think they are bound to treat such a question as though it were a trial. They have no power to administer an oath, and need not examine witnesses. They cart obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view".

88. Thus, it is clear that the mere fact that the Legislature does not in express language, provide for an opportunity of being heard to be given to the party concerned is not conclusive of the question whether the power is judicial or quasi-judicial or it is purely administrative.

89. The question whether a power is judicial or quasi-judicial or whether it is merely administrative has to be decided upon the language of the statute, upon the nature of the power and the consequences of its exercise upon the rights of others and the exigencies of the situation. What one has mainly to see is whether the authority concerned has to decide a dispute between two parties one of whom may be the authority itself, or whether it has merely to take note of the dispute to inform its mind before it exercises the power conferred upon it in its discretion. If it be the former, it acts judicially or quasi-judicially; if the latter, it acts merely administratively or ministerially.

[25]1911 A.C. 179

90. In my opinion, the Examinations Committee when not dealing with indiscipline pure-and simple exercises a quasi-judicial power under the regulation in question. It will be seen that the power of the Examinations Committee to award a penalty under the regulation is after it had "considered" cases and upon such consideration has found that the examinees have done one or the other of the acts mentioned in the regulation. The word "consider" means to fix the mind on, with a view to careful examination; to examine; weigh (see Webster's International Dictionary). Without a finding that the examinees have been guilty of one or the other of the acts mentioned in the regulation the Examinations Committee would have no power to award a penalty. The Committee is not a court of law and therefore its consideration of a case is not to be the same as a decision by a court of law in a trial. Nevertheless, the charge of malpractice and, use of unfair means at the examination cannot be adequately "considered" without calling for an explanation from the examinees concerned. It will be unreasonable to suppose that in considering the cases of malpractice the Examinations Committee may give its decision not upon the result of the enquiry but in its own discretion specially when the decision may seriously affect the natural right of reputation of the examinees, may-jeopardize their future career.

91. In *Dipa Pal v. University of Calcutta*[26], Bose, J., observed :

> "In the present case before me, Mr. Mukherjee the examiner made the complaint of adoption of unfair means by the petitioner, to the examination Board, the petitioner was the person charged, and the deciding authority to adjudicate upon the charge was the Malpractice Committee set up by a Syndicate. The charge was misconduct or dishonesty. In the context of these facts, it is difficult to resist the conclusion that the word 'consider'in Chapter XXV, Reg. 8 (VI) (c) must necessarily involve and import a decision not merely depending upon opinion but depending upon inquiry or investigation."

92. A similar view was expressed in AIR 1953 Calcutta 212 .

93. If, therefore, I were free to express my own opinion, I would have held that when the Examinations Committee "considers" the charges of malpractice or use of unfair means by examinees and imposes penalties upon them, it exercises a quasi-judicial function.

94. But, as already stated, in view of the opinion of my learned brothers, I am bound to assume that the Examinations Committee acts administratively when exercising its powers under the regulation in question. Even so, in my opinion, in order to perform its administrative functions properly, it must have before it the viewpoint of the examinees before it passes any order.

95. Now, it is well settled that when a body is the creature of a statute or rules made there under, then in the exercise of its administrative but statutory functions the authority concerned must act, (a) within its jurisdiction and according to the statute which creates the power; (b) bona fide and not with an ulterior motive or upon

[26] AIR 1952 Cal 594

irrelevant considerations; (c) reasonably and fairly and not arbitrarily, and (d) with due care and attention and not negligently (see Halsbury's Laws of England, 2nd Ed. Vol. 31, p. 533 para 697, and *Indian Quarter Masters'Union v. P.R. Dutt*[27],

96. In *Westminster Corporation v. London and North Western Rly*[28]Lord Macnaghten observed :

> "It is well settled that a public body invested with statutory powers such as those conferred upon the corporation must take care not to exceed or abuse its powers. It must keep within the limits of the authority committed to it. It must act in good faith. And it must act reasonably."

97. In the case of non-statutory bodies, e.g., joint stock corporations or members'clubs, the rule is slightly different. They have a larger field for the exercise of their discretion. In their case all that is necessary is (a) that they shall follow the procedure laid down in the rules which must not be contrary to the principles of natural justice, (b) that where there are no rules, they shall follow the procedure in accordance with the principles of natural justice, and (c) that their action shall be in good faith. In other words, even the rules can be challenged if they are contrary to natural justice, but it is not necessary in their case that their decision should be reasonable provided it is in good faith.

98. In (1881) 17 Oh. D. 615 (S) it was held :

> "The court will not interfere against the decision of the members of a club professing to act under their rules, unless it can be shown either that the rules are contrary to natural justice, or that what has been done is contrary to the rules, or that there has been mala fides or malice in arriving at the decision .... The fact that a decision is unreasonable may be strong evidence of malice, but is not conclusive, and may be rebutted by evidence of bona fide."

99. The requirements of the principles of natural justice and of acting reasonably and with due

care imply that before a person is condemned he must have an opportunity of being heard. This requirement is not merely the essence of a judicial or quasi-judicial proceeding but also with certain exceptions of the proceeding of all administrative or executive bodies when they condemn a man and injuriously affect his right or property.

100. In (1863) 14 CB (N.S.) 180 : 143 ER 414 already cited above, Byles, J., observed :

> "It seems to me that the board are wrong whether they acted judicially or ministerially. I conceive they acted judicially, because they had to determine the offence, and they had to apportion the punishment as well as the remedy .... But suppose they acted ministerially, then it may be they were not bound to give the first sort of notice, viz., the notice of the hearing; but they were

[27] AIR 1951 Cal 570
[28]1905 AC 426

> clearly bound, as it seems to me, by the words of the statute, to give notice of their order before-they proceeded to execute it."

101. In *Local Govt. Board v. Arlidge*[29], Lord Parmoor observed :

> "Whether the order of the Local Government Board is to be regarded as of an administrative or of a Quasi-judicial character appears to me not to be of much importance, since, if the order is one which affects the rights and property of the respondent, the respondent is entitled to nave the matter determined in a judicial spirit, in accordance with the principles of substantial justice."

102. In 1943 AC 627, Lord Wright observed that the phrase "contrary to natural justice" implied at least two concepts, (1) that the tribunal should be impartial and (2) that the party to be affected is given a full and fair opportunity of being heard.

103. In AIR 1939 Bombay 35, a member of a club had been expelled from the membership of the club by a resolution of the general committee. The reasons for expulsion were not allowed to be discussed by the Chairman. The plaintiff deliberately remained absent from the meeting. The requisition for the meeting gave no reasons whatever for the expulsion. It was held that the procedure adopted was contrary to natural justice. It was laid down that :

> "Interference by the Court to prevent expulsion would not be justified if the following conditions are satisfied....that the rules providing for expulsion have been strictly observed, that the member expelled has had due notice, and full opportunity of answering the charges made against him, that there had been no want of good faith in the exercise of the power of expulsion, and that the decision arrived at is not manifestly absurd."

In this case the rules did not prescribe that due enquiry be made. They prescribed that without assigning any reason a member could be expelled from the club. It was held that due enquiry was necessary, and due enquiry was held to imply an opportunity to the member concerned of being heard.

104. In AIR 1954 Allahabad 144 (H) Mootham, J., (as he then was) held that whether the licensing authority acted quasi-judicially or ministerially, the general principle applied that "a man be not deprived of his property without being heard" and that the same principle applied where the loss of a man's right to carry on business is concerned.

105. The case of *Nakkuda All v. M. F. De S. Jayaratne*[30], is distinguishable. In that case a licence was cancelled by the Controller of Textiles in Ex Cylon under Regulation 62 of the Defence (Control of Textiles) Regulations, 1945 which empowered him to do so "where the Controller has reasonable grounds to

[29]1915-AC 120

[30]1951 AC 66

believe that any dealer is unfit to be allowed to continue as a dealer."

It was held by the Judicial Committee that the Controller was not under a duty to give notice to the licensee and to hear him before he cancelled the license. The decision in that case was based upon two grounds, first, that the Controller was merely taking executive action to withdraw a "privilege" and, second, that under the special terms of the regulation the only condition for the exercise of the power vested in the Controller was that he had reasonable grounds to believe that the holder was unfit to retain the licence. The regulation which we have to construe in the present case is very different in language.

106. Apart from the cases in which special provision of a statute may obviate the necessity of hearing the aggrieved party, there is another exception to the general rule stated above no notice need be given when action is taken for the maintenance of discipline.

107. Where a class teacher or the head of an educational institution or a commander of an army in the field or an officer in charge of a fire brigade is faced with act of indiscipline on the part of a student or examinee or a member of the force for the purpose of maintaining order and discipline in the institution or force, his action has to be swift and immediate lest one bad example may corrupt others. Delay or laxity may spell disaster. In such cases, in the nature of things, immediate action may be taken without any opportunity of showing cause being afforded, and courts do not interfere with the discretion used in inflicting punishment except when it is beyond the jurisdiction of the authority concerned or when the action has not been taken bona fide.

108. But such cases are distinguishable from the present, and the distinction was clearly brought out by Bose, J., in AIR 1952 Calcutta 594 where he observed :

> "In cases where breaches of discipline are detected by the invigilators or other officers present in the examination hall and candidates concerned are expelled from the hall or are otherwise dealt with, question of any enquiry or investigation open to the candidates may not arise. But where no case of breach of discipline is actually detected but subsequently upon examination of the answer papers the examiners come to entertain suspicion about adoption of unfair means by particular candidate or candidates and the Examination Board had to consider such cases and come to a determination as to the nature of the offence committed and has to apportion the penalty which can properly be inflicted upon the delinquents, it is only fit and proper that the party arraigned should have an opportunity to defend himself and to offer an explanation, if any.

To brand a candidate with the stigma of adoption of unfair means at the examination or in ether words finding him or her guilty of dishonesty or misconduct and thereby causing an irreparable injury to the character and reputation of such candidate, without giving him or her any opportunity to explain, is contrary to all notions of justice and good sense."

109. It may be noted that when the Examinations Committee records a finding that the appellants were guilty of using unfair means at the examination and cancels the result of that examination on that ground and further debars them from appearing at the ensuing examination, the Committee does not merely take away a privilege granted to the appellants but affect their natural right to reputation with serious consequences to them in their career.

110. The appellants contend that they had an explanation to offer, that they had anticipated question No. 1 and got its answer written down "by the teacher and had committed it to memory (the answer being a short one), and this is how their answers tallied with one another. They point out that it is not suggested that they were found copying from one another in the examination hall or they had any opportunity of doing so. They point out that the allegation that a typed sheet containing the answer was circulated among the examinees supports their version of the matter. They further point out that if they had copied the answer from each other why should they have not done so with regard to the answers to the other Questions ? They had passed the examination and were placed in the second division. They had attended the B. A. classes for about six months. The penalty imposed upon them is likely to cause very serious damage to their career in that not only do they lose two years of their life but also they carry a stigma all their lives, and might be unfit for ever being taken in government service. It appears to me that in these circumstances the requirements of natural justice demanded that the appellants should have been afforded an opportunity to explain the charges brought against them.

111. I am therefore of opinion that the Examinations Committee even though acting

administratively was bound to give an opportunity to the appellants of being heard either orally or by means of a written explanation during the consideration by the Board of the alleged use of unfair means by them, and the failure of the Examinations Committee or the Board of High School and Intermediate Education to provide such an opportunity to the appellants vitiates the order.

112. The second question referred to me is whether the penalty imposed by the Examinations Committee or the Board on the appellants was within its powers to impose. It was contended on behalf of the appellants that the order of cancellation of the result of the examination was not within the power of the Examinations Committee or the Board. It will be seen that the penalties which can be imposed by the committee, are three withdrawal of certificate of having passed the examination, cancellation of the examination, and exclusion from the examination. It is urged that the cancellation of the result of the examination is not the same thing as cancellation of the examination. In my opinion cancellation of the examination is a wider term than cancellation of the result of the examination. Cancellation of the examination may be the cancellation of the entire examination which will affect all the candidates appearing at the examination whereas cancellation of the results of an examination may be confined to certain individuals only. Cancellation of the result of the examination of particular individuals is the cancellation of the examination in part namely the cancellation of the examination of those individuals.

113. It was then urged that the Examinations Committee had no power to impose the penalties and that its only duty was to report to the Board and the Board alone had the power to impose penalties. Reliance for this contention is placed upon Section 14 of the Act which has already been quoted. Rule 1(1) of Chapter VI of the regulations empowers the Examinations Committee to impose the penalties mentioned in Clause (1) subject to the sanction and control of the Board. It was not stated before me that there was no sanction of the Board for the imposition of the penalties by the Examination Committee. The Examinations Committee could therefore impose the penalties in question.

114. This however does not mean that the Board itself cannot exercise the power. Section 14 says that if the Board wishes to exercise that power which has been delegated to the Examinations Committee, it shall receive and consider the report of the Examinations Committee before it exercises the power which has been delegated to the Committee. In the present case the Chairman has acted on behalf of the Board. As stated already, the Chairman considered the report of the Examinations Committee and considered that immediate action was required to be taken and took the action mentioned in the report of the Committee. This power is conferred upon the Chairman under Section 11(3) of the Act. I therefore hold that the Examinations Committee had the power to impose the penalty which it did and the Chairman of the Board also acted within his power in accepting the report of the Committee and imposing the penalty.

115. The third question referred to me really does not arise for consideration as I have answered

the first question in the affirmative, but even if my answer to the first question were in the negative, I would have held that the provision empowering the Board or the Examinations Committee to impose the penalty of cancelling the result of the examination does not infringe the appellants ‘exercise of fundamental right under Article 19(1)(f) of the Constitution.

116. An examination certificate may for certain purposes be treated as property in the widest sense of the word as implying all kinds of rights possessed by a person. But even so, the provisions of Article 19(1)(f) and of 19(2) can have no application to a case where the property is the creation of a statute subject to the condition that the property can be taken away under certain conditions. The condition under which the property created by the statute itself can be taken away is the condition upon which the right to the acquisition of the property is conferred, and he who takes the property takes it upon those conditions. He can have no grievance when he is deprived of such property upon the application of such conditions. Reasonable restrictions as mentioned in Clause (2) of Article 19 have application to the case of property which a person has a fundamental right to hold and not to property created by the very statute which imposes the restrictions. No person has a fundamental right in an examination certificate as against the authority which grants the certificate unless he is prepared to subject himself to the conditions upon which alone such certificate is granted. Article 19(1)(f) therefore does not apply to this kind of property. In this view of the matter, it is unnecessary to consider whether Article 19(1)(f) applies at all to the case of deprivation of a particular item of property, or whether it applies to the deprivation of the general right of a person to hold such property.

117. My answers to the questions referred to me are :

> (1) The failure of the Examinations Committee of the Board of High School and Intermediate Education, U.P., to provide the appellants an opportunity of being heard during its consideration of the alleged use of unfair means by them at the Intermediate Examination, 1954, vitiates at their order.
> (2) The penalty imposed by the Examinations Committee of the Board upon the appellants was I within their power.
> (3) As the answer to the first question is in the affirmative, this question does not arise, but I may say that even if the answer to the first question were in the negative, I would have held that the provisions empowering the Board or the Examinations Committee to cancel the results of the examination did not infringe the appellants'rights under Article 19(1)(f) of the Constitution.

BY THE COURT :- In view of the opinion of the third judge that the failure of the Examinations Committee of the Board of High School and Intermediate Education, U.P., to provide the appellants an opportunity of being heard during its consideration of the alleged use of unfair means by them at the Intermediate Examination, 1954, vitiates their order, we allow this appeal, set aside the decision of the learned single Judge and issue a writ of mandamus directing the

opposite parties to forbear from enforcing resolution No. 83, dated 5-9-1954. The appellants shall get their costs from the respondents which we assess at Rs. 300.
Appeal allowed.