Before M. M. Punchhi, J.

TEK BAHADUR SINGH,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 6085 *of* 1983.

May 23, 1984.

Punjab Agricultural Produce Markets Act (XXIII of 1961)—*Section* 15—*Member of a Market Committee removed by a notification—Reasons for removal not recorded in the notification though stated in the executive file—Non-recording of reasons in the notification—Whether makes the removal bad in law—Departmental procedure in quasi-judicial matters—Assent signified by signatures without express words—Such procedure—Whether desirable.*

Held, that the notification removnig a member of a Market Committee is not bad in law for not containing the reasons for such removal when the same are to be found on the executive file containing the quasi-judicial order which file could be inspected to discover reasons that weighed with the Government to pass such an order.

(Paras 4 and 5)

Held, that there is a clear distinction between an executive order and a quasi-judicial order of the Government which, in certain circumstances it has occasion to pass. What is good routine for passing executive orders may not always be a good routine for quasi-judicial order. Mere signatures signifying assent may in certain events be not enough for a quasi-judicial purpose. To rule out the possibility of routine or perfunctory assent, it would be desirable that the quasi-judicial authority while agreeing to the proposal made signifies its assent by express words. This, at least, rules out the possibility that the signature of the quasi-judicial authority was appended with closed eyes and without proper application of mind.

(Para 7).

Petition under Articles 226 *and* 227 *of the Constitution of India praying that* :—

(*i*) *that this writ petition be admitted;*

(*ii*) *that the respondents along with relevant records be summoned;*

(*iii*) *that after hearing the parties or their counsels, the impugned order dated 27th July,* 1983 (*Annexure P.* 3) *and the notification issued by the Government,*—vide *its No.* 1(1)-*M-III*-82/5926, *dated 12th August,* 1983 *be quashed being illegal and without jurisdiction.*

(*iv*) *that the operation of the impugned orders be stayed and the petitioner be allowed to resume the charge as Chairman and he further be allowed to continue to be the Chairman of the Market Committee till the disposal of this writ petition.*

G. S. Sandhu, Advocate, *for the Petitioner.*

H. S. Bedi, Dy. Advocate General, Punjab, A. S. Cheema, Sr. Advocate and Baljinder Singh, Advocate and Jasbir Singh, Advocate with him, *for the Respondents.*

JUDGMENT

Madan Mohan Punchhi, J. (Oral)

(1) The petitioner herein was a member and then the Chairman of the Market Committee, Ferozepore Cantt. For an incident, which took place on 18. 2. 1983, relating to a meeting scheduled to be held, in which the petitioner was to participate as also the Executive Engineers of the Marketing Board and the Provincial Division, it transpired that Shri G. S. Mann, Executive Engineer, Marketing Board Ferozepore, made an adverse report against the petitioner. That was to the effect that the petitioner was found drunk in the meeting and was not in his senses. An instance was also quoted that prior to 18. 2. 1983 the petitioner had come to the office drunk and had even been taking drinks while sitting in the office neglecting the duties as a member and the Chairman of the Market Committee. Thereupon, the State Government, through its Deputy Secretary of the concerned Department, issued a show-cause notice on 1st June, 1983 (Annexure P.1) to the petitioner satisfying the requirement of the proviso to section 15 of the Punjab Agricultural Produce Markets Act, 1961 (hereafter referred to as the Act). The petitioner was required to submit his reply up-till 25. 6. 1983.

(2) As is plain from the show-cause notice, reference was made therein to the report of Shri G. S. Mann, the crux of which detailed therein, was that the petitioner was found drunk and was not in

his senses on 18. 2. 1983. The petitioner, instead of showing cause to the notice, submitted an application, copy whereof is Annexure P.2, asking for a copy of the report/reports mentioned in the show-cause notice and stated that, on receiving a reply from the Government, he would submit a detailed reply to the show-cause notice. Thereupon, the Government issued notification Annexure P.3 in accordance with Section 15 of the Act, whereby the petitioner was removed from the membership as well as the Chairmanship of the Market Committee, Ferozepore Cantt. Challenging the same, the petitioner has approached this Court under Articles 226 and 227 of the Constitution of India.

(3) Written statements have been filed by the State of Punjab on the affidavit of the Joint Secretary to Government, Punjab, Development Department, as also by respondent No. 2, Gurbax Singh Sidhu, Secretary of the Market Committee, Ferozepore Cantt. Both of them have reiterated, in justification, the allegations against the petitioner about his misconduct and neglect. The defence taken is that the action of the Government was within the four corners of law and had been taken after an opportunity of being heard had been afforded to the petitioner.

(4) When this petition came up for hearing before the Motion Bench, to which I was a member, the learned counsel for the petitioner stated that the matter was covered in his favour by a full Bench decision of this Court in *Sahela Ram son of Ch. Dhan Singh* v. *State of Punjab* (1). Seemingly, such statement was not disputed by the learned counsel for the respondents and thus the Bench was persuaded to order the listing of the case within a period of three months, out of turn. In consequence thereof, the matter has been placed before me. Section 15 of the Act is in the following terms:—

> "The State Government may by notification remove any member, if, in its opinion, he has been guilty of misconduct or neglect of duty or has lost the qualification on the strength of which he was appointed :
>
> Provided that before the State Government notifies the removal of a member under this section, the reasons for his proposed removal shall be communicated to the member concerned and he shall be given an opportunity of tendering an explanation in writing".

(1) AIR 1968 Pb. and Hary. 127.

The Full Bench in *Sahela Ram's case* (supra) took the view amalgamatedly that the notification envisaged in section 15 of the Act, was, by itself, an order and, as such, should have *ex facie* reasons embodied therein, it being a quasi-judicial order. And, since in that case the notification/order disclosed only the conclusion without disclosing any reasons for coming to the same, it was struck down, being contrary to the law laid down by the Supreme Court in *Bhagat Raja* v. *Union of India and others* (2). This has been passed into service by the learned counsel for the petitioner to contend that notification Annexure P. 3 is also bereft of any reasons. On the other hand, Mr. H. S. Bedi, learned Deputy Advocate General, has rightly drawn the distinction on the strength of a Full Bench decision in *The State of Punjab* v. *Bhagat Ram Patanga* (3) which was affirmed by the Supreme Court in *Bhagat Ram Patanga* v. *State of Punjab,* (4) that the quasi-judicial order giving the process of reasoning could stay on the executive file of the Government and which file could be inspected to discover reasons which weighed with the Government to pass it. And the resultant notification need not contain reasons as those would be found on the quasi-judicial orders already passed on the file. In this way, the validity of notification Annexure P. 3 has been sought to be justified as also by producing before me for perusal the supportive file.

(5) I have gone through the department file. It appears that the letter of the petitioner asking for a copy of the report/reports was dealt with by the concerned Assistant of the Department on 7. 7. 1983. He proposed that a copy of the report of Shri G. S. Mann be sent to the petitioner. The superintendent, however, on the same day, differed from the note and suggested that, since the show-cause notice itself was based on the report of Shri G. S. Mann and its details had already been mentioned in the show-cause notice there was no need to supply a copy of the report to the petitioner The matter was put before the Deputy Secretary on 15. 7. 1983 and he proposed that the petitioner's asking for a copy of the report was only a dilatory tactic. And as he had not submitted the explanation within time as asked for, he proposed that the same be ignored and the petitioner be removed from the membership as also from the chairmanship of the Market Committee. To this, the Minister concerned agreed on 24. 7. 1983 by putting his signatures thereon,

(2)AIR 1967 S.C. 1606.
(3) AIR 1970 Pb. & Hary. 9.
(4) AIR 1972 S.C. 1571.

though expressly it was not so mentioned that he had agreed to the proposal. Mr. Bedi tells me that this is the usual practice in the Department, whereby government work is done and unless there is a dissent to the note, the assent is normally given by affixing signatures. It is in this manner that the order is sought to be justified being based on reasons.

(6) I must, at this stage, express that the learned counsel for the petitioner was remiss in not pointing out to the Motion Bench *Bhagat Ram Patanga's case* (supra), for had he done so, we would have let the petition come for hearing in its due course. All the same, the learned counsel has been successful in having this matter listed and it would not be desirable now to throw it out without deciding it on merits. To his contention that the impugned order was bereft of reasons, the answer is that reasonings are available on the department file which contains the quasi-judicial order. Those are sufficient for the impugned action. There is thus no ground to interfere therein.

(7) A word of advice need however be tendered here. In *Bhagat Raja's case* (supra) K. Subba Rao, CJ, had drawn a clear distinction between an executive order and a quasi-judicial order of the government which, in certain circumstances it has occasion to pass. What is good routine for passing executive orders may not always be good routine for quasi-judicial orders. Mere signatures signifying assent may in certain events be not enough for quasi-judicial purpose. To rule out the possibility of routine or perfunctory assent, it would be desirable that the quasi-judicial authority, while agreeing to the proposal made signifies its assent by express words. This, at least, rules out the possibility that the signature of the quasi-judicial authority was appended with closed eyes and without proper application of mind.

(8) The second point urged is that no proper opportunity was given to the petitioner to show cause. It is urged that the petitioner had asked for a copy of the report/reports and, in case the Government was not inclined to give him, he should have timely been warned so that he could have a deailed reply to the show-cause notice. This step of the petitioner was termed by the Government on the quasi-judicial file to be a dilatory tactic. When the petitioner had made such a request, he should have calculated that it may or may not be granted and should have been prepared for the eventuality of submitting a reply to the show-cause notice within the time stipulated, as an alternative. Admittedly, he took no such step. The Government, in its turn, was thus justified in concluding that the petitioner was given the opportunity of showing cause

which he had not chosen to avail in the right manner. Thus, this point too is not of any substance and sequelly fails.

(9) No other point has been urged.

(10) For the foregoing reasons, there is no force in this petition which is hereby dismissed with costs.

N.K.S.

Before J. V. Gupta, J.

INTRA CHEMICALS AND DRUGS (P) LTD.,—*Appellant.*

versus

RUPA NARAIN,—*Respondent.*

First Appeal from order No. 248 of 1976.

May 23, 1984.

Workmen's Compensation Act (VIII of 1923) as amended by Act LXV of 1976—Section 4 Schedule IV—Accident taking place after the amendment of the Schedule—Compensation, however, claimed under the unamended Schedule and the Commissioner allowing the same—Claimant subsequently moving the Commissioner for enhanced compensation under the amended Schedule—Commissioner—Whether competent to modify his Award and increase the quantum of compensation in accordance with the amended Schedule—Notice of subsequent application not given to the employer—Absence of such a notice—Whether causes any prejudice.

Held, that where the accident took place after the amending Act of 1976, the claimants were entitled to the enhanced amount of compensation as provided in the Schedule. Simply because in the original application, the amount claimed was in terms of the unamended Schedule, it will not deprive them of the amount to which they were entitled under the Act. In the subsequent application it was specifically pleaded that the earlier application was filed under the old Schedule through a *bona fide* mistake and, therefore, it could not be said that the earlier order passed by the Commissioner could not be modified by him subsequently when the amended provisions were brought to his notice. May be that