desirability of taking proper care in being present in Court when their cases are called, I am inclined in the present case to set aside the dismissal in default and restore C.W. No. 285 of 1963, to the pending list of cases. This writ petition would be set down for hearing on 14th January, 1966. I should also like to make it clear that legal position having once again been clarified; in future; this Court would expect proper adherence to the law laid down herein. In the circumstances of the case, I do not impose any terms, and indeed, learned counsel for the respondents has also not insisted on costs.

R.S.

CIVIL MISCELLANEOUS

Before Inder Dev Dua and R. S. Narula, JJ.

THE MUNICIPAL COMMITTEE, KHARAR AND OTHERS,—*Petitioners*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 1721 of 1965.

1966

January, 13th.

Punjab Municipal Act (III of 1911)—S. 238—Reasons for superseding a municipal committee—Whether must be stated in the notification—Enquiry into allegations against the municipal committee before passing the order of supersession—Whether necessary to be made—Principles of natural justice—Whether to be observed in holding such enquiry—Constitution of India (1950)—Art. 226—Order superseding a municipal committee—Whether amenable to scrutiny by High Court.

Held, that the mere copying of the words of the section into the notification, issued under section 238(1) of the Punjab Municipal Act, 1911, superseding a municipal committee, amounts only to notifying the conclusions of the Government and is no substitute whatever for the statutory requirement of notifying the reasons leading the Government to take the action for superseding the municipal committee. The reasons and the conclusion arrived at on account of a consideration of those reasons are two distinct matters. A statutory safeguard against abuse of the powers conferred on the State Government under section 238 of the Act has been provided by making it necessary for the Government to state the reasons for coming to the requisite conclusion in the notification itself. This requirement is also a very reasonable curb on a possible arbitrary order which might otherwise be passed by the State Government which may, in its zeal, sometimes outstep the real jurisdiction conferred

by the Act. It needs no argument to envisage cases in which the State Government itself may absue the powers vested in it under sub-section (1) of section 238. In such a case it would be open to the Municipality concerned or its members who may be affected by such notification to approach High Court and to show that *ex facie* the reasons on account of which the Municipality has been superseded are extraneous and that it is humanly impossible to conclude from the reasons alleged in a particular case that any of the eventualities justifying supersession of Municipality under section 238(1) of the Act has in fact occurred. It is open to High Court in exercise of its writ jurisdiction to see whether in a given case the notified reasons are at all germane to the exercise of power vested in the State Government for superseding a Municipality. The requirement to give reasons can also be supported on the ground that a mere reading of the notification should be able to help the Court in determining the *bona fides* of the State Government or its appropriate authorities if any order superseding a Municipality is challenged on the ground of *mala fides*. The provision for requiring the reasons for superseding a municipal committee being stated in the notification under section 238(1) of the Act is not merely formal or directory but is mandatory.

Brij Lal v. *State of Patiala* (1) overruled.

Held, that a mere reference to the provisions of section 238(2)(a) of the Act shows that notification superseding a municipal committee directly affects the members of the Municipality who are citizens of this country and who are automatically made to vacate their seats as members of the Municipality. The effect of the notification is to extinguish or to put an end to the Municipality itself. Such an order directly interferes with the democratic way of life to which our Republic is committed. It interferes with a very important right of citizens. The decision to supersede a Municipality must be preceded by one of the findings enumerated in the section. The statute further requires that the finindg must be supported by reasons which themselves must be contained in that notification. Thus the statutory requirement is that a notification under section 238(1) of the Act is required to be made a speaking one. This appears to cast a duty on the State Government to act in accordance with the principles of natural justice while coming to an objective finding on some objective material placed before it which should justify the supersession of a Municipality. When an action of this kind has to be taken, it is necessary that the Municipality concerned should be taken into confidence and associated with the inquiry which is likely to lead to its supersession. It would be against the fundamental principles of natural justice that an authority should arrive at such a serious finding of far-reaching consequence without giving any opportunity at all to the Municipality to explain the allegations made against it.

Held, that an order of the Government under section 238(1) of the Act is subject to scrutiny of the High Court in the exercise of

(1) A.I.R. 1957 Punj. 100.

its writ jurisdiction and is amenable to a suitable writ, order or direction in an appropriate case under Article 226 of the Constitution. The powers of the High Court under Article 226 of the Constitution are very wide and the fetters and restrictions attached to the various writs which could be issued in exercise of the high preprogative of the Crown in England are not imposed by our Constitution. In a fit case where the right of liberty or property of any citizen is prejudicided by any order, which may not be strictly judicial, the powers of the High Court under Article 226 of the Constitution can be invoked to do justice.

Case referred by the Hon'ble Mr. Justice Jindra Lal by order, dated 3rd September, 1965, to a Division Bench owing to an important question of law involved in the case. The Division Bench consisting of the Hon'ble Mr. Justice Inder Dev Dua and the Hon'ble Mr. Justice R. S. Narula, after deciding the question of law referred to them, finally disposed of the case on 13th January, 1966.

Petition under Article 226 of the Constitution of India, praying that a Writ in the nature of Certiorari, Mandamus, *or any other appropriate Writ, Order or direction be issued quashing the order of the Punjab Government, Respondent No. 1, dated 19th June, 1965, superseding the Municipal Committee, Kharar, under section 238 of the Punjab Municipal Act and directing the State Government not to enforce the impugned order by notifying it in the official Gazette and by appointing an Administrator for the Kharar Municipality.*

ANAND SWAROOP WITH G. S. CHAWLA AND R. SACHAR, ADVOCATES, for the Petitioners.

J. N. KAUSHAL, ADVOCATE-GENERAL WITH M. R. AGNIHOTRI, for the Respondents.

ORDER OF THE DIVISION BENCH

NARULA, J.—The following three important questions arises in this writ petition under Article 226 of the Constitution namely— Narula, J.

(i) whether the requirement of section 238(1) of the Punjab Municipal Act, 3 of 1911, hereinafter called the Act, about the reasons for superseding a municipal committee is satisfied by merely stating in the notification issued under that provision of law that the committee concerned is incompetent to perform the duties imposed on it by or under the Act;

(ii) whether the provision for requiring the reasons for superseding a municipal committee being

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stated in a notification under section 238(1) of the Act is mandatory or merely directory; and

(iii) In case it is held that the above-said requirement is mandatory, what is the effect of the said provision not being complied with in a notification purporting to supersede a municipal committee?

The Municipal Committee of Kharar, district Ambala, hereinafter called the Municipality, was constituted in or about June, 1961. On February 29, 1964, the Municipality by a resolution terminated the services of one Mehar Singh, Water-carrier and one Gulab Kaur, Sweepress by giving them one month's notice. Mehar Singh filed a petition under section 232 of the Act for prohibiting the Municipality from executing the above-said resolution. By order dated March 16, 1964, Shri S. K. Dewan, Sub-Divisional Officer (Civil) Kharar, hereinafter referred to as the S.D.O., directed the Municipality not to implement the resolution against Mehar Singh, etc., till the disposal of Mehar Singh's petition. By his final order dated June 2, 1964, S.D.O. accepted Mehar Singh's petition and suspended the execution of the resolution in question. The Municipality represented against the same to the State Government. According to the Municipality, the Secretary to the Punjab Government, Local Government Department, has already called for the explanation of the S.D.O. in respect of the above-said action taken by him in suspending the resolution dated 29th February, 1964. It has been complained by the Municipality that in spite of the above-said communication, the S.D.O., has not submitted the case to the Government under section 235 of the Act till the filing of this writ petition. On behalf of the Punjab Government it has been stated that this matter is still to be considered by the Government under section 235 of the Act. It is needless to go into this dispute as it has been unequivocally stated on behalf of the Government that the decision to supersede the Municipality was not at all based on any consideration of the action taken by it against Mehar Singh by its above-said resolution dated February 29, 1964.

On May 17, 1964, the Secretary of the Municipality submitted a report to the effect that he had checked the

Commission Shop of the Co-operative Store at about 2.15 p.m., on 16th May, 1964, and that on being asked to produce the octroi receipts the Manager of the shop was not able to show the same and had told the Secretary to come on the next day "as the Manager was busy with the public". It is admitted by the respondents that when the Secretary went on the next day the Manager was not to be found at the shop. According to the petitioner-Municipality the President of the Co-operative Stores had imported three trucks of sugar within the municipal limits without payment of requisite octroi duty. In the above circumstances the Municipality issued a notice to the President of the Co-operative Stores calling upon the Stores to deposit a sum of Rs. 294 as octroi duty and threatening the Co-operative Stores, in case of their failure to do the needful, with action under section 78 of the Act. The Municipality then passed a resolution by which it resolved to impose 5 times penalty of the actual octroi duty on the defaulting Stores and also resolved to issue a demand notice. Taking advantage of the clash between the Municipality and the S.D.O., the President of the Co-operative Stores filed an application before the S.D.O. purporting to be under section 232 of the Act for superseding the resolution for the imposition of penalty and issue of demand notice. On that application the S.D.O., passed an interim order on June 29, 1964, restraining the Municipality from taking any further action in pursuance of the said resolution. According to the written reply of the S.D.O. the relevant municipal file is now not available in the municipal office. The Municipality does not admit the order of the S.D.O. suspending the execution of the above-said resolution to be legal.

One Attar Singh Bedi is admittedly a resident of Kharar town and owns a house within the area of the Municipality. In June, 1964, he is stated to have been posted as Tehsildar in Karnal. It is not disputed that the Municipality had made a drain in front of Attar Singh's house which was forcibly dismantled by Attar Singh. Notice dated June 1, 1964 (copy annexure A), was thereupon served by the Secretary of the Municipality on Attar Singh directing the latter to restore the above-mentioned drain to its original condition after diverting it to the municipal drain and to report compliance on 2nd June, 1964, as it was alleged that as a result of the forcible

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closure and dismantling of the drain by Attar Singh, dirty water was spreading in the crossing by which the passers-by were being put to great difficulty and this had resulted in bad smell being spread in the area endangering public health. Legal action was threatened to be taken against Attar Singh if he did not comply with the requirements of the notice by 2nd June, 1964. According to the Municipality, Attar Singh approached the S.D.O., whereupon the latter gave a ring to the Secretary of the Municipality not to proceed in the matter. The Municipality has further alleged that the S.D.O., threatened that if this warning of the S.D.O., was not heeded, he would put the Secretary and the members of the Municipality behind the bars. The alleged telephonic talk of the S.D.O. has been denied by the respondents. Ram Dass, Secretary of the Municipality made a written report (copy annexure C) reading as follows:—

> "It is requested that today on 1st June, 1964, a notice was served upon Shri Attar Singh Bedi, Ward No. 2, Kharar, asking him to report after restoring flow of the Municipal drain, which he has dismantled, changed the flow of its water and has spread the water in the chauk, so that the dirty water and bad smell should not spread and create difficulty to the passersby. When the Sanitary Jamadar went to Shri Attar Singh Bedi to serve the notice, the behaviour met by Shri Attar Singh and the words used by him are quite clear from his report, which is attached. After that Shri Attar Singh, aforesaid, went to S.D.O., Kharar and might have made a complaint against the Committee. Then the S.D.O. rang me up and directed that no interference should be made in this case and if anybody made any interference, he would be arrested. Hence, orders may be passed so that action may be taken accordingly."

There is admittedly on the Proceeding Book of the Municipality a resolution dated 1st June, 1964, purporting to have been passed at an urgent meeting of the Committee held on that day at 8.00 p.m., in the following words:—

> "Today on 1st June, 1964, the Secretary and Jamadar of the Committee made a report that a

notice was sent to Attar Singh Bedi at his residence through Jamadar Dayal Singh, regarding closing and dismantling the drain in front of his house. Thereupon this Attar Singh Bedi and his son abused and grappled with him and did not accept the notice and allow him to paste it at their house. After that the S.D.O. range up the Secretary and directed and warned him that if the Committee would serve any notice or take any action regarding the restoration of above drain, which runs by the side of the house of Attar Singh Bedi, he would be arrested. Therefore, Committee think it proper that the S.D.O. should give this order in writing so that the action may be taken accordingly. In view of sanitation the repairs of this drain are necessary to be done in two days as the water of this drain is spreading on the thoroughfare and creating great difficulty in communication. Complaints are also being received from the public. For these reasons, the Committee demands proper orders from the S.D.O., so that the public interest can be watched. This Commitee is of the unanimous view that the orders or warning of the S.D.O. to the Secretary to the effect that in case any action was taken, he would be arrested are sorrowful and derogatory to the Committee."

On behalf of the Government it is stated that the Municipality had constructed the drain irregularly as the land on which the drain had been made was not municipal property. According to the Municipality, S. Attar Singh had made an unauthorised encroachment on the municipal land. I need not at all go into this dispute of the Municipality with Attar Singh as it has once again been stated by the Government in its return to the rule issued in this case that the Municipality was not superseded on the basis of the action taken by it against Attar Singh for dismantling the disputed drain.

On August 3, 1964, the Municipality made a representation to the State Government against "unnecessary obstruction in the way of the Municipal Committee carrying out its duties" by the S.D.O. A copy of the resolution

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passed by the Municipality in that respect is annexure H to the petition. This was followed by still another resolution dated 9th August, 1964 (copy annexure J), wherein a further protest against the S.D.O. was recorded and it was resolved that a copy of the resolution be sent to the Government protesting that the S.D.O. had adopted revengeful methods against the members of the Municipality and that he was harassing them for the last many days. The Government was requested by that resolution to transfer the S.D.O., as he was accused of causing unusual interference with the working of the Committee. It was complained that the municipal employees were resigning from service under fear of the S.D.O. A judicial inquiry into the allegations made against the S.D.O. was prayed for in that resolution.

One Kulwant Singh sought permission of the Municipality to erect a building on a part of certain municipal land claiming the land to be his own property. This permission was refused to Kulwant Singh on the ground that the land was municipal property. Instead of getting the question of disputed title adjudicated upon by a competent civil Court, Chet Singh Gill, borther-in-law of Kulwant Singh is alleged to have used his influence with the district officers to intimate the Municipality to surrender the disputed land to Kulwant Singh. It has been stated in the writ petition that the borther of the wife of Chet Singh, namely, Ch. Mohinder Singh, Advocate, is related to Ch. Rizaq Ram, a Minister in the Punjab Government and, therefore, wielded great influence with the district authorities. The relationship has not been specifically denied in the written statement of the respondents. It is alleged by the Municipality that on Chet Singh's complaint the Deputy Commissioner, Ambala, wrote a letter dated 22nd November, 1964, to the Municipality (copy annexure K) reading as follows:—

> "Attached herewith please find the written statement of Shri Chet Singh Gill in which he has alleged that the Municipal Committee, Kharar, has unduly harassed by claiming ownership over his personal property, which he owns jointly with his cousin Shri Gurbachan Singh and his son Shri Kulwant Singh. Please let me have your reply and comments by 2nd December, 1964, on behalf of the Committee. You may

add comments on your own behalf, if any. In the event of your failure to furnish the comments by aforesaid date it will be presumed that you have no explanation to offer. You may produce attested copies of any documents to show the ownership of the Committee."

It is somewhat strange that instead of asking the complainant to prove his title to the disputed land the Deputy Commissioner laid the burden of proof on the Municipality. On behalf of the State it is averred that the Municipality sent the alleged reply dated 22nd December, 1964 (annexure L) to the Deputy Commissioner's letter and it is stated that the Deputy Commissioner, therefore, decided to get the alleged encroachment removed. This is stated by the respondents to have been done on the basis of evidence led by Chet Singh Gill to the effect that the Municipality had no right to lease out the land in question.

In reply to the various complaints sent by the Municipality against the S.D.O., the Chief Secretary to the Punjab Government sent a communication dated 12th May, 1965 (copy annexure N) informing the Municipality that its complaints against the S.D.O., had been carefully looked into by the Government and that the Government did not find any need for any action being taken against the said officer. The letter ended with the following words:—

"It is hoped that the municipal work and relations between the Municipal Committee, Kharar and the Sub-Divisional Officer (Civil), Kharar, will be carried on smoothly in future."

The Secretary to the Government, Punjab, in the Local Government Department also sent a similar letter dated 14th May, 1965, to the Municipality.

It is in the above background that the impugned notification dated June 19, 1965 (copy annexure P), has been issued by the Punjab Government in purported exercise of its powers under section 238 of the Act. The notification reads as follows:—

"Whereas the Municipal Committee of Kharar, in the Ambala District, is incompetent to perform and has persistently made default in the performance of duties imposed on it by or under the Punjab Municipal Act, 1911—

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Now, therefore, in exercise of the powers conferred by section 238 of the aforesaid Act, the Governor of Punjab hereby directs that the said Municipal Committee of Kharar in the Ambala District shall be superseded with immediate effect and directs that all powers and duties of the said Committee shall, until the Committee is reconstituted, be exercised, and performed by an Administrator and hereby appoints the Sub-Divisional Officer (Civil), Kharar as Administrator of the Kharar Municipality in addition to his own duties till the appointment of a whole-time Administrator."

Thus the clash between the Municipality on the one hand and the S.D.O., on the other ended with the appointment of the S.D.O., himself as the administrator to exercise all the municipal functions. Though the notification stated that the said arrangement was to continue till the appointment of a whole-time administrator, it is alleged that no whole-time administrator has so far been appointed and no steps have been taken by the State Government to reconstitute the Municipal Committee. It is this notification of the State Government which is sought to be set aside and declared void in this case. It is significant that though it has ben specifically stated in the written statement of the Government that the impugned action has not been taken against the Municipality on most of the grounds referred to by the petitioner, it has not even been hinted in any part of the return as to the real reasons which impelled the State Government to take drastic action of superseding the Municipality. Even in the return the Government has only repeated the words of section 238 of the Act to justify the impugned action and has averred as follows :—

"Government superseded the Municipal Committee Kharar as it became incompetent to perform and had persistently made default in the performance of duties imposed on it by or under the said Act."

Regarding the grievance of the Municipality to the effect that no opportunity had been given to it to show cause against any complaint on the basis of which it had been adjudged to be incompetent to perform its functions the Government has stated in its return as below:—

"It is admitted that the Municipal Committee, Kharar, was not given an opportunity to explain

its position in respect of the various acts of omission and commission on its part on the basis of which this Committee was superseded. There is no provision in the said section (section 238) for giving an opportunity to the Committee before its supersession by the Government."

Regarding the factual aspect of giving reasons for the impugned action in the notification in question the State has averred as follows:—

"It is denied that Government did not mention the reason in the notification issued for the supersession of the Municipal Committee, Kharar. The reason for supersession of Municipal Committee, Kharar, was given in the Government notification dated 19th June, 1965. It was specifically mentioned in the said notification that the Municipal Committee, Kharar, was incompetent to perform and had persistently made default in the performance of duties imposed on it by or under the Punjab Municipal Act, 1911.

In the writ petition originally filed in this Court on June 22, 1965, the Minister for Local Bodies and the Irrigation Minister of the Punjab Government had ben impleaded as respondents Nos. 2 and 3. At the time of admitting the petition the Motion Bench held that there was no ground for issuing notices to the said two Ministers as the allegations against them were too inadequate and vague to justify their names being allowed to continue in the array of respondents. Their names were, therefore, directed to be struck off. In their place (1) Shri Surinder Singh Bedi, Deputy Commissioner, Ambala and (2) Shri Surinder Kumar Dewan, Sub-Divisional Officer (Civil), Kharar, were allowed to be added as respondents Nos. 2 and 3 as prayed for by the Municipality in C. M. No. 2700 of 1965.

When this case came up for hearing before a learned Single Judge of this Court (Jindra Lal, J.), it was referred to a larger Bench by order dated 3rd September, 1965, as the questions involved in the petition were of considerable importance and were likely to arise in a large number of cases. It was also directed to be referred to a larger Bench in view of an earlier Judgment of this Court

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(Bishan Narain, J.), in *Brij Lal* v. *State of Patiala* (1), the correctness of which was being questioned by the Municipality in view of a subsequent pronouncement of the Supreme Court in *Collector of Monghyr and others* v. *Keshav Prasad Goenka and others* (2). This is how the writ petition has come up for disposal before us.

The first question that calls for determination in the above circumstances is whether merely repeating the words of the section amounts to giving reasons for superseding the Municipality or not. On behalf of the Municipality it is contended that the impugned notification merely contains the conclusions of the Government requisite for superseding it but not the reasons for arriving at those conclusions. It appears to me that the reasons and the conclusion arrived at on account of a consideration of those reasons are two distinct matters. The repeating of the conclusion necessary to supersede a Municipality under section 238 of the Act cannot possibly be equated to the reasons impelling such a decision. The scheme of the section itself shows that the Legislature has specifically provided that a Municipal Committee should be allowed to be superseded only if and when the appropriate Government comes to the conclusion that the committee is incompetent to perform or has made persistent default in the performance of its duties under the Act or has exceeded or abused its powers. There must always exist reasons for the Government to come to that conclusion. A statutory safeguard against abuse of the powers conferred on the State Government under section 238 of the Act has been provided by making it necessary for the Government to state the reasons for coming to the requisite conclusion in the notification itself. The decision of the State Government is not subject to any appeal. As a result of a notification under section 238 of the Act drastic consequences ensue. Under sub-section (2) of that section all the members of the Committee vacate their respective seats with effect from the date of a notification under sub-section (1). The only solace or consolation to the members of the Municipal Committee concerned would be to know the reasons which have impelled the serious action of supersession. The Legislature has thought fit to make such a provision in the statute itself for the obvious purpose of inspiring confidence of the people in the Government which is vested with such a

(2) AI.R. 1962 S.C. 1694.

drastic power. The necessity to state reasons in the notification under section 238(1) of the Act appears to be the only bridle placed on the otherwise wide powers conferred on the State to supersede any Municipality. This requirement is also a very reasonable curb on a possible arbitrary order which might otherwise be passed by the State Government which may, in its zeal, sometimes outstep the real jurisdiction conferred by the Act. It needs no argument to envisage cases in which the State Government itself may abuse the powers vested in it under sub-section (1) of section 238. In such a case it would be open to the Municipality concerned or its members who may be affected by such notification to approach this Court and to show that *ex facie* the reasons on account of which the Municipality has been superseded are extraneous and that it is humanly impossible to conclude from the reasons alleged in a particular case that any of the eventualities justifying supersession of Municipality under section 238(1) of the Act has in fact occurred. It is open to this Court in exercise of its writ jurisdiction to see whether in a given case the notified reasons are at all germane to the exercise of power vested in the State Government for superseding a Municipality. The requirement to give reasons can also be supported on the ground that a mere reading of the notification should be able to help the Court in determining the *bona fides* of the State Government or its appropriate authorities if any order superseding a Municipality is challenged on the ground of *mala fides*. The orders of the State Government are subject to scrutiny by this Court in exercise of its writ jurisdiction within certain limits. The moment the reasons impelling the Government to take the impugned action are available to the Court, it can be found out whether the same are extraneous or germane to the action taken. I would, therefore, hold that the mere copying of the words of the section into the notification amounts only to notifying the conclusions of the Government and is no substitute whatever for the statutory requirement of notifying the reasons leading the Government to take the action in question. I, therefore, answer the first question framed by me in the opening part of this judgment in favour of the petitioner-Municipality and hold that the impugned notification does not satisfy the requirement of section 238(1) of the Act.

In the *Collector of Monghyr and others* v. *Keshav Prasad Goenka and others* (2), the effect and meaning of

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the phrase "for reasons to be recorded" as occuring in section 5A of the Bihar Private Irrigation Works Act, 5 of 1922, as amended by Bihar Act 10 of 1939, was being considered. Section 5A(1) of the said Bihar Act reads as follows:—

"5A. (1) Notwithstanding anything to the contrary contained in this Act, whenever the Collector, for reasons to be recorded by him, is of opinion that the delay in the repair of any existing irrigation work which may be occasioned by proceedings commenced by a notice under section 3 adversely affects or is likely to affect adversely lands which are dependent on such irrigation work for a supply of water, he may forthwith cause the repair of such irrigation work to be began by any one or more of the persons mentioned in clause (ii) of section 3 or by such agency as he thinks proper:

Provided that the Collector shall cause public notice to be given at convenient places in every village in which the irrigation work is situated stating that the work mentioned therein has already been begun."

The order of the Collector purporting to have been passed under section 5A of the Bihar Act which was impugned before the Supreme Court in the above-said case was in the following terms:—

"Whereas it appears to me that the repair of an existing irrigation work, viz..... situated in village ....., Thana ....District Monghyr is necessary for the benefit of the aforesaid village and the failure of repair of such irrigation work adversely affects and is likely to affect adversely the lands which are dependent thereon for supply of water, and

Whereas I am satisfied that my intervention is necessary because, in my opinion, delay in the repair of the existing irrigation work which may be occasioned by the proceedings commenced

by a notice under section 3 adversely affects or is likely to affect adversely the land which depends on such irrigation work for supply of water, it is deemed expedient to proceed under S. 5A of the BPIW Act. I, therefore, hereby order that the said work be forthwith put to execution under S. 5A of the said Act. A public notice under S. 5A(1) be given at a convenient place at the aforesaid village that the work mentioned therein has already begun."

Dealing with the above-said situation it was held by Ayyangar, J., who wrote the judgment of the Court, as follows:—

"If the question whether the circumstances recited in S. 5A(1) exist or not is entirely for the Collector to decide in his discretion, it will be seen that the recording of the reasons is the only protection which is afforded to the persons affected to ensure that the reasons which impelled the Collector were those germane to the content and scope of the power vested in him. It could not be disputed that if the reasons recorded by him were totally irrelevant as a justification for considering that an emergency had arisen or for dispensing with notice and enquiry under sections 3 to 5, the exercise of the power under S. 5A would be void as not justified by the statute."

While dealing with the question whether the requirement in section 5A of the Bihar Act for giving the reasons in question was directory or mandatory, it was held by the Supreme Court that answer to that question would depend on whether the requirement is insisted upon as a protection for the safeguarding of the right of liberty of person or of property which the action might involve.

Their Lordships of the Supreme Court also dealt with the nature of the requirement for recording reasons as compared with the mere mention of the conclusions in the Bihar case in the following words:—

"To suggest that by a recital of the nature of the repairs required to be carried out and employing

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the language of S. 5A(1) the officer has recorded his reasons for invoking S. 5A is to confuse the recording of the conclusion of the officer with the reasons for which he arrived at that conclusion. Besides just as it would not be open to argument that the terms of S. 5A(1) will be attracted to cases where there is factually an emergent need for repairs of the type envisaged by the section but the Collector does not so record in his order; similarly the factual existence of reasons for the Collector's conclusion would not avail where he does not comply with the statutory requirement of stating them in his order."

In *Brij Lal* v. *The State of Patiala and another* (1), it was held by a learned Single Judge of this Court (Bishan Narain, J.), that a statutory provision which pertains to an official action, is generally construed as directory rather than mandatory and that section 238 of the Act does not lay down how a Municipal Committee is to be superseded and it only prescribes the mode in which the act of supersession is to be expressed. The manner of such an expression, so held Bishan Narain, J., should be considered as merely a matter of form and formality for doing a public act. That being so, it was held in that case, the formality of recording reasons in the notification should be considered to be merely directory and not mandatory in character. The judgment of Bishan Narain, J., in that case concluded in the following words:—

> "Taking the object of section 238, Punjab Municipal Act, it appears to me clear that the direction laid down therein as to what the notification should contain is only directory in character and its disobedience does not nullify the notification or the order of supersession."

The learned Advocate-General relied strongly on the above-said dictum of Bishan Narain, J., in support of the impugned notification. In view of the law since settled in this respect by the Supreme Court in the case of *Collector of Monghyr and others* v. *Keshav Prasad Goenka and others* (2), the law laid down by Bishan Narain, J., in the above-said case clearly requires reconsideration.

In Aeron Steel Rolling Mills v. *State of Punjab and another* (3), the objection raised on behalf of the petitioner-mill against an order of the State Government under section 33-B of the Industrial Disputes Act, 1947, was that the order of transfer passed under that provision did not give any reason and was thus violative of the said requirement of section 33-B of that Act. Section 33-B of the Industrial Disputes Act reads as follows:—

"33B. (1) The appropriate Government may, by order in writing and for reasons to be stated therein, withdraw any proceeding under this Act pending before a Labour Court, Tribunal, or National Tribunal and transfer the same to another Labour Court, Tribunal or National Tribunal, as the case may be, for the disposal of the proceeding and the Labour Court, Tribunal or National Tribunal to which the proceeding is so transferred may, subject to special directions in the order of transfer, proceed either *de novo* or from the stage at which it was so transferred:

Provided that where a proceeding under section 33 or section 33A is pending before a Tribunal or National Tribunal, the proceeding may also be transferred to a Labour Court.

(2) Without prejudice to the provisions of sub-section (1), any Tribunal or National Tribunal, if so authorised by the appropriate Government, may transfer any proceeding under section 33 or section 33A pending before it to any one of the Labour Courts specified for the disposal of such proceedings by the appropriate Government by notification in the Official Gazette and the Labour Court to which the proceeding is so transferred shall dispose of the same."

The order which was impugned by Aeron Steel Rolling Mills before Bishan Narain, J., was in the following terms:—

"In exercise of the powers conferred by sub-section (1) of Section 33-B of the Industrial

(3) A.I.R. 1959 Punj. 386.

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Disputes Act, 1947, the Governor of Punjab is pleased to withdraw all the references pending before the Second Industrial Tribunal, Punjab, Amritsar, and to transfer the same for adjudication and disposal to the Industrial Tribunal, Punjab, Jullundur, constituted,—*vide* Notification No. 7183-C-Lab. 57/11196, dated 4th June, 1957, from the stage it had been left by the previous Tribunal: This also includes all the cases under sections 33 and 33-A of the Industrial Disputes Act, 1947."

Bishan Narain, J., held in that case that the power of transfer under section 33-B of the Industrial Disputes Act was obviously in public interest and omission to give reasons therefor did not impair any public or private right and that, therefore the order impugned in that case, which did not contain the reasons required by section 33-B, would continue to be effective even without the reasons having been given therein. The very same question which had been decided by the learned Single Judge of this Court came up for consideration before their Lordships of the Supreme Court in *Associated Electrical Industries (India) (Private), Ltd., Calcutta* v. *Its Workmen* (4), P. B. Gajendragadkar, J., (as his Lordship then was) held in that case as follows:—

> "All that the orders purport to say is that it is expedient to withdraw the reference from one tribunal and transfer it to another. In our opinion, the said bare statement made in the orders by which the proceedings are withdrawn from one tribunal and transferred to another does not amount to a statement of reasons as required by Section 33-B(1). It is quite clear that the requirement about the statement of the reason must be complied with both in substance and in letter."

In the result, the award of the transferee Tribunal was set aside by the Supreme Court on the solitary ground that the order of transfer under section 33-B of the Industrial Disputes Act did not contain any statement of

(4) (1961)2 Labour Law Journal 122.

the reasons justifying the transfer. Though the judgment of Bishan Narain, J., in *Aeron Steel Rolling Mills* v. *State of Punjab and another* (3) has not been specifically overruled by the Supreme Court in the case of *Associated Electrical Industries (India) (Private) Ltd.*, it is obvious that the view held by Bishan Narain, J., has not found favour with their Lordships of the Supreme Court and the Single Bench judgment of this Court in *Aeron Steel Rolling Mills* v. *State of Punjab and another* (3), has been impliedly overruled. For similar reasons it appears that it is impossible to uphold the view expressed by Bishan Narain, J., in *Brij Lal* v. *State of Patiala* (1), after the authoritative pronouncement of the Supreme Court in the case of *Collector of Monghyr* and in the above-said case of the *Associated Electrical Industries (India) (Private) Ltd. Calcutta.* With greatest respect to the learned Single Judge (Bishan Narain, J.), the judgment of this Court in *Brij Lal* v. *State of Patiala* (1), is, therefore overruled.

The requirement to record reasons contained in section 5(1) of the West Bengal Non-Agricultural Tenancy Act, came up for consideration before a Division Bench of the Calcutta High Court in *Sankar Lal Saha* v. *The Superintendent, Gun and Shell Factory, Cossipore and others* (5), Section 5(1) of the Bengal Act, reads as follows:—

> "If after considering the cause, if any, shown by any person in pursuance of a notice under section 4 and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard, the Estate Officer, may, on a date to be fixed for the purpose, make an order of eviction for reasons to be recorded therein, directing that the public premises shall be vacated by all persons who may be in occupation thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the premises."

The question that arose before the Calcutta High Court in the above-said case was whether the requirement of

(5) 69 C.W.N. 1035.

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reasons being stated in the notice is essential or material or only formal. The learned Judges of the Calcutta High Court held that if the notice under section 5 of the West Bengal Act, does not state the reasons as to why an occupant should be evicted but states only the decision that the person is in unauthorised occupation, it is an irregular notice for in the absence of reasons the notice does not comply with the requirement that is "for reasons to be recorded therein". The language of the section, held the Calcutta High Court, makes the "reasons" essential and material.

It is, therefore, held that the provision for requiring the reasons for superseding a Municipal Committee being stated in a notification under section 238(1) of the Act is not merely formal or directory but is mandatory. This disposes of the second question formulated by me.

On behalf of the respondents it has been contended by the learned Advocate-General that the impugned notification has been issued by the State Government in exercise of its administrative powers and the impugned action of the Government is, therefore, not amenable to a writ in the nature of *certiorari*. Before dealing with that objection it may be stated at the outset that the powers of this Court under Article 226 of the Constitution are very wide and the fetters and restrictions attached to the various writs which could be issued in exercise of the high prerogative of the Crown in England are not imposed by our Constitution. In a recent judgment of the Supreme Court, dated 29th March, 1965 in C.A. No. 62 of 1964—*Dwarka Nath* v. *The Income-tax Officer, Special Circle, D-Ward, Kanpur and Another* (6), dealing with the scope of the authority of a High Court under Article 226 of the Constitution, it was held (per Subba Rao, J.) as follows:—

> "This article is couched in comprehensive pharaseology and it *ex facie* confers a wide power on the High Courts to reach justice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prorogative

(6) A.I.R. 1966 S.C. 81.

writs as understood in England; but the scope of those writs also is widened by the use of expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Courts under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself. To say this is not to say that the High Courts can function arbitrarily under this Article. Some limitations are implicit in the article and others may be evolved to direct the article through defined channels. This interpretation has been accepted by this Court in *Basappa* v. *Nagappa* and *Irani* v. *State of Madras.*"

It is, therefore, idle to contend that this Court cannot set aside an administrative order in any circumstances. I may not be understood to hold that the decision to supersede a Municipality is an administrative one. But it cannot be denied that in a fit case where the right of liberty or property of any citizen is prejudiced by any order which may not be strictly judicial, the powers of this Court under Article 226 of the Constitution can be invoked to do justice. The learned counsel for the Municipality has relied on a recent judgment of the House of Lords in *Ridge* v. *Baldwin and others* (7). In that case it was held that in exercising the powers of dismissal conferred by the English Municipal Corporations Act, 1882 (where the power was to be exercised on the ground of negligence which required to be proved) the watch committee was bound to observe the principles of natural justice and that

(7) (1962)2 A.E.L.R. 66 (L.R. 1964 A.C. 40).

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Ridge, the employee, not having been informed of the grounds on which the action was proposed to be taken against him and not having been given a proper opportunity to present his defence was entitled to have the impugned order set aside. The observations of the House of Lords in *Ridge* v. *Baldwin and others* (7) appear to have been approved at least to a certain extent by their Lordships of the Supreme Court in *Associated Cement Companies, Ltd.* v. *Sharma (P.N.) and another* (8), in the following words:—

> "In other words, according to Lord Reid's judgment, the necessity to follow judicial procedure and observe the principles of natural justice, flows from the nature of the decision which the watch committee had been authorised to reach under section 191(4). It would thus be seen that the area where the principles of natural justice have to be followed and judicial approach has to be adopted, has become wider and consequently, the horizon of the writ jurisdiction has been extended in a corresponding measure. In dealing with questions as to whether any impugned orders could be revised under Article 226 of our Constitution, the test prescribed by Lord Reid in this judgment may afford considerable assistance."

On the other hand it is contended by Shri J. N. Kaushal, the learned Advocate-General, that the Supreme Court (Shah J.) has not approved the ratio of the judgment in *Ridge* v. *Baldwin and others* (7), while deciding the case of *Sadhu Singh* v. *The Delhi Administration* (9). In that case it was argued before the learned Single Judge of the Supreme Court on behalf of Sadhu Singh that every order made by a public authority which affects the rights of an individual must of necessity be preceded by a quasi-judicial determination of the question, on the determination of which an order may be made and that if the determination is made contrary to the rules of natural justice, the order is liable to be struck down by a competent Court. Support was sought to be derived for that

(8) (1965)1 Labour Law Journal 433.
(9) A.I.R. 1966 S.C. 91.

proposition from the judgment of the House of Lords in *Ridge's case*. In that context Shah, J., held that the view which the Supreme Court has taken is inconsistent with the proposition propounded by the counsel for Sadhu Singh. The correct law in this respect was enunciated by Shah, J., in *Sadhu Singh's case* in the following words:—

> "There is undoubtedly a clear distinction between cases in which an authority is invested with power to determine the rights of a person, and cases in which the authority is invested with power to act in a certain matter, and the exercise of that power affects the rights of a person. In the former, the duty to act judicially may readily be inferred. But whether a public authority invested with powers to pass a specified order is required to act judicially must depend upon the scheme of the statute which invests him with that power. The nature of the authority conferred, the procedure prescribed and the nature of the powers exercised will determine the question whether the public authority is required to act judicially; it is not, however, predicated that before a writ of certiorari or prohibition may issue the duty to act judicially must be expressly or independently imposed upon the authority called upon to determine the rights of a citizen. In the view of the Judicial Committee:
>
> "If the mere requirement that the Controller must have reasonable grounds of belief is insufficient to oblige him to act judicially, there is nothing else in the context or conditions of his jurisdiction that suggests that he must regulate his action by analogy of judicial rules."
>
> The scheme of the Regulation, therefore, negatived, according to Judicial Committee, a judicial approach.
>
> I am not concerned in this case with the validity of the criticism by Lord Reid of the two decisions. It is sufficient to state for the purpose of this case

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that there is no principle or binding authority in support of the view that wherever a public authority is invested with power to make an order which prejudicially affects the rights of an individual, whatever may be the nature of the power exercised, whatever may be the procedure prescribed, and whatever may be the nature of the authority conferred, the proceeding of the public authority must be regulated by the analogy of rules governing judicial determination of disputed questions."

Deriving support from the observations of Shah, J., in the above case; it is sought to be argued by the learned Advocate-General that approach of the Court should be different to a case where the rights of a citizen are directly affected by an impugned order and a case where the order is not directed against the rights of any citizen though it might ultimately affect him. The argument of the learned counsel for the State does not appear to help him in the instant case. A mere reference to the provisions of section 238(2)(a) of the Act shows that the impugned notification directly affects the members of the Municipality who are citizens of this country and who are automatically made to vacate their seats as members of the Municipality. The effect of the notification is to extinguish or to put an end to the Municipality itself. Such an order directly interferes with the democratic way of life to which our Republic is committed. It interferes with a very important right of citizens. The decision to supersede a Municipality must be preceded by one of the findings enumerated in the section. The statute further requires that the finding must be supported by reasons which themselves must be contained in that notification. Thus the statutory requirement is that a notification under section 238(1) of the Act is required to be made a speaking one. This appears to cast a duty on the State Government to act in accordance with the principles of natural justice while coming to an objective finding on some objective material placed before it which should justify the supersession of a Municipality. When an action of this kind has to be taken, it is necessary that the Municipality concerned should be taken into confidence and associated with the inquiry which is likely to lead to its supersession. It

is stated in this case on behalf of the Government that an inquiry was in fact held though the charges on which the matter was enquired into have not been disclosed to the Court. It is admitted by the respondents that the Municipality has never been told of the grounds on which the proceedings against it have been taken. This appears to be opposed to all principles of natural justice. The notification also directly violates the mandatory requirements of section 238(1) of the Act.

The learned Advocate-General also referred to the judgment of the Supreme Court in *Swadeshi Cotton Mills Co. Ltd.* v. *State Industrial Tribunal, U.P. and others* (10), wherein it was held as follows:—

> "Now there is no doubt that section 3 gives power to the State Government to make certain provisions by general or special order, if, in its opinion, it is necessary or expedient so to do for securing public safety or convenience, or the maintenance of public order or supplies and services essential to the life of the community or for maintaining employment. The forming of such opinion is a condition precedent to the making of the order. The preamble to the second order also does not contain a recital that the State Government had formed such opinion before it made the order."

There is, however, a clear distinction between the provisions of section 3 of the U.P. Industrial Disputes Act, 28 of 1947 and the provisions of section 238 of the Punjab Municipal Act. The operating part of section 3 of the U.P. Act at the relevant time was in the following terms:—

> "If, in the opinion of the State Government, it is necessary or expedient so to do for securing the public safety or convenience, or the maintenance of public order or supplies and services essential to the life of the community, or for maintaining employment, it may, by general or special order, make provision—".

It is obvious that under section 3 of the U.P. Act, it is the subjective approach of the State Government which

(10) A.I.R. 1961 S.C. 1381.

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need only precede the relevant decision. In contradistinction to that provision, section 238(1) of the Punjab Municipal Act, requires an objective approach to the matter. The law laid down by the Supreme Court in *Swadeshi Cotton Mills' case* has, therefore, no application to the question mooted before us.

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It appears to me that an order and a notification under section 238 of the Act is as much subject to scrutiny of this Court under Article 226 of the Constitution as an order under section 16(1)(e) of the Act removing a person from membership of a Municipal Committee. In the latter case it has already been held by a Division Bench of this Court (Dulat and Harbans Singh, JJ.) in *State of Punjab* v. *Sugna Ram* (11), that orders passed by the State Government under section 16(1)(e) of the Act are subject to scrutiny by the High Court with a view to check two matters, namely, (i) whether the grounds of removal are not extraneous to the conduct of the member as such and (ii) if the grounds are not extraneous, to see that the act or acts done by the member in disregard to his duty are such as can shock a reasonable mind. Substantially the same can be said about an order superseding a municipality under section 238 of the Act. An illustration of the application of the law laid down in *State of Punjab* v. *Sugna Ram* can be found in the judgment of my learned brother, Dua, J., in *Satya Dev* v. *State of Punjab and another* (12) (Dua and Harbans Singh, JJ.), where an order removing a member of a Municipal Committee under section 16(1) of the Act for encroachment which had come into existence before he became a member of the Committee was set aside as not being within the jurisdiction of the State Government. The observations of the Division Bench in *Sugna Ram's case* apply with a greater force to a situation like the present one as the statute requires the reasons for coming to a conclusion justifying the supersession of a Municipality being stated in the notification itself. Considering the scheme, object and effect of the provision and the nature and extent of the power and authority thereby conferred on the State Government, I hold that action of the Government under section 238(1) of the Act is subject to scrutiny of this Court in exercise of its writ

(11) 1964 P.L.R. 828.

(12) I.L.R. (1964)1 Punj. 878=1964 P.L.R 381.

jurisdiction and is amenable to a suitable writ, order or direction in an appropriate case.

In the instant case the State Government, which is entrusted with vast power and extensive authority to supersede a municipality has done so without fulfilling the statutory requirement of recording in the notification its reasons for taking that action, a course prescribed by the Legislature so as to allay any misgivings that may arise in the mind of the public and to inspire confidence in the Government. The determination of the facts constituting the conditions precedent for taking drastic and serious action under section 238(1) of the Act have not been left by the Ligislature to the subjective satisfaction of the Government but have to be decided on an objective basis. The supersession of a municipality on any of the grounds contained in section 238(1) of the Act carries with it a stigma on the municipal committee and consequently on at least some of its members. That is why the statute requires the Government to arrive at a finding justifying such action on objective facts and to incorporate its reasons not only in its order on the Government file but in the notification itself, which notification has to meet the public gaze. It would be against the fundamental principles of natural justice that an authority should arrive at such a serious finding of far-reaching consequence without giving any opportunity at all to the Municipality to explain the allegations made against it. In *Radheshyam Khare and another* v. *The State of Madhya Pradesh and others* (13), it was held on similar grounds that section 53-A of the C.P. and Berar Municipalities Act, 2 of 1922, imposes a duty on the Government to act judicially in ascertaining the objective and jurisdictional fact, namely, whether the committee is incompetent or not. In that case S. R. Das, C.J., went to the extent of holding that even if powers under section 53-A of the C.P. and Berar Municipal Act may be treated as administrative, this would not absolve the State Government from observing the ordinary rules of fair play. The learned Chief Justice observed that even where an administrative action is taken, it may be necessary to give an opportunity to a party to have his say before an order is passed though the extent to which a party or person sought to be affected may be associated

(13) A.I.R. 1959 S.C. 107.

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with the inquiry may not be the same as in the case of a quasi-judicial action which is open to a writ of *certiorari*.

On the other hand, Mr. J. N. Kaushal, the learned Advocate-General, has referred to the Division Bench judgment of the Rajasthan High Court (Wanchoo, C.J. and Bapna. J.), in *Madhoram* v. *The State* (14), wherein it was held that an order passed under section 172 of the Bikaner Municipal Act, 1923 superseding a municipality is an administrative order and not a quasi-judicial one. The learned Judges of the Rajasthan High Court held in that case, that the test to be applied with regard to section 172 of the Bikaner Act was a subjective one and the opinion of the Government was final and that the absence of words like "in the opinion of" from that section would not convert the order into a quasi-judicial decision. On that basis it was held by the learned Judges of that Court that the Governemnt is not bound to hear the Municipality before passing the order of supersession in the absence of a provision in the section itself for giving such a hearing. The relevant words in section 172(1) of the Bikaner Act are substantially the same as those in section 238(1) of the Punjab Municipal Act. Even in the Bikaner Act it is provided that the notification superseding a Municipality should contain the reasons for taking that action. In the notification, which was impugned in the Rajasthan case, certain reasons had been mentioned in the order superseding the Municipal Board. The only attack of the petitioner in that case against the impugned notification was that the order of supersession was *mala fide* and had been passed by the Government without conducting any inquiry and without affording the Municipal Board a chance to explain its case. The writ petition was dismissed on the solitary ground that the order superseding the Municipal Board was not a quasi-judicial one and was, therefore, not amenable to a writ of *certiorari*. On that basis, it was held that the order of supersession could not be challenged under Article 226 of the Constitution. In view of the subsequent judgment of their Lordships of the Supreme Court in *Radheshyam Khare's case* (13), referred to above, it does not appear to be any more the law that an order superseding a municipality canot be attacked in a writ petition before a High Court in any circumstances

(14) A.I.R. 1953 Rajasthan 149.

whatsoever. If the judgment of the Rajasthan High Court is sought to lay down law to the effect that no order of a State Govenment superseding a Municipality can be questioned under Article 226 of the Constitution in any circumstances, I would, with the greatest respect to the learned Judges who gave that judgment, not go to that length. Each case will depend upon and will have to be decided on its own facts.

On the facts stated in the opening part of this judgment, it was sought to be argued on behalf of the Municipality that the impugned action is *mala fide* and has been taken for extraneous considerations. In the view I am taking of the legal propositions referred to above, it is not necessary to go into that aspect of the case. I have not, however; been able to restrain myself from remarking that the story of head on collision between the Municipality on the one hand and the Sub-Divisional Officer on the other, and the undue advantage of the situation taken by some persons, present a rather sad spectacle and the State Government appears to have been simply taken away by some *ex-parte* complaints of the Sub-Divisional Officer or his supporters. As the respondents have not thought it fit to take the court into confidence about the actual allegations on which the impugned action has been taken, I do not want to say anything on the merits of the unknown charges. I may only make it clear that nothing stated by me in this judgment would debar the Government from proceeding against the Municipality under section 238(1) of the Act afresh in accordance with law, if it is considered necessary to do so.

In the above circumstances, I accept this writ petition and hold that the impugned notification of the State Government, dated 19th June, 1965 purporting to supersede the petitioner-Municipality is *ultra vires* section 238(1) of the Act and is, therefore, null and void and non-existent in the eye of law. The said notification is, therefore, quashed and set aside. The petitioner will be entitled to have its costs of this case from the respondents.

DUA, J.—I entirely agree with my learned brother in his conclusions and the reasons on which they are based. In view, however, of the importance of the question raised,

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I should like to say a few words without re-stating the facts which have been given with the requisite clarity in the order prepared by my learned brother.

Section 238 of the Punjab Municipal Act No. III of 1911, the interpretation of which concerns us in the present case, occurs in Chapter XII dealing with "Control" over the Municipal Committees. Section 231, with which this Chapter begins, provides for the control by Commissioners, Deputy Commissioners or persons empowered by the State Government. This control is confined to inspection and enquiries, etc. Section 232 confers power on the Deputy Commissioner concerned to suspend by order in writing the execution of any resolution or order of a Committee. Section 233 confers extraordinary power on the Deputy Commissioner exercisable in case of emergency to provide for the execution of any work or the doing of any work which the Committee is empowered to execute or do. Section 234 empowers the Deputy Commissioner after due enquiry and satisfaction in regard to a default committed by a Committee in performing any statutory duty imposed on it, to fix a period for the performance of that duty by an order in writing and on failure to perform that duty, to appoint some other person to do the needful. Under section 235 a copy of any order made by the Deputy Commissioner under sections 232 to 234 has to be forwarded forthwith to the Commissioner and if made by the Commissioner, then to the State Government, with a statement of the reasons for making it and also with such explanation, if any, as the Committee may wish to offer, and the Commissioner or Government, as the case may be, is empowered thereupon to confirm, modify, or rescind that order, Section 236 confers power on the State Government and the Deputy Commissioners acting under the orders of the State Government to require the Committee to act in confirmity with law and the rules in force under any enactment for the time being applicable to the Committee. The State Government is also specifically empowered to annul or modify any proceedings of the Municipal Committee which are considered not to be in conformity with law or with the aforesaid rules. The Deputy Commissioners are given similar powers within their jurisdiction. Section 237 empowers the State Government to reverse or modify any order of any of its officers passed or purporting to have been passed under the Municipal Act, if it is considered to be at variance with the Act or the Rules,

or for any reason inexpedient and also generally for carrying out the purposes of the Act. Then comes section 238 which provides that if a Committee is incompetent to perform or persistently makes default in the performance of, the duties imposed on it by or under the Municipal Act or any other Act or exceeds or abuses its powers, the State Government may, by notification, in which the reasons for so doing shall be stated, declare the Committee to be superseded. On such supersession, all the members of the Committee shall vacate their seats from the date of the notification and all powers and duties of the Committee are to be exercised and performed by such person as the State Government may appoint in this behalf and all property vested in the Committee is to vest in the State Government till the Committee is reconstituted. The State Government is empowered, if it thinks fit, to constitute another Committee in the place of any Committee so superseded. Section 239 deals with disputes and decision thereon and section 240 empowers the State Government to frame forms and make rules under this Act. It is worthy of note that section 235 contemplates the possibility of explanation offered by the Committee concerned in all cases of orders made under sections 232 to 234. This seems to be clearly suggestive of the statutory intendment that an opportunity of offering such explanation must be afforded to the Committees concerned : in other words, opportunity of showing cause against the order which the Commissioner or the State Government, as the case may be, are called upon in the discharge of their statutory duty to confirm, modify or rescind. It may be recalled that reasons for making the order have also to be forwarded under section 235. It is true that in the language of section 238, there is nothing explicit requiring an explanation from the Committee. It is, however, necessary for the notification superseding the Committee to contain reasons for the supersession. This requirement is expressed in mandatory language and nothing cogent or convincing has been brought to our notice to persuade us to construe the requirement as merely optional or permissive. Indeed, it has not even been canvassed on behalf of the respondents that reasons can without entailing invalidation be dispensed with or that a notification even without stating the reasons is legally sustainable. The broad contention pressed before us is that the reasons for superseding the Municipal

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Committee, as contemplated by section 238, are actually stated in the impugned notification. The reasons for supersession, according to the respondents, are found in the following words of the notification:—

> "Whereas the Municipal Committee, Kharar * * * * * * is incompetent to perform and has persistently made defaults in the performance of duties imposed on it by or under the Punjab Municipal Act, 1911."

I am wholly unable to accede to this contention. The reasons required as a condition precedent by section 238 to be stated in a valid notification superseding a Committee, in my view, are those necessary facts which may have weighed with the State Government in arriving at the conclusion that the Committee is incompetent to perform and as persistently made defaults in the performance of statutory duties. The notification in order to be valid must accordingly set out all the necessary facts precisely so that all those who read the notification may be able to know what those facts are on which the above conclusion has been founded. The object and purpose of this requirement appears to me to be traceable to a desire on the part of the Legislature to guarantee that the State Government does not act arbitrarily and does not abuse or misuse the drastic power conferred on it by the statute. This desire has apparently roots in the conscious realisation that the exercise of power, if it is to be something better than infliction of wanton injustice, must be hedged round by safeguards of law and entrusted to those who are closely supervised by the eye of the public in the interests of those subject to it. The party against whom this power is exercised has, according to the fundamental concept of the traditional democratic principles of justice, a right to know that action has been taken to its prejudice in accordance with the law of the land and this has in my view, been assured by the mandatory provisions requiring the reasons for the action to be stated in the notification as an essential pre-requisite for its validity. For my part, I consider this right to be basic in a set-up like ours where a citizen has been assured equal justice according to law and where the Courts are not ordinarily deprived of their jurisdiction to adjudicate on citizens' rights even

against the State. In any event, the right to know the reasons indisputably tends to promote in the minds of the citizens a feeling of democratic satisfaction with the legal character of our State : a satisfaction on which alone can be founded a stable and healthy democratic set-up. If I may so put it, it is because of this law that a citizen primarily feels content with a truly democratic State and it is this contentment alone which basically sustains such a State. The impugned notification is accordingly invalid as it does not contain reasons for the supersession.

This brings me to the submission that this is only an administrative matter which neither requires a show-cause notice nor is it open to review by the Court because no writ of *Certiorari* can go to an administrative order. Turning to the second aspect first, the wide language of Article 226 of the Constitution provides a complete answer. This Article is not confined only to the "prerogative Writs" known to English law which are specifically mentioned in it: indeed, this Article speaks of the power of the High Court to issue "directions, orders or writs including writs in the nature of *Habeas Corpus, Mandamus, Prohibition, Quo-warranto* and *Certiorari* or any of them"; and they can be issued for the enforcement of any fundamental right as also for any other purpose. The words "any other purpose" enlarge the scope of the power of the High Court to more extensive spheres than are covered by Article 32, extending to the enforcement of all the legally enforceable rights of an aggrieved party. To restrict this Article only to the English prerogative writs would, in my opinion, have deprived our democratic set-up to a substantial extent, of its basic and fundamental source of vitality which feeds and sustains the people's confidence in our democratic sense of justice.

Adverting to the first part of the submission, I may first clear the ground whether a purely administrative act, however, arbitrary, unjust and contrary to law, is completely immune from scrutiny by this Court when an aggrieved party approaches it for seeking redress against an illegal encroachment on his rights. For my part, I cannot uphold such an unqualified immunity because I

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consider the following basic fundamentals of the rule of law to be universally accepted—

(i) in a decent democratic society of our pattern, it is unthinkable that the Government or any of its officers possess arbitrary power over the person, property or the vital interests of the individual,

(ii) all members of a society, private persons and Government officials alike must be equally responsible before the law; and

(iii) effective judicial remedies are more important than abstract constitutional declarations in securing the rights of the individual against encroachment by the State.

Government under the Rule of law demands proper legal limits on the exercise of power and the instinct of justice must be allowed to infuse the work of the executive Government, just as it must infuse the work of the law-giver as also that of the Courts. To say that in an administrative action, the State Government has not to observe the ordinary rules of fair-play, is, in my opinion, a wholly indefensible and, therefore, an unacceptable position.

The next question which in substance confronts us is whether the act of the State Government in the instant case is so completely of an executive nature depending on administrative policy that the rules of natural justice are completely out of place. The principles of natural justice, broadly stated, are undoubtedly principles of fair-play in action and their exact requirements can by no means be precisely defined; being of variable import, they must depend in each case on its own peculiar circumstances. In this broad concept, even administrative bodies, while acting fairly and objectively, have to conform to the principles of natural justice, but this does not by itself impose on them an obligation to have a judicial approach, for they may still take account of considerations of executive policy in coming to their decisions. At the same time, the fact that an order is issued or an act emanates from an administrative or executive authority would not, for that reason alone, make it any the less quasi-judicial,

if the cumulative effect of all the relevant factors satisfies the requisite test. The two concepts of administrative authorities and administrative acts must, in order to have a clear vision, be kept distinct. The concept of quasi-judicial act has its roots basically in the democratic desire to keep the administrative authority within legal bounds. In the case in hand, I am unable to hold that the order of the Government is required to be founded on purely executive considerations of policy and proceeds exclusively on that basis, and, therefore, it cannot attract the rules of natural justice. It is true that the statute does not in terms provide that the State Government has to perform a duty of a judicial character while dealing with the question of supersession, but that alone cannot be conclsive, because the judicial character of a duty may be inferred from the nature of the statutory duty itself, examined in the light of the character of the right affected and the consequences that flow from the exercise of such duty. Where power is conferred on an authority to determine questions prejudicially affecting rights of citizens, in view of what I have said above, a duty may justifiably be implied that such power would be exercised in conformity with the principle of natural justice applicable to a judicial approach. These limits seem to inhere in the very nature of the power. The omission of the Legislature to insert positive words imposing an obligation of a judicial approach appears to be supplied by the plainest principles of justice on which our Constitution is founded. The duty imposed on the State Govenment, when exercising the power conferred by section 238, requires the determination of the question whether the Committee concerned is incompetent to perform or persistently makes default in the performance of the duties imposed on it. This duty necessarily involves consideration of factual material and formation of opinion on its evaluation leading to the final conclusion. This seems to me to require an objective approach closely resembling that of a judicial mind adjudicating upon a controversy, and is not a mere matter of administrative or executive policy, expediency or discretion. And if I am right in taking this view, then this duty may well be considered to partake of a quasi-judicial character attracting the observance of the rules of natural justice. The order of supersession, it may be remembered, very seriously affects the members of the Committee concerned and incidentally also the electorates who have duly elected

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the municipal counsellors. I am not unmindful of the fact that the Punjab Municipal Act was enacted apparently in pursuance of the policy of developing local-self-governing institutions as a part of the larger policy of establishing in this country democratic Government by elected representatives and training the people in the art of local self Government. An effective and close supervision and control over the working of the local bodies like the Municipal Committee was thus considered necessary to a considerable extent. But this aspect induces me further to hold that the power conferred by section 238 which entails drastic consequences of superseding a self-governing elected body calls, in its exercise, proper observances of the rules of natural justice so that the other side of the picture is adequately presented before the State Government by the party affected. This seems to me to be essential if local-self-Govednment is to develop on healthy lines and our democratic set-up is to have strong and deep roots in the community at large.

On behalf of the respondents, reliance has been placed on some observations in the judgment of the Supreme Court in *Radeshyam Khare and another* v. *The State of Madhya Pradesh and others* (13). I am, however, unable to construe the true ratio of this decision to go against the legal position just stated: indeed, the rule of law enunciated therein appears to be quite in conformity with it. Read with care. the decision seems to proceed on its particular facts to solve a different problem; the principle of law enunciated and acted upon therein does not come into conflict with my view. Section 53 of the C. P. & Berar Act (2 of 1922), with which the Supreme Court was directly concerned in that case, is materially different in its scope and effect from section 57 of that Act which corresponds to section 238 of the Punjab Municipal Act. Section 57 of the C. P. Act deals with the subject of dissolution of Municipal Committees which are incompetent or which commit default in the performance of their duty or exceed or abuse their powers. Incidentally, I may point out that section 57 of the C. P. Act contains express provisions in sub-section (5) requiring as a condition precedent a reasonable opportunity to be given to the Committee concerned to furnish explanation. S. R. Das, C.J., considered the action under section 57 to be extremely drastic as it

puts an end to the very existence of the Committee itself and apparently the Legislature was considered to have been rightly impelled to make a provision of reasonable opportunity in the statute itself. Same or similar considerations may well, in my view, apply to section 238 of the Punjab Act and the omission of the Legislature to make in it an express provision to that effect may appropriately and legitimately be supplied by the "plainest principles of natural justice." It may be recalled that section 235 of the Punjab Act does contemplate an explanation by the Committee concerned: consistently with this intendment, there seems to be logically no legal justification for having no such provision in the case of section 238. The fact that section 238 confers power on the State Government and not on a subordinate official is of little consequence, because, the State, which acts through human agency, is equally subordinate to law, and it is primarily, if not solely, the controlling hand of the rule of law, and, the guide-posts like the rules of natural justice, which distinguish a true limited legal State from an absolute regime with practically no limits on its discretion. In some cases, the ratio of the decision in *Radeshyam Khare's case* does seem to have been so construed as to apply the reasoning in regard to section 53-A also to the provisions of other statutes resembling section 57, but those cases apparently proceed on some misunderstanding of some of the observations contained in *Radheshyam Khare's case.* In regard to the decision of the House of Lords in *Ridge* v. *Baldwin and others* (7), It is noteworthy that the Supreme Court has approvingly referred to it in *Lala Shri Bhagwan* v. *Ram Chand* (15).

The order made by the State Government in the instant case in pursuance of the power conferred on it by section 238, Punjab Municipal Act, is accordingly of quasi-judicial character requiring observance of the rules of natural justice by affording an opportunity of showing cause against the proposed action. It is in this connection well to remember that to give everyone affected a fair hearing is just as much a canon of good administration as of good legal procedure and nothing is more likely to conduce to just and right decision than the habit of affording a hearing to the party suffering.

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With these observations, I fully agree with the order made by my learned brother.

B.R.T.

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