been dismissed on 21st September, 1979 by their Lordships of the Supreme Court. During the pendency of this petition,—*vide* order of the Bench, dated 11th July, 1979, we granted stay in the same terms as was granted by the Supreme Court in *Krishna Ice and General Mills' case* (supra) and further added that the petitioners shall also maintain a list containing the names and particulars of each of their customers from whom they charged the amount in excess of the prescribed limit. The said amount, according to the orders of the Supreme Court, has been deposited in a separate account. Since this petition is being dismissed, we direct that the petitioners should refund the excess amount charged by them to all their customers within a month from today and shall make a report to the Deputy Registrar (Judicial) of this Court regarding the compliance of this part of the order.

(21) For the reasons recorded above, this petition fails and the same is hereby dismissed. However, the parties are left to bear their own costs.

S. S. Dewan, J.—I agree.

H. S. B.

Before S. S. Sandhawalia C.J. and I. S. Tiwana, J.

GURDIAL SINGH and another—*Petitioners.*

versus

STATE OF PUNJAB and another—*Respondents.*

Civil Writ Petition No. 2483 of 1979

November 19, 1979.

Constitution of India 1950—Articles 19(1)(b)& (c), 310 and 311(2)(c)—Inexpediency of holding an enquiry in the interest of the security of the State—Satisfaction of the Governor—Nature of—Whether subjective and non-justiciable—Considerations of security of State—Whether could be the subject matter of judicial review—Disclosure of incriminating material to the delinquent official—Whether necessary when action is taken under Article Article 311(2)(c)—*Such disclosure—Whether necessary to be made when the action is challenged in court—Member of police force indulging in demonstration and prejudicial*

activities endangering security of the State—Whether entitled to protection under Article 19(1) (b) & (c)—*Such activities—Whether can form the basis of disciplinary action.*

Held, that in the hiearchy of clauses (1) & (2) of Article 311 of the Constitution of India 1950 and the proviso to clause (2) specifying the conditions in sub-clauses (a), (b) & (c) whereby the application of the requirements of an enquiry under clause (2) are to be entirely excluded, the highest pedestal is obviously that of clause (c). Herein the power is vested in the highest executive functionary of the State, that is, the President of India or the Governor of the State concerned. Exclusive vesting of this power in the final executive head is in itself indicative of the relatively wider discretion which is sought to be given to him by the Constitution. In sub-clause (c), succeeding as it does sub-clause (b). it would be obvious that the framers of the Constitution have deliberately excluded the requirement of recording any reason whatsoever, which by contrast, was a basic requirement of the earlier sub-clause. In terms, therefore, the President or the Governor is not obliged to delineate or spell out any reason what so ever for his satisfaction. The language used herein is well known to law and the whole matter is vested in the satisfaction of the President or the Governor and that it is meant to be primarily subjective appears to be writ large over the provision. Thus, the satisfaction of the Governor or the President under Article 311(2) (c) is essentially subjective in nature and, therefore, does not permit ajudicial review. (Paras 16 and 22).

Gauranga Karmakar vs. *State of West Bengal and others* 1976(2) S. L.R. 317

Mrinal Kanti Das Burman and others vs. *State of West Bengal and other* 1977(1) Lab. I.C. 628 DISSENTED FROM.

Held, that the security of State is not a matter fit for judicial review and ultimately for judicial determination. The phrase 'security of State' is not a term of legal art. Indeed, the security of the State must inevitably remain a wide ranging thing which cannot be put into a Procrustean bed of a strait-jacketed definition. Inevitably, security of State would materially vary from time to time (in war or peace) and from clime to clime and so senstive a field must remain exclusively within the ken of the executive power which alone is paramountly responsible for the same. The role of the courts cannot but be a fair one of staying their hands and restraining themselves from an arena which is entirely alien to the issues of either legality or even propriety, and it is this rationale which not only makes the issue of the security of State non-justiciable but also points to the desirability that this should indeed be so.

It is, therefore, manifest, that under Article 311(2)(c), the satisfaction of the President and the Governor being essentially subjective may by itself be non-justiciable. Equally evident it is that matters with regard to the interest of the security of State are equally not fit for judicial scrutiny. Conjointly, therefore, when the satisfaction of the Governor or the President is rooted in the interest of the security of the State the question would indeed become doubly non-justiciable. This, of course, must be subject to the well known exception that the exercise of such a power may be challengeable on the ground of *mala fides* which, if proved, would render the same a fraud on the power itself and, therefore, liable to be struck down on that limited ground. (Paras 26, 29 and 33).

Held, that the whole intent and purpose of clause (c) of Article 311(2) is to do away with the enquiry if the paramount interests of the security of State so demand. If the President or the Governor is satisfied that it is inexpedient to hold an enquiry then all the basic four postulates of the same, namely, the delivery of charges, the disclosure of evidence the conduct of the enquiry and the hearing on the point of imposition of penalty are all to be done away with by a valid exercise of the power vested by clause (c). The very object and purpose of this provision would be frustrated and rendered nugatory if the delinquent official could claim that all the aforesaid materials should be made available to him either *aliunde* or in any case when he chooses to lay a challenge thereto in court which he would invariably wish to do. Holding that the public servant would be entitled to all these materials would be giving by one hand what the Constitution in its wisdom had deliberately taken away by the other under clause (c). In effect, if the statute says 'do not disclose' or casts a cloak of protection around the incriminating material, the same cannot be pierced and the protection rendered nugatory by making an open disclosure of the same in court. There is, therefore, no obligation cast upon the State nor a right vested in the public servant to claim disclosure of all the relevant materials under clause (c) of Article 311(2) of the Constitution. This, however, may not be understood to mean as a blanket bar against the court itself if it wishes to examine the same in a particular case for its own satisfaction. (Paras 37 and 38).

Held, that where members of the police force who being a disciplined force and the supposed upholders of the law and order had themselves violated prohibitory orders under section 144 of the Code of Criminal Procedure and had not rested content with a mere peaceful demonstration but had designedly indulged in aggravated form of prejudicial activities which had gone to the length of calculatedly endangering the security of the State bordering on the mutinous activity, their demonstration would not obviously be within Article 19(1)(b) & (c) and such activities make them liable for disciplinary action. (Para 42).

Gurdial Singh and another *v.* State of Punjab and another
(S. S. Sandhawalia, C.J.)

Petition under Articles 226 *and* TTS *of the Constitution of India praying that :—*

(*i*) *a writ in the nature of certiorari/mandamus or any appropriate writ or order quashing the impugned orders Annexures 'P-1' and 'P-2', be issued ;*

(*ii*) *Any other writ, order or direction as this Hon'ble Court may deem fit and proper, under the circumstances of the case, be issued ;*

(*iii*) *the record of the case be ordered to be sent for ;*

(*iv*) *the cost of the petition be awarded to the petitioners, as they have been unnecessarily disturbed.*

Kuldip Singh, Advocate, with R. S. Mongia and S. S. Shergil, Advocates, *for the Petitioner.*

H. L. Sibal, Advocate, with A. K. Jaiswal, Advocate, *for the Respondents.*

JUDGMENT

S. S. Sandhawalia, C.J.

1. Whether the satisfaction of the Governor (with regard to the inexpediency of holding an enquiry in the interest of the security of the State) under Article 311(2)(c) of the Constitution of India, is essentially subjective in nature and consequently non-justiciable, is the primarily significant question before this Bench, stemming from the widespread police agitation in the State of Punjab in May, 1979, which later spilled over and engulfed large parts of the country.

2. The facts in this set of three writ petitions are virtually identical and neither in serious dispute nor in a wide compass. Learned counsel for the parties are agreed that this judgment will govern all of them and further that a reference to the averments in *Gurdial Singh* v. *State of Punjab*, C.W.P. No. 2483 of 1979, amply suffices. At the very beginning, it may be noticed that this writ petition is now confined only to petitioner No. 1, Gurdial Singh, who claims a long tenure of service with the police force and having held the post of Assistant Sub-Inspector for about seven years. It is averred that there has been an agitation by the police officials in

the various parts of the State of Punjab and at the material time, he was posted at Sangrur and it is claimed that he did not participate either actively or otherwise in the police agitation. However, in guarded terms it is also averred that even assuming that the petitioner did participate in the peaceful agitation, the same could not be a ground for any adverse action against him. Nevertheless, it is alleged that by the order of the Governor dated May 19, 1979 (Annexure P/1), the petitioner has been removed from service in exercise of the power under Article 311(2)(c) without affording him any reasonable opportunity to show cause against the same.

3. In impugning the order of removal, the first ground is that the same is not passed in the individual capacity of the Governor and on the basis of his personal satisfaction, which according to the petitioner is an essential pre-requisite of Article 311(2)(c) of the Constitution of India. It is then alleged that in any case even the exercise of the power under Article 311(2)(c) of the Constitution is administrative in nature and therefore, subject to the process of judicial review. Whilst admitting that the sufficiency of material before the Governor for invoking the impugned power cannot be questioned in Court, it is nevertheless alleged that in fact there was absolutely no material before him for passing the impugned order. It has further been averred that peaceful agitation is a guaranteed right and it cannot be made the basis for invoking Article 311(2)(c) of the Constitution. Lastly, it is the claim that it was incumbent upon the respondents to disclose to the petitioners the material and the charges on the basis of which they are being held guilty of misconduct and its non-disclosure is assailed as being in violation of the rule of natural justice.

4. In the Return filed on behalf of the respondents by Mr. B. S. Danewalia, Inspector General of Police, Punjab, a primary objection is taken that the impugned order itself recites that it has been passed after the Governor's satisfaction on the point of the inexpediency of holding an enquiry in the interest of the security of the State and therefore, the matter is not justiciable in Court and the validity thereof cannot be questioned. On merits, the stand of the petitioner with regard to the non-participation in the police agitation is categorically and forthrightly controverted. It has been averred that some undesirable elements in the police force organised patently illegal demonstrations and *dharnas* in the State thereby gravely jeopardising the security of the State. The petitioner is specifically

averred to have taken part in organising these illegal demonstrations and *dharnas* and had vehemently incited others to do so. The activities in the present case were an aggravated form of prejudicial activities which were calculated to directly endanger the security of the State and the illegal agitation was carried on in a manner which rendered necessary to invoke the provisions of Article 311(2)(c) of the Constitution of India.

5. With regard to the form, content, and legality of the impugned order, it is the respondents' stand that the Governor had satisfied himself that in the interest of the security of the State, it was inexpedient to hold an enquiry in the case of the petitioner and that the orders had been issued in the name of the Governor of Punjab duly authenticated by the Secretary to the Government, Punjab, Home Department. The satisfaction of the Governor, it is claimed can neither be challenged nor judicially reviewed. It has been specifically averred that there was sufficient material before the Governor to satisfy him and invoke the constitutional provision, under which the action has been taken. Lastly, it is the stand that there is no provision for disclosing the material and the charges when Article 311(2)(c) of the Constitution is invoked and clause (2) of the said Article is not at all applicable in these circumstances and therefore, no question of either furnishing any charges or materials to the petitioner arises nor is there any violation of the rules of natural justice.

6. To clear the ground for an appraisal of the main issue, it is necessary to notice at the very out set that Mr. Kuldip Singh, learned counsel for the petitioner, conceded that a misplaced emphasis had been laid in the writ petition on the ground that the impugned order of the termination of the petitioner's service was not passed by the Governor in his individual judgment or individual discretion. It was fairly submitted that in view of the express over-ruling of *Sardari Lal* v. *Union of India and others* (1) (on which this contention was rested) by the Larger Bench in *Shamsher Singh* v. *State of Punjab and another* (2), the said contention was no longer available to the petitioner and had been admittedly raised under a patent misappropriation of the law. This aspect of the case and the pleadings in the writ petition, therefore, need not detain us any further.

(1) 1971 S.C. 1547.
(2) 1974 S.C. 2192.

7. Coming now to the basic issue in the case, it is obvious that it has to be examined in the light of the contents of the impugned order as also of the provision under which it has been passed. For facility of reference, therefore, the impugned order and the material parts of Article 311 of the Constitution may be set down:

"PUNJAB GOVERNMENT
HOME DEPARTMENT

ORDER

The 19th May, 1979

Whereas A.S.I., Gurdial Singh, No. 242/PTL posted at Sangrur is guilty of such misconduct as renders him liable to removal from Punjab Government service ;

And whereas the Governor of Punjab is satisfied that in the interest of the security of the State of Punjab, it is not expedient to hold an enquiry against the aforesaid A.S.I. Gurdial Singh, No. 242/PTL as required by clause (2) of Article 311 of the Constitution of India for his removal from Government service;

Now, therefore, in exercise of the powers conferred by Article 310 of the Constitution of India, the Governor of Punjab is pleased to remove the aforesaid A.S.I., Gurdial Singh No. 242/PTL, from Government service with immediate effect.

(Sd.) . . .,
Commissioner for Home Affairs and
Secretary to Government, Punjab,
Home Department."

Article 311: *Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State*—

(1) * * *

(2) * * *.

Provided further that this clause shall not apply:—

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, *is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.*

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

8. Before inevitably adverting to the language of the constitutional provisions or embarking on a discussion on first principles it appears advisable to deal with the binding or persuasive precedents on the point. With regard to the basic underlying issue of the justiciability or otherwise of the satisfaction of the Governor arrived at in the context of the interest of the security of the State, Mr. Kuldip Singh, when pressed was compelled to concede that he could cite no judgment in which the satisfaction of the executive head with regard to the security of the State had been pronounced to be justiciable. However, there appears to be an earlier and unbroken line of precedents holding that under Article 311(2)(c), the Presidential or the Gubernatorial satisfaction is not justiciable. Reference to these judgments may be briefly made in the chronological order. In *B. Eswaraiah* v. *The State of Andhra (now Andhra Pradesh) represented by the Secretary Revenue Department, Hyderabad and another* (3), Subba Rao, Chief Justice speaking for the Division Bench, observed as follows:—

"Clause (c) of the proviso to Clause (2) of Article 311 in terms confers unrestricted power on the Governor in the

(3) A.I.R. 1958 Andhra Pradesh 288.

interest of the State to deprive a particular officer of the reasonable opportunity provided by Article 311 of the Constitution of India. The said power is not circumscribed by any objective standards and, therefore, it cannot be questioned in a Court of law. It may be that if a party establishes by placing relevant material before the Court that the Governor made the order *mala-fide* or for ulterior purposes, the order may be set aside on the ground that it is a fraud on power."

Jaganmohan Reddy, J. speaking for the Division Bench then expressed a similar view in *Mohammed Azam* v. *State of Hyderabad (now Andhra Pradesh) and another* (4). In the Division Bench Judgment of *Jagdish Dajiba* v. *The Accountant-General of Bombay and others* (5), Badkas, J. in unequivocal terms observed as follows:—

"..... It is obvious that what the above provision of the Constitution requires is satisfaction of the President about the expediency of not giving an opportunity to the employee concerned in the interest of the security of the State. To make such matter a justiciable issue would mean that the Court should be also satisfied about such expediency and then only the order of President passed under the powers given by the Constitution should be upheld by the Court. This would amount to substituting satisfaction of the Court in place of the satisfaction of the President. *It is possible that what may satisfy the President may not satisfy the Court. What may be found expedient by the President may not be so found by the Court. If Courts were to demand proof of such satisfaction and the evidence of material on which the satisfaction was reached, the Courts would be virtually depriving the President of the powers and confidence which the Constitution in its wisdom has reposed in the President.*"

Madholkar, J., in a concurring opinion held as under:—

"* * * The satisfaction of the President is only subjective and, therefore, where the President has expressed that he

(4) A.I.R. 1958, Andhra Pradesh 619.

(5) A.I.R. 1958 Bombay 283.

is satisfied about a particular matter, the Court had no power to go behind it."

The aforesaid view was expressly noticed with approval and followed *in Narendra N. Das* v. *State of West Bengal* (6). In this Court Shamsher Bahadur J., in *Satyandra Kumar Dutta, New Delhi* v. *Union of India, New Delhi,* (7), noticed the aforesaid judgment to take an identical view. A Division Bench of the Rajasthan High Court again in *Chhatar Singh* v. *The Union of India and others* (8) after reference to some of the aforesaid precedents expressed a categoric agreement therewith Satish Chandra J., as his Lordships then was, in *Muhammad Akhtar* v. *Union of India* (9), has then expressed an identical view even after making reference to the *Barium Chemical's case.*

9. Deviating from tradition it is perhaps necessary to note that Mr. H. M. Seervai, the learned author of the Constitutional Law of India (Second edition) at page 1486 seems to himself conclude as follows:—

"Under proviso (c), Article 311(2) does not apply if the President or the Government is satisfied that in the interest of the security of the State it is not possible to hold the inquiry provided for in Article 311(2). As the proviso leaves the matter to the satisfaction of the President or the Governor, it is clear that the question whether the security of the State did require that an inquiry should not be held is not justiciable."

9-A. With so consistent and unbroken a line of precedent of all the major High Courts on the point without a dissenting note thereto, the question really boils down to this whether there is any adequate or overwhelming justification to take a contrary view therefrom ?

10. Faced with the insuperable stone wall of the aforesaid precedents against him, Mr. Kuldip Singh, for the petitioner had attempted to better the same mainly on plank of the observations first made in the well-known case. *Barium Chemicals Ltd. and another* v.

(6) A.I.R. 1962 Calcutta 481.
(7) A.I.R. 1962 Pb. 400.
(8) A.I.R. 1967 Rajasthan 104
(9) (1967) 2 L.L.J. 767.

Company Law Board and others (10), and reiterated in *Rohtas Industries Ltd.* v. *S. D. Agarwal and another, etc.* (11) and *M. A. Rasheed and others* v. *The State of Kerala* (12). Relying thereon, counsel had contended with more vehemence than plausibility that despite the fact that the satisfaction of the Governor herein was subjective and rooted squarely in the interest of the security of the State, it was still justiciable and subject to judicial review. This, according to counsel, required an examination of all the relevant and adequate materials on which the satisfaction of the Governor had been arrived at. Not only this, it was contended that the Court must, on an examination of these materials, find that it satisfies a twin test, namely, be indicative of sufficient factual misconduct attracting disciplinary action against the public servant and further that there existed relevant materials on the point of the inexpediency of holding an enquiry in the interest of the security of the State. It was submitted that unless the Court was satisfied about the existence of materials as also its nexus with the aforesaid twin requirements, the order under Article 311(2)(c) cannot be sustained.

11. Since the whole argument here is rested on the ratio of the observation in *Berium Chemicals' case* (supra) and the judgments following the same, it becomes necessary at the very outset to quote the provisions which fell for consideration therein and in the context whereof the findings were arrived at. Therein the order of the Company Law Board passed under the provisions of section 237(b) of the Companies Act, 1956, was in issue. This provision may first be set down:—

> "Without prejudice to its powers under Section 235 the Central Government—
>
> (a) shall appoint one or more competent persons as inspectors to investigate the affairs of a company and to report thereon in such manner as the Central Government may direct, if—
>
> (i) the company, by special resolution, or
>
> (ii) the Court, by order, declares that the affairs of the company ought to be investigated by an inspector appointed by the Central Government; and

(10) A.I.R. 1967 S.C. 295.
(11) A.I.R. 1969 S.C. 707.
(12) A.I.R. 1974 S.C. 2249.

(b) *may do so if, in the opinion of the Central Government, there are circumstances suggesting—*

(i) that the business of the company is being conducted with intent to defraud its creditors, members or any other persons, or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members, or that the company was formed for any fradulent or unlawful purpose, or in a manner oppressive of any of its members, or that the company was formed for any fraudulent or unlawful purpose; or

(ii) that persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or

(iii) that the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, the managing agent, the secretaries and treasurers, or the manager of the company."

Now a bare look at the aforesaid provision is enough to indicate that the language, content and purpose of the same is entirely and radically different from that under Article 311(2)(c). Whilst the constitutional provision requires merely a satisfaction of the Chief Executive Head, section 237 of the Companies Act does not even remotely talk of such a satisfaction. Even the word "satisfied" is not used. What perhaps deserves pointed notice is that the interests of the security of State are not even remotely attracted. It is, therefore, plain that there is not the least parity either of language or purpose betwixt what fell for consideration in the *Barium Chemicals' case* as against the relevant provisions of Article 311(2)(c).

12. Now analysing section 237(b) of the Companies Act, it is obvious that it required the twin conditions of the formation of opinion by the Central Government upon the objective criteria spelled out in sub-clauses (i) and (ii) thereof. It was more in view of the later requirements that their Lordships rightly interpreted

that the materials which suggested the circumsances could be the subject-matter of a limited judicial review. This is evident from the following observations in the *Barium Chemicals' case* itself:

> "An examination of the Section would show that clause (b) thereof confers a discretion upon the Board to appoint an Inspector to investigate the affairs of a company. The words 'in the opinion of' govern the words 'there are circumstances suggesting' and not the words 'may do so'. The words 'circumstances' and 'suggesting' cannot be dissociated without making it impossible for the Board to form an 'opinion' at all. The formation of the opinion must, therefore, be as to whether there are circumstances suggesting the existence of one or more of the matters in sub-clauses (i) to (ii) and not about anything else."

Again, in analysing the same provision in *Rohtas Industries' case* (supra), it was concluded as follows:—

> "In other words the existence of the circumstances in question is open to judicial review though the opinion formed by the Government is not amendable to review by the courts. As held earlier the required circumstances did not exist in this case."

In the light of the above it deserves highlighting that in Article 311(2)(c) there is nothing even remotely in *pari materia* with any requirement of the existence of circumstances and the objective basis from which the necessary inference is to be derived.

13. Apart from the above, Mr. Sibal, for the respondent was at pains to point out that the basic tenet under section 237(b) of the Companies Act is the opinion of the Central Government. Now, it would be plain that the formation of an opinion necessarily implies a process of reasoning applied to a consideration of materials and thereafter arriving at a necessary inferential decision. The further requirements under the said provision were whether fraudulent, unlawful purpose or the conduct of business in a manner oppressive of its members etc., was spelled out and, therefore, circumstances had to exist suggesting the formation of an opinion to this effect by the Government before taking over a company. Therefore, the

language here is radically different. The basic factual foundation on which the formation of the opinion of the Central Government is to be rested has no analogy whatsoever with the larger purpose and the more satisfaction of the Chief Executive Head in the interest of the security of State which lies embedded in the Constitution under Article 311(2)(c). It would thus be evident, therefore, that the bringing in of the ratio of observations made under a radically different statute and altogether different context and purpose in the *Barium Chemicals' case* can have little relevance for construing Article 311(2)(c).

14. What is said above about the *Barium Chemicals' case* applies equally and even more fully to the *Rohtas Industries' case* and in fact a reference to that judgment would show that it is nothing else but a reiteration and following of the earlier view in the identical context of the provisions of section 237 of the Companies Act.

15. A passing reference to *M. A. Rasheed's case* (supra) would suffice. Herein, again, the difference in language, purpose and the content of the legislative provision is patent. Therein, the matter was construed with regard to rule 114(2) of the Defence of India Rules, 1971. This again required the formation of opinion by the Central Government or the State Government. The notification under the said provisions further recited that the Government had arrived at a particular opinion. At the cost of repetition it must be said that the moment the requirement of the formation of opinion is brought in, then necessarily the question of materials, the necessary data, the inferences to be derived therefrom and the process of reasoning and logic for the formation of opinion must come into play. That such a situation postulates something entirely different from what the constitutional mandate of a subjective satisfaction of a high functionary like the Governor or the President is concerned, appears to me as too elementary to call for a meticulous elaboration. *M. A. Rasheed's case*, therefore, also appears to be wholly wide of the mark and of little consequence and relevance in the construction of Article 311(2)(c).

16. To conclude on this aspect, it appears to me that trilogy of cases noticed above do not, in any way, advance the case of the petitioners nor can they even remotely be deemed to run counter to the long line of precedents noticed earlier holding to the effect that the

satisfaction of the Governor or the President under Article 311(2)(c) is essentially subjective in nature and, therefore, does not permit a judicial review.

17. In fairness to Mr. Kuldip Singh, reference must inevitably be made to the judgments of the Calcutta High Court on which he sought to place direct reliance. The first in time and sequence is the Single Bench judgment in *Gauranga Karmakar* v. *State of West Bengal and others,* (13). Thereby a number of connected writ petitions preferred by police officials were disposed of. This judgment, however, is plainly distinguishable on facts. As was rightly pointed out on behalf of the respondents, the learned Single Judge after referring to an earlier unreported Division Bench judgment of the Calcutta High Court, which he followed, allowed the writ petition on the peculiar facts of this case. As rightly pointed out by Mr. Sibal, in this case the order of the Governor under Article 311(2)(c) on facts suffered from a patent and glaring infirmity because the same was passed in public interest and unrelated to the interest of the security of State which is the paramount requirement under the constitutional provision. The learned Single Judge, therefore, had little option but to observe as he did in the concluding para:

> "In the supplementary affidavit, in the note of the Inspector-General of Police, it is stated that normal procedure for dismissal cannot be followed in the public interest and accordingly recommended that the petitioner be dismissed under Article 311(2)(c) of the Constitution. It appears that even the Inspector-General of Police in his note did not form any opinion that in the interest of the security of the State it was not expedient to hold an enquiry in the case of the petitioner. "From the facts disclosed in the supplementary affidavit, in my view, no reasonable person could have come to the decision that in the interest of the security of the State, it was not expedient to hold an enquiry in the case of the petitioner. In my opinion, the condition precedent to the formation of such decision of the Governor had got no factual basis and there was no existence of relevant materials upon which powers under Article 311(2)(c) of the Constitution had been exercised by the Governor."

(13) 1976 (2) S.L.R. 317.

It would be plain from the above that the whole case turned on the point that the impugned order was not at all passed in the interest of the security of the State which is the basic requirement under Article 311(2)(c) of the Constitution, but on altogether different and one may say so extraneous considerations of a purported public interest. *Gauranga Karmakar's case* possibly, therefore, is no warrant for the proposition that even an order by the Governor rooted in the interest of the security of State is nevertheless justiciable or subject to judicial review.

18. Following the earlier judgment in *Gauranga Karmakar's case*, the learned Single Judge also made the rule absolute in the case of another police official—Narenbra Narayan Das. The State of West Bengal appealed against this judgment which was ultimately decided by the Division Bench in *State of West Bengal and others* v. *Narenbra Narayan Das,* (14). Though the State appeal was allowed and the judgment of the learned Single Judge set aside and the writ petition of the police official dismissed, there nevertheless are observations in the judgment which tend to lend support to the stand canvassed on behalf of the petitioner. The Bench observed as follows:—

> ".....In our opinion an order under Article 311(2) Proviso (c) is an exercise of the administrative power by the executive and, therefore, must be subject to judicial review in the manner as other discretionary powers of the executive authorities....."

It is the aforesaid view which has been frontally and forcefully assailed on behalf of the respondent-State by Mr. Sibal and in my view rightly so. Counsel pointed out that without the matter having been adequately canvassed and debated before the Bench, it seems to have taken the view that the exercise of all administrative power of whatsoever nature is justiciable This was rightly pointed out is rather too widely stated and the position must vary with the nature and the content of the administrative power exercised in the peculiar context, and no sweeping generalization embracing all situations can be possible. This seems to be self-evident here. The learned Judges of the Bench did not even notice the earlief catena of cases to the effect that the Presidential and

(14) 1978 (1) S.L.R. 646.

Gubernatorial satisfaction on the point of the interest of the security of State was beyond the ken of judicial review. The sharp distinction which has been earlier brought out betwixt the position in *Barium Chemicals, Rohtas Industries* and *M. A. Rasheed's cases*, as against the provisions of Article 311(2)(c) of the Constitution, seems to have altogether missed notice. What deserves highlighting, however, is the fact that the exercise of the power here is not merely administrative simplicitor, but deeply rooted to the interest of the security of the State itself and, therefore, the Courts are precluded from examining a matter essentially political and pristinely executive in nature. With great respect, therefore, I would wish to record a dissent with the wide ranging and sweeping generalisation made by the Division Bench in *State of West Bengal and others* v. *Narenbra Narayan Das* (supra) to the effect that the power even under Article 311(2)(c) of the Constitution must be subject to judicial review with all its inevitable consequences. Equally necessary it is to notice that in the course of arguments a Division Bench judgment of the Calcutta High Court in *Mrinal Kanti Das Burman and others* v. *State of West Bengal and others*, (15), was not cited before us. However, for clarity sake it may also be mentioned that for the above-mentioned reasons I would also wish to record my dissent with the view taken therein as well.

19. I have in the opening part of this judgment noticed the long line of unbroken precedents taking the consistent view that the satisfaction of the President or Governor, with regard to the interest of the security of the State was not justiciable. I have also distinguished the case of Barium Chemicals and the judgments following the same. Had the matter stood at that, it would have sufficed to merely record one's concurrence with the earlier statement of the law and precedents. However, as a discordant note has undoubtedly been struck by the Division Bench in *State of West Bengal and others* v. *Narenbra Narayan Das*, (supra), and to some extent in *Gauranga Karmakar* v. *State of West Bengal and others*, (supra), the issue now necessarily calls for an examination on principle of the scope and purpose of Article 311(2)(c) of the Constitution.

20. The hallowed doctrine of holding office during the pleasure of the Crown has been incorporated with the necessary modification

(15) 1977(1) Labour and Industrial cases 628.

in Article 310 of the Constitution. However, it has been hedged and limited down by the conditions prescribed in clauses (1) and (2) of Article 311. The proviso to clause (2), however, specifies the three conditions in sub-clauses (a), (b) and (c) thereof whereby the application of the requirements of an enquiry under clause (2) are to be entirely excluded. An analysis of the scheme of Articles 310 and 311 of the Constitution would show that the protection of clause (2) of Article 311 is altogether lifted, if any one of the three conditions spelled out in sub-clauses (a), (b) and (c) of the proviso stand satisfied. Taking a bird's eyeview of these, the first one in sub-clause (a) pertains to the conviction on a criminal charge of the public servant. This necessarily implies the regular trial and the findings of a criminal court in which the public servant already has had the opportunity of fully defending himself. Therefore, where the dismissal, removal or reduction in rank is rested squarely on a conviction, the requirement of a departmental enquiry is constitutionally allowed to be obviated.

21. Then, comes sub-clause (b) which authorises the appointing authority for reasons to be recorded that he is satisfied that it is not reasonably practicable to hold an enquiry in accordance with clause (2) of Article 311 of the Constitution. Even here clause (3) of Article 311 of the Constitution which deserves to be highlighted makes the decision of the appointing authority whether good or bad, as final. In effect, therefore, this is a clear pointer to the fact that even where the recording of reasons is made necessary as in sub-clause (b) nevertheless finality is attached to the decision of the appointing authority with regard to the practicability or otherwise of holding an enquiry and the same is constitutionally sought to be put beyond any challenge.

22. In this hierarchy, the highest pedestal is obviously that of sub-clause (c). Herein the power is vested in the highest executive functionary of the State, that is, the President of India or the Governor of the State concerned. Exclusive vesting of this power in the final executive head is in itself indicative of the relatively wider discretion which is sought to be given to him by the Constitution. In sub-clause (c), succeeding as it does sub-clause (b), it would be obvious that the framers of the Constitution have deliberately excluded the requirement of recording any reason whatsoever, which by contrast, was a basic requirement of the earlier sub-clause. In

terms, therefore, the President or the Governor is not obliged to delineate or spell out any reasons whatsoever for his satisfaction. The language used herein is well-known to law and the whole matter is vested in the satisfaction of the President or the Governor and that it is meant to be primarily subjective appears to be writ large over the provision.

23. Now the two basic postulates for the exercise of this power are the satisfaction of the executive head with a nexus to the interest of the security of State. It would be conducive to clarity if these two postulates are first construed independently and then notice the conjoint effect thereof. With regard to the first, it deserves highlighting that the language used herein is not with regard to the formation of any opinion on the basis of an objective data nor the necessity of expressing it by way of recording of any reasons. The whole thing is rooted in the satisfaction of the President or the Governor. It was, therefore, contended with plausibility by Mr. Sibal for the respondent-State that when the matter is vested in the satisfaction and the sole judgment and discretion of the executive head it is neither possible nor desirable that this should be subjected to judicial scrutiny. Doing so would be taking away with one hand what the Constitution has given with the other and in fact would amount to the substitution of the satisfaction of the Court in place of the satisfaction of the final executive head.

24. For the aforesaid stand, basic reliance was on the judgment of their Lordships in *M/s. S. K. G. Sugar (P) Ltd.* v. *State of Bihar and others*, (16). Therein the question was examined in the context of Article 213 of the Constitution. The material part of the language is in the following terms:—

> "213(1) If at any time, except when the Legislative Assembly of a State is in session, or where there is a Legislative Council in a State, except when both Houses of the Legislature are in session, *the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action*, he may promulgate such Ordinances as the circumstances appear to him to require."

It is evident from the above that herein also the constitutional mandate is with regard to the satisfaction of the Governor as to the existence of circumstances which may warrant immediate action.

(16) A.I.R. 1974 S.C. 1533.

construing this satisfaction, the Court found the matter so plain that it categorically brushed aside all objections thereto as also the claim of judicial scrutiny therefor in the following terms:—

> "There is no dispute with regard to the satisfaction of the first condition. Existence of condition (b) only is questioned. It is, however, well settled that the necessity of immediate action and of promulgating an Ordinance *is a matter purely for the subjective satisfaction of the Governor. He is the sole judge as to the existence of the circumstances necessitating the making of the Ordinance. His satisfaction is not a justiciable matter. It cannot be questioned on ground of error of judgment or otherwise in court.*"

Basic reliance for the aforesaid observation was placed on the more elaborate enunciation in the earlier judgment in *State of Punjab* v. *Satya Pal Dang and others,* (17), where again the Governor's satisfaction and the power to issue ordinance was put beyond the pale of judicial scrutiny or judicial review whilst reversing a Full Bench judgment of this Court holding to the contrary.

24-A. It would be equally instructive to advert by way of analogy to the concept of satisfaction under the Preventive Detention Statutes. Section 25 of the Preventive Detention Act, 1950, postulates the satisfaction of the Central or the State Government for detaining a person in order to prevent him from acting in a prejudicial manner. This provision, with particular reference to the nature of the satisfaction fell for consideration by their Lordships in *Rameshwar Shaw* v. *District Magistrate, Burdwan and another,* (18). Gajendragadkar (as his Lordships then was) speaking for the Constitution Bench held as follows:—

> "It is true that the satisfaction of the detaining authority to which section 3(1)(a) refers is his subjective satisfaction, and so is not justiciable. Therefore, it would not be open to the detenu to ask the Court to consider the question as to whether the said satisfaction of the detaining authority can be justified by the application of

(17) A.I.R. 1969 S.C. 903.
(18) A.I.R. 1964 S.C. 334.

objective tests. It would not be open, for instance, to the detenu to contend that the grounds supplied to him do not necessarily or reasonably lead to the conclusion that if he is not detained, he would indulge in prejudicial activities. The reasonableness of the satisfaction of the detaining authority cannot be questioned in a Court of law, the adequacy of the material on which the said satisfaction purports to rest also cannot be examined in a Court of law. That is the effect of the true legal position in regard to the satisfaction contemplated by section 3(1) (a),—*vide State of Bombay* v. *Atma Ram Sridhar*, (19)."

25. It would follow from the above that both on principle and binding precedent, the satisfaction of the President or the Governor in sub-clause (c) may by itself be wholly subjective and beyond the pale of judicial scrutiny.

26. What, however, deserves particular highlighting is the fact that the aforesaid subjective satisfaction of the President or the Governor is again to be rooted in the interest of the security of the State. This inevitably raised even a more meaningful issue, whether the security of State is a matter fit for judicial review and ultimately for judicial determination ? The answer to my mind must be rendered in the negative. The phrase 'security of State' is not a term of legal art. It is, therefore, unnecessary to resort to legal dictionaries in this context. Indeed the security of the State must inevitably remain a wide ranging thing which cannot be put into a Procrustean bed of a strait-jacketed definition. Inevitably, security of State would materially vary from time to time (in war or peace) and from clime to clime, and so sensitive a field must remain exclusively within the ken of the executive power which alone is paramountly responsible for the same.

27. Particularising in the context of the present case, learned counsel for the respondents highlighted the considerations which inevitably must weigh with the Governor in arriving at a decision in the context of the security of the State. It was argued plausibly and in my view rightly that in this regard it is not only the past misconduct of the delinquent police officials but also the reasonable possibility and after-effect of holding an enquiry in future which

(19) A.I.R. 1951 S.C. 157.

must also be taken into consideration. It was the respondents' stand that the issue in the correct perspective is not what has already happened but what is likely to and may well happen in the future to affect the security of the State. Now could it be lost sight of that it was during the zenith of agitation when it was in full swing that the State Government and the Governor were called upon to take the decision under Article 311(2)(c) of the Constitution. It was highlighted that at the material time the police force was armed with lethal and sometimes automatic weaponary and the matter had gone to the extent of tacitly handing over the custody of some of the arms to the other para-military and military forces. Possibility of an armed confrontation and the agitation taking a violent turn and igniting into a conflagration could not at that stage be ruled out.

28. Counsel submitted that in so sensitive a field the authority had to take into consideration the future and the larger ramifications of both the adverse publicity if prolonged enquiries were launched and the political entanglement which may subsequently ensure therefrom. It was the stand that the risk of the matter being over politicalised and hostile parties bargaining in making a political capital out of a purely administrative issue as a *modus operandi* of exploitation had equally to be guarded against in the context of the security of the State. Prolonged enquiries of this nature against a large number of ring leaders might well spark off a fresh spurt to an already dangerous agitation and the overall risk of the matter spreading and getting out of hand was yet another factor which must come in the ken of the authorities. It was submitted that as in the present case this has not only to be visualised but had in fact happened and the police agitation in the State of Punjab actually spilled over to the adjoining States and in fact at one stage posed a country-wide problem of a magnitude not easy to handle. Nor is it in dispute that later in the other parts of the country at numerous places the army had to be called out and militant confrontation did take place leading to sizeable loss of life.

29. In sum, the stand of the respondent State is that considerations of security of State are in essence political questions which the executive sovereign is not only entitled to decide but indeed is the only competent authority to decide since the responsibility therefor rests squarely on the shoulders of the executive alone. The maintenance of national security is in essence a pristinely executive

function. Therefore, the determination of the interest of the security of State as also the responsibility for the maintenance thereof must rest on the ruler. It is perhaps in this context that the addage comes to mind that the people should neither be ruled by the judges nor judged by the executive. The security of State at its core is the concern of the ruler and the executive action to maintain the same does not admit of being weighed in the golden scales of judicial scrutiny. Therefore, in a field so sensitive and in essence political the role of the Courts cannot but be a fair one of staying their hands and restraining themselves from an arena which is entirely alien to the issues of either legality or even propriety. It was this rationale which, according to the learned counsel for the respondents, not only makes the issue of the security of State non-justiciable but also points to the desirability that this should indeed be so.

30. Precedent again is not lacking in an area which otherwise appears to me as plain on principle. Lord Parker in well-known *The Zamora's case* (20) pithily observed as follows:—

> "* * * Those who are responsible for the national security must be the sole judges of what the national security requires. It would be obviously undesirable that such matters should be made the subject of evidence in a Court of law or otherwise discussed in public."

The aforesaid dictum was referred to in the famous *Liversedge* v. *Sir John Anderson and another* (21), with the following observations by Lord Macmillan:—

> "I turn now to the nature of the topics as to which the Secretary of State is under the regulation to have reasonable cause of belief. They fall into two categories. The Secretary of State has to decide (1) whether the person proposed to be detained is a person of hostile origin or associations or has been recently concerned in certain activities, but he has also to make up his mind (2) whether by reason thereof it is necessary to exercise control over him. The first of these requirements relates to matters of fact, and it may be that a court of law, if it

(20) 1916(2) A.C. 77 at page 107.

(21) 1942 A.C. 206.

could have before it all the Secretary of State's information an important 'if'—might be able to say whether such information would to an ordinary reasonable man constitute a reasonable cause of belief. But how could a court of law deal with the question whether there was reasonable cause to believe that it was necessary to exercise control over the person proposed to be detained, which is a matter of opinion and policy, not of fact ? *A decision on this question can manifestly be taken only by one who has both knowledge and responsibility which no court can share.*"

Coming nearer home, a Division Bench of the Delhi High Court in *Sardari Lal, Ex-Sub-Inspector, Delhi Police* v. *Union of India through Secretary, Ministry of Home Affairs, Government of India, New Delhi and others*, (22), in the particular context of Article 311(2) (c) of the Constitution of India has held in categoric terms as follows:—

"* * * On the other hand clause (c) of the proviso does not talk of any ground or reasons to be recorded or not. It is the personal satisfaction of the President or the Governor, as the case may be that in the interest of the security of the State, it is not expedient to hold an enquiry. Apart from the fact that in terms the satisfaction is expressed to be subjective, the satisfaction is with regard to the interest of the security of the State. *It cannot be doubted that questions relating to the security of the State cannot be examined by a Court because such questions are primarily political questions.*"

Reference must also be made to *Bhagaban Chandra Das* v. *State of Assam*, (23). Undoubtedly that judgment in a way turns on the fact that the impugned order therein under Article 311(2)(c) was apparently passed in ignorance of the amendment introduced in the said Article. Nevertheless despite the inherent infirmities caused thereby because of references to the unaltered provision of law, their Lordships took the substance of the matter into consideration and forthrightly upheld the order. It was observed as follows:—

"No doubt Article 311(2) is intended to afford a sense of security to Government servants covered by sub-article

(22) 1974(2) S.L.R. 311.
(23) A.I.R. 1971 S.C. 2004.

(1) and the safeguards provided by sub-article (2) are mandatory. But clause (c) of the proviso to this sub-article which is designed to safeguard the larger interest of the security of the State cannot be ignored or considered less important when construing sub-article (2). The interest of the security of the State should not be allowed to suffer by invalidating the Governor's order on unsubstantial or hyper-technical grounds which do not have the effect of defeating the essential purpose of the constitutional safeguard of individual government servant."

31. It then calls for pointed notice that Article 311(2)(c) of the Constitution of India uses a wider and more compendious phrase than security of State simplicitor. The language used is 'in the interest of the security of State' and this phrase fell for consideration in the *State of West Bengal and others* v. *Narendra Narayan Das* (supra), on which heavy reliance was placed by the learned counsel for the petitioners. Therein it was observed:—

"The expression 'security of State' and 'in the interest of the security of State' have different connotations. The expression used under proviso (c) to clause (2) of Article 311 is the expression 'in the interest of the security of State' and not 'for the security of the State'. The meaning of the words 'in the interest of' is wider than simply the expressions 'security of the State'. The expressions 'in the interest of' include everything that even indirectly help the security of the State. * * *

AND AGAIN

Security of State is different from law and order or public order but maintenance of law and order as well as maintenance of public order may be in the interest of the security of State. Therefore, it can be said that failure to maintain law and order or failure to maintain public order might endanger not so much the security of the State but the interest of 'the security of the State'. Attempt to change the government or to attack the persons who occupy the governmental positions need not necessarily create any problem for the security of the State but attempts to undermine the forces who are charged with responsibility of maintaining the integrity of the State might endanger the interest of the security of the State."

32. On this aspect of the case it would, therefore, appear that the issues of the interest of security of State are not and indeed should not be made justiciable. That the forum of the Courts for weighing issues of this nature would be inapt is evident from the weighty words of Lord Chancellor Finlay in *Rex* v. *Halliday* 1917 A.C. 260 wherein it was observed that no Tribunal for investigating sensitive questions of this nature can be imagined less appropriate than a Court of Law.

33. To conclude on this point it would be manifest that under Article 311(2)(c), the satisfaction of the President and the Governor being essentially subjective may by itself be non-justiciable. Equally evident it is that matters with regard to the interest of the security of State are equally not fit for judicial scrutiny. Conjointly, therefore, when the satisfaction of the Governor or the President is rooted in the interest of the security of the State the question would indeed become doubly non-justiciable. This, of course, must be subject to the well-known exception that the exercise of such a power may be challengeable on the ground of *mala fides* which, if proved, would render the same a fraud on the power itself and, therefore, liable to be struck down on that limited ground.

34. Once it is so held it is evident that the case of the petitioners must fail. It deserves highlighting that there admittedly is not a hint of any allegation of factual *mala fides* in averments nor was it at any stage even suggested in the course of arguments. That being so the petitioners must be non-suited on this score alone.

34-A. This, however, is not the final Court and it is, therefore, advisable to dispose of the other two contentions raised on behalf of the petitioners as well. It was contended by Mr. Kuldip Singh that the impugned order being in exercise of the administrative power of the State was subject to the judicial review at least to the limited extent that the condition precedent for the satisfaction of the Governor existed in the shape of adequate materials therefor. These materials must further satisfy a twin test that they indicated misconduct on the part of the petitioners calling for the disciplinary action of removal and further that these materials also were adequate to satisfy the authority about the inexpediency of holding a deparmental enquiry in the interest of the security of the State.

35. Assuming entirely for argument sake in favour of the petitioners that such an argument can be raised even with regard to the

exercise of power under Article 311(2)(c), it seems to me that the said tests are more than amply satisfied on the materials produced before us.

36. Before I briefly advert to the above, it is first necessary to examine the ancillary contention of Mr. Kuldip Singh that all and every material in this regard must be disclosed in terms and made available to the petitioners. It was submitted that in the counter-affidavit of the respondent State, no adequate facts had been spelt out on the basis of which the satisfaction of the authority was arrived at. The substance of the argument herein was that either of the materials which were taken into consideration be conveyed to the petitioners and in any case be disclosed expressly by way of an affidavit on the record. The claim was pressed that all materials which in the eye of the State were relevant both as regards the misconduct of the petitioners as also pertaining to the risks to the security of State should be barred in order to enable this Court to be satisfied with regard to the exercise of the power. In effect, therefore, the argument was focussed on a demand for all relevant materials on which the removal as also the decision of not conducting an enquiry was based.

37. In stoutly opposing such public disclosure of all the relevant materials by either conveying them to the delinquent public servant or by disclosing all of them to him, the moment he seeks to challenge the same in Court, Mr Sibal for the respondent-State relied on the fundamental premises which underline the constitutional mandate under clause (c) of proviso to the Article 311(2) itself. It was highlighted that clause (2) of Article 311 at least postulates four things which may be mentioned as the bare minima of an enquiry envisaged thereby. Inevitably, it requires the furnishing of charges to the public-servant, the data and the evidence which necessarily go to support those charges, a fair opportunity of showing cause against the same including the right of cross-examination of witnesses against him and the leading of defence evidence as well, and lastly on the charge being established to represent on the point of the penalty to be imposed upon him for the misconduct. Counsel submitted and in my view rightly that the whole intent and purpose of clause (c) is to do away with the said enquiry if the paramount interests of the security of State so demand. If the President or the Governor is satisfied that it is inexpedient to hold an enquiry

then all the basic four postulates of the same, namely, the delivery of charges, the disclosure of evidence, the conduct of the enquiry and the hearing on the point of imposition of penalty are all to be done away with by a valid exercise of the power vested by clause (c). The very object and purpose of this provision would be frustrated and rendered nugatory if the petitioner could claim that all the aforesaid materials should be made available to him either aliunde or in any case when he chooses to lay a challenge thereto in Court which he invariably would wish to do. Holding that the public servant would be entitled to all these materials would be giving by one hand what the Constitution in its wisdom had deliberately taken away by the other under clause (c). In sum the issue is that if the Constitution says that the enquiry is not to be held and the prejudicial material is not to be disclosed then to say that the moment the delinquent public servant challenges the same in Court he should be furnished with identical material would be a contradiction in terms. In effect if the statute says 'do not disclose' or casts a cloak of protection around the incriminating material, can the same be pierced and the protection rendered nugatory by making an open disclosure in Court is public disclosure for all purposes. Therefore, it does not sound logical to hold that what the Constitution under clause (c) mandatorily takes away should be again deviously given in an indirect manner and even in a more open forum of the Court of law as against a mere domestic enquiry which may be held under the departmental procedures.

38. On the ancillary question I would, therefore, hold that there is no obligation cast upon the State nor a right vested in the public servant to claim the disclosure of all the relevant materials under clause (c) of Article 311(2) of the Constitution. This, however, may not be understood to mean as a blanket bar against the Court itself if it wishes to examine the same in a particular case for its own satisfaction.

39. Learned counsel for the respondents then took the counter-offensive by relying on the *Barium Chemicals Ltd. and another* v. *Company Law Board and others* (supra), itself to show that in such like sensitive matters the State does more than its duty by disclosing, if at all necessary, the relevant facts to the Court alone whilst not throwing it open to the wide winds of general publicity. Even in the case of section 237(b) of the Companies Act

which had fallen for construction in the said case it was observed as follows in paragraph 29 of the report :—

> "29. Had the matter rested there it would have been a question whether this Court should interfere with a subjective opinion, when the affidavit showed that there were materials for consideration. It would then have been a question whether this Court could or should go behind the affidavit. I leave that question to be decided in another case where it arises. In this case it is not necessary to decide it because the affidavit goes on to state :
>
> * * * *

and again paragraph 65 it was held :—

> "Even assuming that the entire clause (b) is subjective and that the clause does not necessitate disclosure of circumstances, the circumstances in the present case have been disclosed in the affidavits of the Chairman and the other official. Once they are disclosed, the Court can consider whether they are relevant circumstances from which the Board could have formed the opinion that they were suggestive of the things set out in clause (b)."

It would be evident from the above that their Lordships were themselves of the view that it was perhaps unnecessary for the State to disclose but once it willingly does so by filing a counter affidavit and placing the material for scrutiny then inevitably it must be deemed to have invited a decision thereon. Consequently only in such a situation the Court in *Barium Chemicals case* felt compelled to examine the same. Therefore, the aforesaid case is no warrant for claiming a total disclosure of materials in Court even under section 237(b) and indeed far from so in the much more restricted field under Article 311(2)(c). Reverting back to the contention that the materials before the Governor must be indicative both of misconduct calling for disciplinary action as also the inexpediency of the holding of departmental enquiry I would repeat that in the light of the foregoing discussion no such issue actually arises. However, assuming entirely for argument's sake in favour of the petitioners that such materials for the satisfaction of the Governor were necessary, the same are more than amply borne out on the

record. There are first the categoric averments made in paragraphs 6, 7, 9 and 10 of the return, the relevant parts thereof may well be set down.

> "P.6. * * * The Governor has looked into the case and given the final orders to the effect that it is not expedient in the interest of the security of the State to hold an enquiry.
>
> P.7. The contents of this para are denied. There was sufficient material before the Governor of Punjab to invoke the provisions of Art. 311(2)(c) of the Constitution of India.
>
> P.9. * * * The agitation was carried on in such a manner that it was necessary to invoke the provisions of sub-clause (c) of clause (2) of Art. 311 of the Constitution of India. The only judge for this matter was the Governor who was personally satisfied in this connection. The activities in this particular case were aggravated form of prejudicial activities which were calculated to endanger the security of the State.
>
> P. 10. * * * Even if, the right to form associations is guaranteed by the Constitution, but if the prejudicial activities are carried on in such a proportion that the security of the State is threatened, the Constitution itself empowers the Governor, if he is satisfied, that in the interest of the security of the State it is not expedient to hold an enquiry against a civil servant, he can pass the appropriate order which he has passed in this case."

The aforesaid averments would by themselves be amply indicative of the materials on the basis of which the final executive in the State and it is the firm stand that both the Chief Minister and the Governor were amply satisfied on the allegedly twin requirements. This, however, was more than supplemented, if at all any supplementing was necessary by the unhesitating and indeed zealous invitation of the respondent-State to disclose the record to the Court which was plainly indicative of the fact that there is nothing to hide.

40. Making the whole record available to us, which we examined, the learned counsel for the respondents highlighted the

fact that the Government had secured the most authentic reports from all the various quarters and the district authorities. These were then processed intimately at the security level and was considered in detail and the final decision was taken by the Chief Minister and bore his signatures. On his categorical recommendation the matter was placed before the Governor who on a consideration thereof felt further satisfied and under his own signatures directed the issuance of the relevant orders under Article 311(2)(c). The record in the present case indicates in no uncertain terms that the highest executive authorities were conscious of the exceptional powers which they were exercising and there was ample material as also the larger considerations which had compelled them to conclude that stringent disciplinary action was necessary and the enquiry was not only inexpedient but perhaps likely to be a source of positive danger to the interest of the security of the State. We are satisfied that more than ample material existed for the satisfaction of the authorities concerned on the allegedly twin requirements and it is otherwise settled law that the sufficiency of the material or evidence is not a matter for the determination of this Court.

41. The last string to the bow of Mr. Kuldip Singh's contention appears to be the trailest one. Counsel fairly conceded that within the limitation of the writ jurisdiction it has to be assumed in the face of the written statement filed by the respondent that the petitioners had demonstrated and also incited others to demonstrate and equally had indulged in aggravated forms of prejudicial activities. Nevertheless it was sought to be contended that the petitioners were entitled to demonstrate or incite demonstration under Article 19(1)(b) and (c) of the Constitution, and therefore this could not be made a foundation for taking any disciplinary action against them at all. Reliance was placed on *Kameshwar Prasad and others* v. *State of Bihar and another*, (21) and the Single Bench judgment of the Calcutta High Court in *Gauranda Karmarkar's case* (supra).

42. The aforesaid contention has again little content or merit both on facts and in law. The firm stand of the respondents is that the petitioners had not rested content with a mere peaceful demonstration but had designedly indulged in aggravated form of prejudicial activities which had gone to the length of calculatedly endangering the security of the State. The averments in the written

(21) 1962 S.C. 1166.

statement and the record made available for the examination of the Court would indicate that the activities in which the petitioners participated bordered on the mutinous activity in a disciplined force. The supposed upholders of the law and order had themselves violated prohibitory orders under section 144, Criminal Procedure Code, and abandoned the duties assigned to them for indulging in activities which were far from peaceful. Once that is so, it is plain that *Kameshwar Prasad's case* can be of little or no aid to the petitioners and in fact would run contrary to their interest. That case pertained to the secretariat ministerial officers of Bihar and in their context their Lordships opined that a rule prohibiting a wholly peaceful or inncuous demonstration by secretariat employees may perhaps be not sustainable under Article 19(1). However, the petitioners are governed by the Police Force (Restriction of Rights) Act, 1960, which empowers the State to limit the right in the context of the disciplined Forces like the police. What is significant, however, is that their Lordships in *Kameshwar Prasad's case* themselves opined that the result may well have been different as is evident from the following observations :—

> "We find ourselves unable to uphold this submission on behalf of the State. In the first place, we are not here concerned with any rule for ensuring discipline among the police force which is the arm of the law primarily charged with the maintenance of public order. The threat to public order should, therefore, arise from the nature of the demonstration prohibited. No doubt, if the rule were so framed as to single out those types of demonstration which were likely to lead to a disturbance of public tranquillity or which would fall under the other limiting criteria specified in Article 19(2) the validity of the rule could have been sustained."

Again as regards the nature of a demonstration, their Lordships held as follows :—

> "* * * It is needless to add that from the very nature of things a demonstration may take various forms, it may be noisy and disorderly, for instance stone-throwing by a crowd may be cited as an example of a violent disorderly demonstration and this would not obviously be within Article 19(1)(a) (b)."

It may be recalled that the firm stand of the respondent-State, both in the written statement as also on the basis of the record and in Court was that the petitioners had indulged in the gravest and most aggravated forms of prejudicial activities in order to endanger the security of the State.

43. Coming now to the passing observations of the learned Single Judge in *Gauranga Karmarkar's case* to the effect that mere incitement to violent crime and public disorder would not come within the scope of the expression 'security of the State', it is significant to notice that this view was in terms reversed by the Division Bench on appeal in *State of West Bengal and others* v. *Narenbra Narayan Das* (supra) wherein it was held (in the passage already quoted in the earlier part of the judgment) that even the maintenance of public order would squarely come within the wider expression of the interest of the Security of the State. I am, therefore, of the view that the last contention raised on behalf of the petitioners cannot also hold water.

44. In the light of the exhaustive discussion aforesaid it is plain that all the writ petitions are devoid of merit and are hereby dismissed. The parties are, however, left to bear their own costs.
S. S. Sandhawalia, C.J.

Oral prayer of Mr. Kuldip Singh, learned counsel for the petitioner for leave to file an appeal to the Supreme Court is declined.

N. K. S.

Before M. M. Punchhi, J.

TILAK RAJ,—*Petitioner.*

versus

STATE OF PUNJAB,—*Respondent.*

Criminal Revision No. 376 of 1977

November 20, 1979.

Prevention of Food Adulteration Act (XXXVII of 1954)—Sections 7 and 16(1)(a)—Prevention of Food Adulteration Rules 1955—Rule 5 and Appendix B Item A.01.01—Sweetened carbonated water seized by the Food Inspector—Report of public analyst that the