challenge to the trifling imposition of the export duty of two annas per L.P. Gallon on rectified spirit by the notification of February 28, 1938. Consequently, the question—whether rectified spirit is an alcoholic liquor for human consumption and thus an excisable article under Section 3(6) of the Act on which any duty could at all be levied is rendered wholly academic and I, therefore, do not propose to advert to the same.

10. The writ petition is, therefore, allowed and the impugned Orders, namely, the Punjab Excise Fiscal (Haryana Amendment) Order, 1968 the Punjab Excise Fiscal (Haryana First Amendment) Order, 1969 and the Punjab Excise Fiscal (Haryana Second Amendment) Order, 1974, are hereby quashed. As a necessary consequence, the petitioner would be entitled to the refund of the export duty paid by him under the said Fiscal Orders only. This, however, would not affect the validity and enforceability of the earlier notification No. 4518 Ex. dated November 28, 1938, inserting Order 1-A in the Punjab Fiscal Orders, 1932, which remains operative.

11. In view of somewhat intricate questions involved, we leave the parties to bear their own costs.

D. S. Tewatia, J.—I agree.

N.K.S.

Before S. S. Sandhawalia, C.J. & M. R. Sharma, J.

JAGDISH RAI MONGHA and others,—*Petitioners.*

versus

STATE OF PUNJAB and others,—*Respondents.*

Civil Writ Petition No. 2856 *of* 1980.

May 17, 1982.

Punjab Town Improvement Act (4 of 1922)—*Sections* 72-F *and* 103—*Improvement Trust dissolved by Government acting under Section* 103—*Such dissolution inevitably resulting in removal of Trust*

members—Opportunity of hearing to a Trust member, before dissolution—Whether necessary—Government action purporting to be taken under Section 103 of the Act—Trust members—Whether entitled to claim that action has in fact been taken under Section 72-F—Section 72-F of the Act providing for a hearing to Trust members before removal—No such requirement under section 103 before dissolution—Rule of audi alteram partem—Whether canbe read into section 103.

Held, that section 72-F and section 103 of the Town Improvement Act are distinct and separate and visualise altogether different and peculiar situations for their application. They neither overlap nor can be said to merge into each other. Consequently it would be a fallacy to equate the dissolution of the trust under section 103 of the temporary suspension or supersession of the trust under section 72-F of the Act. As such an action taken under section 103 which would necessarily involve the removal of the members of the trust would not make the provisions of section 72-F applicable. (Para 10).

Held, that the mere juxtaposition of section 72-F and section 103 of the Town Improvement Act against each other would itself indicate that the State action under section 103 cannot be presumed to be under section 72-F. The language, the content, the object and the ultimate effect of the two provisions seem to be different and distinct. Section 72-F provides for two separate contingencies of suspension and if necessary of supersession later. Clearly these two things are distinct and in any case distinguishable from dissolution. The latter has the attribute of permanency whilst the former is transitory as is evident from section 72-F (4) (e) which provides for the reconstitution of the trust before the expiry of the specified period of its supersession. Again the pre-conditions for suspension and supersession under section 72-F are altogether salient to those provided for dissolution under section 103. The impugned notification expressly invokes sub-section (1) of Section 103 of the Act in its first part and sub-section 2(c) thereof in its later part and incorporates the language of the said section both, with regard to dissolution and with regard to the interim arrangements for the purposes and the functions of the trust and the Chairman by designated officials. It is obvious that the impugned action is in terms under Section 103. It thus seems impossible to hold that despite all these factors the same should be read as one under section 72-F and thereafter to invalidate it on the alleged infraction of sub-section (3) of the latter section on the ground that opportunity to show cause had not been provided. Doing so would be, to use a homely metaphor a classic example of giving a dod a bad name

and then hanging him. In terms it implies to deem the action specifically taken under section 103 as fictionally one under section 72-F and then quash it because it does not conform to a provision under which it has even remotely and purportedly been taken.
(Para 9).

Held, that the Legislature was sharply alive to the requirements of natural justice and expressly provided for an opportunity to show cause to the trust itself before an order of suspension under section 72-F (1) is passed and equally so if later its supersession for a certain period became necessary. Nevertheless there is no such requirement in section 103 pertaining to the dissolution of the trust. Furthermore a reading of sections 5 and 6 of the Act which deals with the maximum term of office of the Chairman and the other trustees respectively also provided that such term would be deemed to expire on the date of the dissolution of the trust itself. These provisions make it manifest that the Act extends no hope of permanency or any long security of tenure to either of the office of the Chairman or of the trustee. The dissolution of the trust automatically by the mandate of the law, terminates the term of the office-holders. In this view of the matter, it cannot be said that "civil consequences" ensues on the dissolution of the trust. The words "civil consequences" have not been defined and perhaps do not admit of any definition *stricto sensu*. However, in the larger connotation, these are words of the widest amplitude which can bring within their ambit every conceivable consequences, which may or may not flow from an administrative action. It can no longer be said that because the action is in administrative nature, the rules of natural justice are either excluded or there is any presumption to this effect. Far from it being so, natural justice may be equally attracted though the exercise of the powers is essentially administrative in nature. However, civil consequences, in order to attract the rule of natural justice, cannot possibly be given a comprehensive connotation of everything which effects a citizen in his civil life. In this contextual limitation they must involve either actual or atleast a possibility of unfairness or prejudice on the part of the authority or unfairness or prejudice on the part of the authority or the consequences which are evil, penal or stigmatic in nature to the victim of such adverse administrative action. The analysis of section 103 would clearly indicate that the three eventualities upon which the dissolution of the trust under section 103 may be rested either purely factual or based on the subjective satisfaction of the State Government that it is expedient to do so. They are in no way connected with any misconduct, abuse of power, incompetence or corruption on the part

of the Chairman or the trustees. This is in sharp contrast with section 72-F which is squarely rested on the fault liability of the trust as a body. Consequently a dissolution under section 103 does not involve any stigmatic or even an innuendo of misconduct on the part of the trust. As such in view of the fact that the Chairman and the trustees have no legal right to hold office beyond the dissolution of the trust, the implied exclusion of the rule *audi alteram partem* because such a provision exists under section 72-F and is absent under section 103, the absence of any penal, evil or stigmatic consequences flowing from a dissolution would comulatively show that the principles of natural justice are not attracted to State action under section 103 of the Act.

(Paras 11, 12, 13, 28, 30 & 33).

Amended Petition under Articles 226/227 of the Constitution of India praying that this Hon'ble Court may be pleased to summon the records of the case from the Government and the Government Press, Chandigarh and after a perusal of the same, may be pleased to issue :

(a) *a writ of certiorari qua warranto or any other appropriate writ, order or direction, quashing the orders—annexures P-3, P-4 and P-5;*

(b) *a writ of prohibition restraining respondent No. 2 from functioning as Chairman of the Bhatinda Improvement Trust;*

(c) *any other writ, order or direction which this Hon'ble Court deems proper in the circumstances of the case;*

(d) *that the production of certified copies of Annexures P-1 and P-4 may kindly be dispensed with as the same are not readily available to the petitioners;*

(e) *that the costs of this petition may be awarded to the petitioners;*

(f) *it is also prayed that the service of the notice on the respondents may kindly be exempted.*

It is further prayed that during the pendency of this writ petition, the implementation, the implementation of the orders—annexures P-3, P-4 and P-5 may kindly be stayed, which will be in the best interest of justice and fair play.

Siri Chand Goyal, Advocate with Satya Pal Jain, Advocate, *for the Petitioners.*

H. L. Sibal, Senior Advocate with S. C. Sibal, Advocate,

J. K. Sibal, Advocate and R. C. Setia, Advocate, *for the Respondents.*

Jagdish Rai Monga and others *v.* State of Punjab and others
(S. S. Sandhawalia, C.J.)

JUDGMENT

S. S. Sandhawalia, C.J.

1. Is the rule of *audi alteram partem* attracted inflexibly to the exercise of the power of dissolution of an Improvement Trust under Section 103 of the Punjab Town Improvement Act (hereinafter referred to as 'the Act') is the spinal issue which has come to the fore in this set of 8 writ petitions assiduously assailing the dissolution of as many as 21 Improvement Trusts at one strike within the State of Punjab by a single notification.

2. Learned counsel for the parties are agreed that the issues of law are identical and the facts giving rise thereto are closely similar. It, therefore, suffices to advert briefly to those in Civil Writ Petition No. 2856 of 1980 (*Jagdish Rai Monga and others* v. *The State of Punjab and others*). Petitioner No. 1 was the Chairman whilst the other three were the trustees of the recently dissolved Bhatinda Improvement Trust. Petitioner No. 1 was appointed Chairman initially for a period of one year,—vide notification dated 4th August, 1978 and was reappointed as such for a period of two years with effect from 10th of August, 1979 by a similar notification (Annexure P 2). Consequently, it is the claim of the petitioners that the Chairman of the Trust is entitled to remain in office till the 10th of August, 1981, while the tenure of petitioners Nos. 2 to 4, who had been elected by the Municipal Committee to the Bhatinda Improvement Trust (hereinafter referred to as 'the Trust') extends till 24th of May, 1982. It is averred that the Trust had got sanctioned from the Punjab Government as many as four development and improvement schemes for the Bhatinda Town, which were at various stages of their execution and four other schemes were under process when the untimely dissolution of the Trust halted the same in their tracks. Petitioner No. 1 further avers that before his appointment as whole-time Chairman, he was carrying on a flourishing private business, which he had abandoned on his appointment as a whole-time Chairman of the Trust, and further that he had been discharging his duties honestly, efficiently, and zealously for the all-round development and Improvement of the Bhatinda Town. On the 11th of August, 1980 the Punjab Government issued the impugned notification (Annexure P3) under Section 103(1) of the Act, whereby 21 Improvement Trusts in the State of Punjab, including the one at Bhatinda, were dissolved with immediate effect. Further in exercise

of the power conferred by sub-section 2(c) of the aforesaid section it was further directed that the respective Deputy Commissioners and Sub-Divisional Officers, specified in column 2, shall perform the functions of the Trust and the Chairman under the Act. It is also the case that before the issuance of the aforesaid notification, the Governor of Punjab also issued the Punjab Town Improvement (Amendment) Ordinance, 1980 (Ordinance No. 6 of 1980), copy whereof is Annexure P5 to the petition.

3. Petitioner No. 1 claims that he was appointed whole-time Chairman during the regime of Akali-Janata Government and he was an active member of the Janata Party before his appointment as such. It is further his claim that out of the 21 Improvement Trusts in the State of Punjab, which stand dissolved by the impugned notification, the Chairman of 19 Trusts are political persons, belonging either to the Akali Party or to the then Janata Party. It is averred that after coming to power in the mid-term poll of 1980, the Congress Party wanted to remove all the aforesaid Chairmen from their position with the ulterior motive of appointing persons belonging to the Congress Party in their place. It is specifically alleged that the Chief Minister and other Cabinet Ministers had been making statements that only those Improvement Trusts would be superseded which were not functioning properly, but ultimately the Government decided to remove all the Chairmen by resorting to a method which is wholly illegal and unsustainable in law. It is also the case that the impugned notification has been issued in undue haste which points to the *mala fides* of the respondents. It is claimed that the Administrative Secretary prepared a note on 8th of August, 1980 and on the same day a decision was also taken at the Cabinet level and the impugned notification was then issued on the 11th August, 1980, since 9th and 10th August, 1980 being Saturday and Sunday were holidays. It is also alleged that the amending ordinance, though shown to have been published in the Government Gazette on the 11th of August, 1980, was in fact so done on the 18th of August, 1980, but the back date was printed in order to make the publication of the Ordinance simultaneous with the notification. It is averred that the only section under which action either to suspend or supersede a Trust can be taken is 72-F of the Act, but the petitioners have been removed by resorting to a dubious method under Section 103 of the Act, which is contrary to law.

4. On the aforesaid factual matrix the amending ordinance and the impugned notification (Annexure P3) has been assailed on a wide variety of legal grounds, to which reference would follow hereinafter.

5. In the return filed on behalf of the respondent-State preliminary objections have been taken to the effect that the dissolution of the Improvement Trusts had been ordered by the Government in good faith, in public interest and to improve the prevailing state of affairs. Similarly, the Ordinance is justified as compulsive action of the Government because the Municipal Committees in particular could not take the additional load of administering the affairs of the Improvement Trusts, being already over-burdened with responsibilities of civic problems. The amendment of sub-section (2)* of Section 103 of the Act by the Ordinance was with a view to enabling the carrying on the work of the Improvement Trusts by responsible officers in order to avoid a vacuum till the Government finally decided how best the functions of the Trusts could be performed by making alternative arrangements. On merits it has been averred categorically that the Amending Ordinance was duly published in the Government Gazette on the 11th of August, 1980 and the Deputy Commissioner assumed charge of the dissolved Trust on 12th August, 1980. It is stated that there was justification for the issuance of the Ordinance as the Legislative Assembly was not in session and the Legislative action was of an urgent nature. It is also the stand that the impugned notification, dissolving the Trusts, was also duly published in the Gazette on the 11th August, 1980. The firm stance on behalf of the respondent-State is that the Government in its absolute and fair judgment had come to the conclusion that all the Trusts in the State of Punjab were not serving the purpose for which they were created, and decided to dissolve and do away with the same in the larger interests of the public and on consideration of the merits. It is averred that the State Government from specific and general reports came to the conclusion that there was something wrong with the very structure of the Improvement Trusts and, therefore, it was its duty to cry a halt ot the mis-use or mis-application of the public funds with a view to restructuring the existing frame-work or substituting it with a very worth-while and workable machinery. It is strenuously denied that there were any extraneous or *mala fide* considerations in taking the impugned

action. It has been averred that action under Section 72-F foor superseding the Trusts is distinct and separate from that under Section 103 of the Act.

6. The Chief Minister of Punjab Sardar Darbara Singh has filed an affidavit categorically denying the allegation of *mala fide* raised in the petition. It is averred that no particular Trust was the subject-matter of decision and as a matter purely of policy based on relevant material, it was decided in public interest to dissolve all the Trusts in the State of Punjab, in pursuance of the powers under Section 103 of the Act. The statements and speeches attributed to the answering respondent have either been denied or it is pointed out that in the absence of any specific copy thereof, no meaningful reply thereto can be rendered. It is reiterated that on consideration of all the relevant materials, the Government came to a conclusion, as a matter of policy, that it was in public interest to dissolve the Trusts.

7. The principles of natural justice and their alleged infraction is the sheet-anchor of the case of the petitioners herein. However, to clear the decks for the examination of the said core question it seems apt to first dispose of an ancillary contention which was pressed before us with some persistence. It was submitted that the action of the respondent-State,—*vide* notification, annexure P. 3, though clearly specified as under sub-sections (1) and (2) of section 103 should nevertheless be deemed to be one under section 72-F of the Act. On that hypothetical basis it was argued that sub-section (3) of the latter section provided for an opportunity to the Trust before its suspension or supersession and this having not been duly given the State action should be quashed. Learned counsel reiterated their stand that the impugned action, though labelled as a dissolution was in fact a supersession of the Trust under section 72-F of the Act.

8. Inevitably the aforesaid contention as also others have to be appreciated in the context of the relevant provisions of the Act and it, thereore, becomes necessary to read the same:—

> S. 5. The term of office of the chairman shall be such period not exceeding three years, as the State Government may fix in this behalf, but when the trust ceases to exist the

said term of office shall be deemed to expire on the date of the dissolution of the trust. He shall be eligible for reappointment and he may be removed from office by the State Government at any time.

S. 6. The term of office of every trustee elected under clause (b) of sub-section (1) of section 4 shall be three years or until he ceases to be a member of the Municipal Committee, whichever period is less, and the term of office of every trustee appointed under clause (c) of the said sub-section shall be three years, but when the trust ceases to exist the said term of office shall be deemed to expire on the date of the dissolution of the trust and the term of office of a trustee appointed under clause (d) shall expire when he ceases to hold the office by virtue of which he is appointed.

S. 72-F(1) If, in the opinion of the State Government, a trust is not competent to perform, or persistently makes default in the performance of, the duties imposed on it by or under this Act or any other law or exceeds or abuses its powers, the State Government may, by an order published, together with the statement of reasons thereof, in the official Gazette, declare the trust to be incompetent or in default or to have exceeded or abused its powers, as the case may be, and suspend it for such period, not exeeding one year, as may be specified in the order.

(2) If, at any time after the expiry of the period of suspension the trust again acts in the manner referred to in sub-section (1), the State Government may, by a like order

S. 103(1) When all schemes sanctioned under this Act have been executed or have been so far executed as to render the continued existence of the trust, in the opinion of the State Government unnecessary, or when in the opinion of the State Government it is expedient that the trust shall cease to exist, the State Government may by notification declare that the trust shall be dissolved from such date as may be specified in this behalf in such notification, and the trust shall be deemed to be dissolved accordingly.

(2) From the said date —

* * *

supersede the trust for such period as may be specified in the order.

(3) Before making an order of suspension or supersession, opportunity shall be given to the trust to show cause why such an order should not be made.

(4) * * *

9. Now the mere juxtaposition of section 72-F and section 103 of the Act against each other would itself indicate that the tenuous stand of the petitioners that the State action under section 103 should be presumed to be under section 72-F has merely to be noticed and rejected. The language, the content, the object and the ultimate effect of the two provisions seem to be different and distinct. Section 72-F provides for two separate contingencies of suspension and if necessary of supersession later. Clearly these two things are distinct and in any case distinguishable from dissolution. The latter has the attribute of permanancy whilst the former is transitory as is evident from section 72-F (4)(e) which provides for the reconstitution of the trust before the expiry of the specified period of its supersession. Again the pre-conditions for suspension and supersession under section 72-F and altogether alien to those provided for dissolution under section 103. The impugned notification, annexure P. 3 does not even remotely talk of any suspension for any period nor any supersession later under sub-section (2) of section 72-F. Indeed it expressly invokes sub-section (1) of section 103 of the Act in its first part and sub-section 2(c) thereof in its later part and incorporates the language of the said section both with regard to dissolution and with regard to the interim arrangements for the purposes and the functions of the trust and the Chairman by designated officials. The firm stand of the respondent-State in its reply as also of its learned counsel before us is that the impugned action is in terms under section 103. It thus seems impossible to hold that despite all these factors the same should be read as one under section 72-F and thereafter to invalidate it on the alleged infraction of sub-section (3) of the latter section on the

Doing so would be, to use a homely metaphor, a classic example of giving a dog a bad name and then hanging him. In terms it implies to deem the action specifically taken under section 103 as fictionally one under section 72-F and then quash it because it does not conform to a provision under which it has not even remotely and purportedly been taken.

10. A limb of the aforesaid contention was that the inevitable consequence of dissolution is that the Chairman and the members are removed from their offices and, therefore, section 72-F would be attracted to the situation. I am clearly of the view that the two sections are distinct and separate and visualise altogether different and peculiar situations for their application. They neither overlap nor can be said to merge into each other. Consequently it would be a fallacy to equate the dissolution of the trust under section 103 with the temporary suspension or supersession of the trust under section 72-F. Inevitably, therefore, the contention of the learned counsel for the petitioners resting on section 72-F is hereby rejected.

11. Reverting now to the star submission on behalf of the petitioners, their stand was that the principle of natural justice must necessarily be read into section 103 of the Act and the requirement of an opportunity to show cause against the dissolution be incorporated therein by judicial mandate. It was argued that the dissolution involves civil consequences not only to the legal person, viz. the trust itself but equally to the individual Chairman and the members thereof who were appointed or elected for a fixed term which has unceremonoiously cut short by such action. It was highlighted that the petitioners would not only be deprived of the offices which they hold but inevitably therewith the emoluments which were their due as also the perquistes and powers which went with the same. This amounted to both material deprivation and in any case a denial of legitimate expectations. Counsel contended that once civil consequences are held to ensue that from dissolution then necessarily the principles of natural justice are attracted forthwith and irrevocably. Primary reliance was placed on the recent judgment in *S. L. Kapoor* v. *Jagmohan and others,* (1) and further support was sought to be derived from *Mohinder Singh Gill*

(1) A.I.R. 1981 S.C. 136.

and another v. *Chief Election Commissioner, New Delhi and others* (2) and *Smt. Maneka Gandhi* v. *Union of India*, (3).

12. Ere I examine in depth the aforesaid contention it is apt to notice an inference of the implied exclusion of natural justice, which though not conclusive, is certainly relevant. Reference in this context may be made to section 72-F(3) on which particular reliance had been placed by the petitioners themselves. This provision was inserted in the Act along with whole of Chapter VII-A (Sections 72-A to 72-F) by Punjab Act No. 7 of 1974 for the purpose of providing control over the trusts. It is plain that even in the context of suspension and supersession, the Legislature was sharply alive to the requirements of natural justice and expressly provided for an opportunity to show cause to the trust itself before even an order of suspension under section 72-F(1) is passed and equally so if later its supersession for a certain period became necessary Nevertheless no change whatsoever in this regard was made in section 103 pertaining to the dissolution of the trust. It is thus evident that opportunity to show cause has been expressly provided in section 72-F but not so provided in section 103 of the Act. Even in *S. L. Kapoor's case,* their Lordships observed that this was a weighty consideration to be taken into account though, as already noticed above, it is not by itself conclusive. Therefore in the present contextual situation the absence of any express provision of opportunity to show cause under section 103 is a relevant and meaningful consideration against the bookdron of which the primary contention of the learned counsel for the petitioners has to be evaluated.

13. Before proceeding further, a pointed reference is called for first to Section 5 of the Act. The maximum period of the term of office of the Chairman for one appointment is not to exceed three years. However, what is significant is that the Section itself provides that on the dissolution of the Trust the terms of office of the Chairman shall be deemed to expire on that very date. Similarly. Section 6 pertaining to the term of office of the other trustees *inter alia* provides that when the Trust ceases to exist, their term of office shall be deemed to expire on the date of the dissolution of the Trust itself. These provisions make it manifest that

(2) A.I.R. 1978 S.C. 851.

(3) A.I.R. 1978 S.C. 597.

the Act extends no hope of permanency or any long security of tenure to either the office of the Chairman or of the trustees. The statute itself makes the tenure co-terminus with the existence of the Trust and its dissolution automatically, by the mandate of the law, terminates the term of the office-holders. Those who accept office under these well-known statutory terms, do so with the fullest knowledge thereof. It necessarily follows that in view of the provisions of Sections 5 and 6 of the Act, neither the Chairman nor the trustees have any legal right whatsoever to continue or lay claim to office on the dissolution of the Trust.

14. Coming now to grips, with the question of the applicability of the rules of natural justice to the exercise of the power of dissolution under Section 103 of the Act, it must be noticed at the out-set that this issue can only be examined within the parameters of the precedents of the final Court. In the recent exposition, or if one may say so, the extension of the law in this field, it has been held in *S. L. Kapoor's case* (supra), that the weightier consideration for invoking the principles of natural justice was whether civil consequences ensue or not. In essence, therefore, the question is what is the precise legal connotation of the "civil consequences", which would inexorably attract the rules of natural justice like a magnetic field. Is it any and every civil consequences flowing from an administrative action which inflexibly mandates the giving of an opportunity to show cause to the person before passing any order? Or, is it necessarily some penal, evil or stigmatic civil consequence which alone would attract the rules of natural justice? The core question therefore, is whether the words "civil consequences" are to be interpreted so broadly as to include within the ken any consequences whatsoever flowing from administrative action or is this concept to be controlled by its necessary contexual limitation.

15. The words "civil consequences" have not been defined and perhaps do not admit of definition *stricto sensu*. However, in their larger connotation, these are words of the widest amplitude which can bring within their ambit every conceivable consequences. This has indeed been authoritatively noticed as follows by V. R. Krishna Iyar, J., in *Mohinder Singh Gill's case* (supra):—

> " ... But what is a civil consequence, let us ask ourselves, by passing verbal booby-traps ? 'Civil consequences' undoubtedly cover infraction of not merely property or

personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts "civil consequence."

The question, therefore, is whether in applying the adage that if civil consequences ensue then natural justice is attracted, one can give the aforesaid all pervading connotation to this phrase.

16. Broadly speaking and without pretending to be exhaustive, Governmental action may be divisible into under-mentioned categories for examining the applicability of the rule of *audi alteram partem*.

1. Criminal ;

2. Civil ;
   (i) Judicial ;

   (ii) Quasi-judicial ;

   (iii) Administrative.

17. Now there is no manner of doubt that so far as criminal process is concerned, the principles of natural justice have now assumed a strict statutory form. In our judicial system, one cannot now visualies a criminal process wherein the parties concerned would not have a full right of hearing. The procedural statutes, in this context take care of the matter and provide a more elaborate and mandatory process ensuring the fullest opportunity of hearing before the criminal process can be finalized. Consequently, it may be said that herein the rules of natural justice have become embodied rules in the shape of mandatory statutes.

18. The same situation ensures in the civil judicial process. In the purely judicial field, the Civil Procedure Code and similar sister provisions provides the fullest right of hearing, thus enshrining the brooding spirit of natural justice in a strict statutory form.

19. As regards the civil quasi-judicial process also, now the binding precedents of the final Court leave hardly any manner of doubt that the principles of natural justice are inflexibly attracted where

the proceedings though not strictly judicial, at least partake of that character and can be conveniently labelled quasi-judicial. It may be said that (barring very few exceptions) in all quasi-judicial actions if rules themselves do not provide for a hearing or a reasonable opportunity, the Courts will read such a necessity into the relevant provisions. Herein, natural justice can perhaps be ousted only by an express statutory provisions to this effect and not otherwise.

20. The slightly *penumbral* area that remains is that of administrative action. It is undoubtedly true that any sharp distinction between the quasi-judicial and the administrative action has now been eroded, if not obliterated altogether. Nevertheless, for the purposes of attracting the principles of natural justice that distinction is of some relevance though not in any way conclusive. It can no longer be said that because the action is administrative in nature, the rules of natural justice are either excluded or there is any presumption to this effect. Far from it being so, natural justice may be equally attracted though the exercise of power is essentially administrative in nature. However, the pristine question that here arises is whether the expanding concept of natural justice now pervades every field and niche of administrative action ? Must it now be said that all executive actions must first satisfy the test of the rule of *audi alteram partem* before it can be of any validity? I am inclined to believe that a final Court has set its face against any such doctrinaire extension. Indeed extending the somewhat tardy procedure of an opportunity to show cause and adjudication thereon to each and every sphere of administrative action cannot but have the effect of hamst ringing executive power and is fraught with the danger of rendering it impotent and negating its effective exercise. It is no doubt true that the horizons of natural justice have been widened and continue to expand and it is rightly so in a society where the rule of law prevails. But to extend them to each and every facet of administrative action thus in terms equating it with the judicial process might well work public mischief and it has been so said at the level of the highest judicial authority.

21. In *S. L. Kapur's case* (supra) which, as already noticed. is the corner-stone of the petitioner's stand, their Lordships had observed as follows in this context :—

> "* * *. It is not always a necessary inference that if opportunity is expressly provided in one provision and not so

provided in another, opportunity is to be considered as excluded from that other provision. It may be a weighty consideration to be taken into account but the weightier consideration is whether the administrative action entails "civil consequences."

Now what precisely did their Lordships intend to lay down when they observed that administrative action entailing civil consequences would attract the rule of *audi alteram partem* ? If carried to a doctrinaire extreme, one can hardly imagine any administrative action which would not result in some civil consequences to one or other of the parties. If it were otherwise, it would hardly be any action worth the name. Herein perhaps the matter can be equated with the law of physics that every action has an equal and opposite reaction. Administrative action may come well within that rule. Barring narrow exceptions it would inevitably entail some consequences and certainly civil consequences at the lowest. If the phrase 'civil consequences' is, therefore, applied in its widest amplitude of everything that affects a citizen in his civil life then natural justice would be inexorably attracted to every administrative action of whatsoever nature because some civil consequence is bound to ensue, therefrom. The question, therefore, is would the concept of natural justice apply inflexibly to every nook and corner of adminstrative action I am inclined to the view that this extreme length is neither tenable on principle nor as yet has the support of any binding precedent by the final Court.

22. Reference in this context may be first made to the celebrated case of *Union of India* v. *J. K. Sinha and another,* (4A). As is well known, that was a case of compulsory retirement and their Lordships expressly noticed as follows:—

> "It is true that a compulsory retirement is, bound to have some adverse effect on the Government servant who is compulsorily retired but then as the rule provides that such retirements can be made only after the officer attains the prescribed age."

It is manifest that their Lordships in terms noticed that adverse effects did flow from the impugned order. Indeed there is no gain-saying that where an employee's service is terminated 8 or 10 years before the ordinary prescribed age of superannuation, then

(4-A) A.I.R. 1971 S.C. 40.

inevitably gravely adverse consequences do flow therefrom. Nevertheless, their Lordships held that this would involve no civil consequences. Patently enough, therefore, their Lordships did not use the phrase in its all comprehensive connotation but in its limited constricted sense. A true analysis of this judgment would indicate that civil consequences are not any consequences whatsoever but only those which are penal, evil or stigmatic in nature flowing directly from administrative action. In *Col. Sinha's case* (supra) their Lordships reversed the High Court view which had held that natural justice was attracted to rule 56(j) of the Fundamental Rules providing for compulsory retirement, in allowing the appeal and upholding the adminstrative action. It deserves highlighting that in *Mohinder Singh Gill's case* (supra) this judgment was expressly referred to and approved. The earlier decision of their Lordships in *Ram Gopal Chaturvedi* v. *State of Madhya Pradesh* (4), would also butteress the same view because it was held that principles of natural justice were not attracted in the termination of the services of a temporary civil Judge even on the basis of adverse materials against him. The later judgment in *Union of India, etc.* v. *M. E. Reddy and another* (5) has again reiterated the ratio *Col. Sinha's case* in the context of compulsory retirement.

23. It seems unnecessary to burden this judgment with a multiplicity of authority on the aforesaid point and it suffices to mention that *Col. J. N. Sinha's case* (supra) holds the field and has been repeatedly reiterated by the final Court in a number of judgments thereafter. An analysis of these authorities would disclose that what their Lordships mean and imply by civil consequences is the existence of an actual or at least a possibility of unfairness to the person aggrieved. Either some bias or prejudice on the part of the authority or the ultimate effect of the administrative action being evil, penal or stigmatic in nature are the necessary foundations which would cry out for an opportunity of being heard to the person to whom such an adverse administrative action is meted out. If there is no touch of bias or unfairness and no evil, penal or stigmatic consequences flow, and it does not violate any inflexible legal right then such an administrative action would not *per se* attract

(4) A.I.R. 1970 S.C. 158.
(5) A.I.R. 1980 S.C. 563.

the principles of natural justice. Holding otherwise to the effect that any and every civil consequence of administrative action attracts the rule of natural justice would render the whole exercise of laying down the tests for their necessary application, a pure exercise in futility, because on such a premise every action, be it purely criminal, judicial, quasi-judicial or administrative would *ipso facto* invite the rule of *audi alteram partem.*

24. Now apart from the above, examples can be multiplied *ad infinitim* which undoubtedly involve civil consequences but admittedly would not attract the principles of natural justice. The law in this branch is now so well-settled that reference to individual precedent is uncalled for. The foremost amongst them has already been noticed in the context of a compulsory retirement which undoubtedly has adverse consequences to the public servant who is compelled to demit office sometimes a decade before the prescribed age of superannuation. Similarly the abolition of a lucrative and prestigious post which a person may be holding even permanently would undoubtedly involve the most serious consequences to its holder yet it is well-settled that herein also the rules of natural justice are not attracted and no opportunity to show cause need be given. Similarly the termination of the services of a temporary employee whilst others similarly situated are retained would undoubtedly entail most serious civil consequences for the person whose services are so terminated and who is thus thrown into the vast pool of unemployment within this country. Nevertheless the final Court has repeatedly held that such a termination does not call in the principles of natural justice and the temporary employee has no right of hearing against such administrative action. Similar, if not more stringent, is the case of a probationer who has the most legitimate expectation of acquiring a permanent right to a post. However, when the services of such a probationer are terminated on the ground of unsuitability it is equally well-established that no opportunity need be given to him on the basis of natural justice. Though on the first flush and on a superficial reading the argument that every civil consequence entails necessarily a right of hearing and an opportunity to show cause may appear to be Utopianly attractive yet a deeper analysis thereof would show that no such blanket rule emerges from precedent. Indeed the final Court has itself given the phrase 'civil consequences' a somewhat limited and constricted meaning.

25. A reference to *S. L. Kapoor's case* in this context again becomes inevitable. Therein their Lordships were considering the State action of supersession of a Municipal Committee under section 238(1) of the Punjab Municipal Act which is in the following terms :—

> "238(1) Should a Committee be incompetent to perform or persistently make default in the performance of, the duties imposed on it by or under this or any other Act, or exceed or abuse its powers, the State Government may by notification, in which the reasons for so doing shall be stated, declare the Committee to be superseded.
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> * * * * *

It is manifest from the above that the pre-requisites for invoking section 238 are the incompetency to perform or persistent default of statutory duties and abuse or transgression of powers by the Municipal Committee. Any supersession under section 238 thus necessarily involves the stigma or a certificate of incompetence or persistent default on the one hand or abuse or transgression of powers on the other. Obviously enough penal and evil cnnsequences would be visited on the Committee and the members against whom such action was taken. It was expressly observed that the said unceremonious removal from office would involve a grave lowering of the members of the Committee in public esteem. Further it was assumed and indeed was patent that the members and the Committee had a legal right to continue in office for the prescribed term. It was in these specific circumstances that their Lordships held that the principles of natural justice would be attracted to the particular case. Even so they were careful not to prescribe any comprehensive and inflexible rule, as is evident from the following observations :—

> "* * *. We guard ourselves against being understood as laying down any proposition of universal application. Other statutes providing for speedy action to meet emergent situations may well be construed as excluding the principle *audi alteram partem*. All that we say is that section 238(1) of the Punjab Municipal Act does not."

I am, therefore, inclined to the view that *S. L. Kapoor's case* is no authority for the proposition that any and every minuscule civil consequence ensuing from administrative action inflexibly attracts the rule of natural justice.

26. That the final Court has itself hedged against an overly extension of the rule is then evident from the *Union of India* v. *Sankalchand Himatlal Sheth and another*, (6). Therein Mehta, J. in the well-known Full Bench case in *Sankalchand Himatlal Sheth* v. *Union of India and another*, (7) had elaborately taken the view that the power of the President under the Constitution to transfer a Judge of the High Court must be exercised in conformity with the principles of natural justice apparently on the ground that it involved grave civil consequences. Reversing that stance, Chandrachud, J. (as the learned Chief Justice then was), in tha leading majority judgment observed as under :—

> "One of the learned Judges of the Gujarat High Court, J. B. Mehta, J., has invalidated the order of transfer on the additional ground that it was made in violation of the principles of natural justice a consideration which in my opinion is out of place in the scheme of Article 222(1)."

Untwalia, J., however, forcefully went much further to observe as follows :—

> To invoke the principle of natural justice in the case of transfer of a judge under Article 222(1), if otherwise it is permissible to make the transfer without his consent, will *be stretching the principle to a breaking point. It will lead to many unpractical, anomalous and absurd results and will* have inevitable repercussions in the order of transfers made in other branches of service either under the Union or the States."

Equally instructive it is to recall the words of Lord Denning, a Judge known for his liberalism and even for the extension of the

(6) A.I.R. 1977 S.C. 2378.

(7) (1976) 17 Gujarat L.R. 1017.

rules of natural justice in *R. v. Secretary of State,* (8).

> "If Mr. Mughal had been lawfully settled here, the enquiries which the immigration officer made would go to help him—to corroborate his story—rather than hinder him. There was no need at all for immigration officer to put them to him when they proved adverse. *The rules of natural justice must not be stretched too far. Only too often the people who have done wrong seek* to invoke the rules of natural justice so as to avoid the consequences."

The aforesaid view has the seal of approval of the final Court as the aforesaid passage was expressly quoted and reiterated by their Lordships in *H. C. Sarin* v. *Union of India,* (9).

27. To conclude, civil consequences, in order to attract the rules of natural justice, cannot possibly be given a comprehensive connotation of everything which affects a citizen in his civil life. In this contextual limitation they must involve either actual or at least a possibility of unfairness or prejudice on the part of the authority or the consequences which are evil, penal or stigmatic in nature to the victim of such adverse administrative action.

28. Now an analysis of section 103 would show that it visualises three eventualities on which the action of the ultimate dissolution of the trust is to be rested—

(i) where all sanctioned schemes have been executed;

(ii) where such schemes though not completed but have been substantially executed thus rendering the continuance of the trust unnecessary in the opinion of the Government; and

(iii) where in the opinion of the State Government it is expedient that the trust should cease to exist.

It would be evident that so far as the first two categories are concerned these are either purely or primarily factual. It is elementary that Improvement Trusts under the Act are constituted for urban

(8) (1973) 3 All Eng Law Reporter 796.
(9) (1976) 2 S.L.R. 248.

improvement and renewal through the execution of a wide variety of schemes after they have been sanctioned by the State Government. Where all such schemes have reached completion the continued existence of the trust would become a mere surplusage and consequentially the necessity for its dissolution. It has to be recalled that Improvement Trusts under the Act are invariably created in areas where Municipal Committees already exist. There is thus a modicum of self-government and an existing civil body which can after the dissolution of the Trust take up the thread to either continue the scheme or maintain them, under sub-section (2) of section 103. Equally in cases where the completion of the sanctioned scheme is not total the State Government on the particular facts may still be of the opinion that the unexecuted part of the scheme does not warrant the continuance of the Trust. It bears repetition that Improvement Trusts are in a way super-added bodies to the Municipal Committees which in essence are equally enjoined with the same duties of urban improvement and renewal. They are only a specialised wing for improving the town which generally a Municipal Committee is equally obliged to do. Therefore, in such a situation also the law vests the Government with the power to dissolve the Trust if the necessary factual matrix for the exercise of the power exists.

29. The third or the residuary category here is where the State Government is of the opinion that it is expedient to dissolve the Trust. It is evident that an exhaustive enumeration of the conditions which may necessitate the dissolution of a Trust is perhaps neither possible and in any case has not been attempted in Section 103. A discretion has been vested in the Government in this context by the designed use of the word 'expedient' which is of wide ranging connotation and is further rested on the opinion of the State Government which may well be subjective and not wholly objective. It deserves highlighting that the statute does not even enjoin the State Government to record any reason for its opinion for the expediency of dissolution. The matter in terms has been left to the discretion and the good sense of the highest functionary, namely, the State Government itself.

30. It would thus appear that the three eventualities upon which the dissolution of the Trust under Section 103 may be rested are either purely factual or based on the subjective satisfaction of the State Government that it is expedient to do so. They are in no way

connected with any misconduct, abuse of power, incompetence or corruption on the part of the Chairman or the trustees. This is in sharp-contrast with section 72-F which is squarely rested on the fault liability of the Trust as a body. Consequently a dissolution under section 103 does not involve any stigmatic or even an innuendo of misconduct on the part of the Trust. Thus no penal, evil or stigmatic consequences flow from such dissolution. Therefore, the ratio of *S. L. Kapoor's case* would not be attracted nor that of *Jathedar Jagdev Singh and Ors.* v. *The State of Punjab* (10). It bears repetition that by virtue of sections 5 and 6, the tenure of the trustees and the Chairman of the Trust being co-terminus with its existence automatically comes to an end by its dissolution. Therefore, no legal claim survives to either of them to continue in office after the dissolution and the impugned action does not cut short any vested rights. In view of the clear-cut provisions aforesaid the Chairman and the trustees enter upon their offices with their eyes open to the transitory nature of their tenure in the context of its dissolution and with the clear knowledge that it may come to an end any moment under section 103 of the Act. If there is thus no legal right to continue after dissolution nor any panel or stigmatic consequences flow therefrom then on the parity of reasoning with the cases of compulsory retirement, termination of temporary employees' services, non-confirmation of probationers etc. the principles of natural justice would not be attracted.

31. Again, as has been observed earlier, the word 'expedient' is a wide ranging one which would include within its ambit even a change of policy by the government. The State Government may come to the conclusion that it is necessary and expedient to shift over to a new policy to execute the urban renewal or improvement, through another agency which would call for the dissolution of the Trust. As in the present case, the firm stand of the respondent State, both in its return and of its learned counsel at the bar, is that the working of Improvement Trusts all over the State, in the opinion of the government, was not satisfactory and consequently, it was decided to shift over to a new policy. In fairness to the learned counsel for the petitioners, it must be noticed that this stand was assiduously assailed as a mere camouflage and it was allged that the ultimate purpose was to only substitute the members of the ruling

(10) A.I.R. 1980 Pb. & Hy. 16.

party as Chairman and the Trustees in place of persons who had been appointed in the earlier Akali-Janata regime. However, allegations of this nature have been categorically denied in the affidavit filed on behalf of the respondent-State as also in that of the Chief Minister, Shri Darbara Singh himself. At this stage we cannot but assume the *bonafides* of the respondents' action. Nor is there any ground to presume that this would be later belied as strenously contended on behalf of the petitioners. On this premise the respondent-State has made a designed change of dissolving the Improvement Trusts and to execute the development and improvement schemes all over the State through Administrative Officers. It is significant that simultaneously with the action of dissolution, a change had been brought about in section 103 of the Act by the Amending Ordinance (which has now become an Act) which was not made the subject-matter of challenge before us in the arguments. By this statutory change, provision has been made that the work of the dissolved Improvement Trusts is to be carried out by the respective Deputy Commissioners or the Sub-Divisional Officers as the case may be for the time being. A distinct change of policy is, therefore, evidenced by an amendment in the Act, by the impugned notification of dissolution whereby Deputy Commissioners and Sub-Divisional Officers have been designated to perform the functions of the Trust and their Chairman. It has been repeatedly held that where action is rooted in a designed change of policy by the government affecting all or a large body of citizens, then principles of natural justice cannot be reasonably invoked. In the Full Bench cases *Gurdas Singh Badal* v. *The Election Commission of India and Ors.* (11) 1, it was observed as follows:—

> ".....As to what particular rule of natural justice, if any, should apply to a given case must, it was held, depend to a great extent on the facts and circumstances of that case, the frame-work of the law under which the enquiry is held and the constitution of the tribunal or body of persons appointed for the purpose. The crux of the matter is that if an administrative authority is to act judicially, the order proposed by it is quasi-judicial, but if it has no such duty and is allowed by law to proceed on considerations of expediency or policy, the order is not quasi-judicial, but an administrative one."

(11) 1972 I.L.R. (Pb. & Hy.) 1.

Though not directly on the point by way of analogy, it was observed in *M. T. Rasheed and Others* v. *The State of Kerala* (12) that if the State Government, as a matter of policy, takes a decision on materials which are not altogether extraneous, then the courts would be chary to interfere therewith.

32. Now apart from precedent, on larger considerations also, it is manifest that where a pristine policy decision resulting in State action affects millions of its citizens, it is neither possible nor perhaps desirable to afford an opportunity to the whole citizenry. Matters of this kind cannot possibly be converted into a *lis* in which opposing views should be adjudicated upon as if in a trial, Giving an opportunity of a hearing to every one so affected in issues of State policy, may be both impracticable and self-defeating as well. Both the argument *ab inconvenient* and may be *augmentum ab impossibili* would be attracted to such a situation. Even in the present case, as many as 21 Improvement Trusts including within their scope their Chairman and all the Trustees would be directly concerned and it can equally be said that the civic rights of the inhabitants of the respective towns and townships may also be affected. Can it possibly be said that each one of the aforesaid persons must be afforded a reasonable opportunity of hearing before the State Government takes any policy decision in this context? It would appear that the answer would obviously have to be in the negative.

To sum up, in view of the fact that the Chairmen and the Trustees have no legal right to hold office beyond the dissolution of the Trusts, the implied exclusion of the rule because of such a provision under section 72-F, and its absence under section 103; the absence of any penal, evil or stigmatic consequences flowing from a dossolution under section 103; and the larger policy decision of the State Government to dissolve all Improvement Trusts within the State would commulatively show that the principles of natural justice are not attracted to State action under section 103 of the Act. The answer to the question posed at the outset has, therefore, to be rendered in the negative.

34. The cardinal issue in the case having been decided as above, it nevertheless remains to briefly advert to the ancillary submissions

(12) A.I.R. 1974 S.C. 2249.

Learned counsel for the petitioners took the stand that section 72-F of the Act conferred somewhat similar (though not identical) powers of suspension and supersession of a Trust in the government as against the power of dissolution under section 103 of the Act. On this premise, he contended that no guideline having been provided for resorting to either of the two sections, the State action was consequently arbitrary and discriminatory and therefore void. This contention has only to be noticed and rejected. Obviously the inspiration therefor was the earlier view in *Northern India Caterors (P) Ltd.* v. *State of Punjab* (13). Undoubtedly, this held the field for sometime but now has been decisively overruled and reversed in *Maganlal Chhaganlal (P) Ltd.* v. *Municipal Corpn. of Greater Bombay and Ors.* (14) wherein it has been authoritatively held that neither the provision nor an action is violative of Article 14 of the Constitution of India on the mere ground of the availability of two procedures to the authority. Even otherwise, it is patent as already held above, that the power of suspension and supersession under section 72-F of the Act is distinct and separate from the power to dissolve the Trusts under section 103 of the Act.

35. Somewhat ingenious though obviously fallacious contention sought to be raised on behalf of the petitioners was that the impugned notification did not disclose any reasons for the dissolution of the Trust. However, neither principle nor precedent could be cited for the unusual stand that the notification itself should contain all the reasons for the action or should be in the nature of a speaking order. We are unable to find the least infirmity on this score in the impugned action. As already noticed, section 103 of the Act, does not require the recording of reasons as a pre-condition for action thereunder. Nevertheless, in the return, filed by the State the motivating factors of governmental actions have been clearly delineated.

36. An equally tenuous argument, which was projected was that the Ordinance amending section 103 of the Act was issued on the same date of August 11, 1980 as the impugned notification of dissolution. We are unable to see how this in any way invalidates

(13) A.I.R. 1967 S.C. 1581.

(14) A.I.R. 1974 S.C. 2009.

the respondent-State's action. It suffices to mention that it was not even the case of the petitioner that annexure P/3 was earlier than the amending Ordinance. The second part of the impugned notification clearly refers to sub-section (2)(c) of section 103 of the Act and designates the officials in accordance with the amendment, brought in the section. There is thus intrinsic evidence in the impugned notification itself that it followed and was in consonance with the amending Ordinance.

37. Lastly, what calls for notice is the contention of the learned counsel that the last eventuality for the dissolution of the Trust must be read *ejusdem generis* with the preceding ones. It was submitted that the earlier two visualised either the total or the substantial completion of the sanctioned schemes and therefore, the opinion of the State Government that it was expedient to dissolve must also be related to the said schemes. I am unable to find any adequate basis for this argument on the language of section 103 of the Act. As already noticed, the third eventuality is a residuary one. The language used for couching this power is a wide ranging one and is not hedged-in either expressly or by necessary implication to the sanctioned schemes. To my mind, the third and the last ground for dissolution of the Trust is an independent, extensive and distinct power which is in no way circumscribed by the limitations of the earlier ones.

38. All the contentions raised on behalf of the petitioners having been rejected, these eight writ petitions, therefore, must fail and are hereby dismissed. In view of the somewhat intricate issues involved, the parties are left to bear their own costs.

39. Before parting with this judgment, it must be noticed that in view of the denial of the allegations by the Chief Minister S. Darbara Singh, the learned counsel for the parties did not prove the issue of *mala fides*.

M. R. Sharma, J.—I agree.

N.K.S.