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their application under section 16 of the Act had been rejected on the ground that the evacuee property did not belong to them.

In view of what I have said above, I would accept this appeal, set aside the judgment and decree of the Learned Additional District Judge and remit the case to him for giving a finding on the remaining issues and then deciding the appeal in accordance with law. In the circumstances of this case, however, the parties will bear their own costs throughout.

B.R.T.

FULL BENCH

Before S. S. Dulat, Tek Chand and D. K. Mahajan, JJ.

JOGINDER SINGH,—*Petitioner.*

versus

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

Civil Writ No. 127 of 1961:

1963

Jan. 9th

Punjab Municipal Act (III of 1911)—Ss. 14 and 16—Orders passed under, by State Government—Whether administrative or judicial or quasi-*judicial—"Flagrantly abused his position as a member of the Committee"—Meaning of—Abuse of position as President—Whether can form reason for removal from membership of Committee—Action of an Authority under an Act—Validity of—How to be examined.*

Held, that the orders passed by the State Government under sections 14 and 16 of the Punjab Municipal Act are administrative and not judicial or *quasi*-judicial.

Held, that section 14 of the Punjab Municipal Act, 1911, authorises the State Government to order a seat to be vacated "for any reason which it may deem to affect the public interests". There is nothing in the section requiring any notice or hearing. The omission is significant in view of a clear provision in section 16 of the same Act which does require that a member, before he is removed, must be given

notice embodying the reasons for his proposed removal and given an opportunity to tender an explanation. It is unthinkable that this kind of provision was inadvertently and not deliberately omitted from section 14. The same conclusion follows from the language itself, for all that it requires is that the State Government must think that public interest requires a particular seat to be vacated. When the State Government orders a seat to be vacated, it does not, and is not required to, perform any judicial or *quasi*-judicial function, and no rule of natural justice comes into the picture.

Held, that the State Government, when considering the removal of a member under section 16 of the Act, is not required to proceed judicially at any stage. It is true that the State Government has to form an opinion whether the particular member has or has not "flagrantly abused his position as a member of the Committee", but there is no indication that it must do so in a judicial or *quasi*-judicial manner except to the extent mentioned in the proviso to the section, the requirements of which are only two—(1) that reasons for the proposed removal must be communicated to the member, and (2) that he must be allowed an opportunity of tendering an explanation in writing. In the face of these explicit terms, which both define and limit the nature of the proceedings, it is idle to suggest that something more is necessary.

Held, that the clause "flagrantly abused his position as a member of the Committee" means is that if a member of a Committee, in disregard of his duty, does any act or acts, which shock a reasonable mind, then he can be removed by the State Government, and again it is the State Government that has to form that opinion. If a member of a Municipal Committee proceeds to encroach on the municipal land and imports goods into the municipal area and avoids payment of octroi duty and does other similar acts while sitting as a member of the Committee, he does in a real sense abuse his position as a member of the Committee. It is no answer for him to say that those acts were not, as they indeed could never have been, done in exercise of his powers as a member of the Committee. Similarly if a President of the Municipal Committee tampers with municipal records in collusion with the Secretary to show favour to a

particular contractor, and the State Government finds that he had by his acts "flagrantly abuse his position as a member of the Committee", it cannot be said that the conclusion has no basis. It cannot be argued that on these allegations he could be removed only from his office as President and not from his membership of the Committee for he became the President because he was a member. Considering the intimate relationship between the two positions, it is hardly possible to ascribe any dishonest act of his to one position rather the other, for dishonest conduct relates to both capacities.

Held, that when a question arises whether a statutory authority has or has not acted in accordance with law, the terms of the statute setting up that authority have to be examined and the Court has to decide, in view of the statutory provisions, whether the Authority concerned has exceeded its power or acted in a manner contrary to the statutory provisions. It is, therefore, neither permissible nor in any sense proper to invoke the assistance of any outside rule, whether of natural justice or otherwise. It is equally clear that it is only when a statutory authority is required by the appropriate statute to act in a judicial or *quasi*-judicial manner that any question of any rule of natural justice really arises. In every case, therefore, the real question always is whether the terms of the particular statute setting up the particular authority have been observed or violated.

Case referred by the Hon'ble Mr. Justice Tek Chand to a larger Bench on 30th April, 1962, owing to the importance of the questions of law involved in the case. The case was finally decided by a Full Bench consisting of the Hon'ble Mr. Justice Dulat and Hon'ble Mr. Justice Tek Chand and Hon'ble Mr. Justice Mahajan, on 9th January, 1963.

H. S. GUJRAL, ADVOCATE, for the Petitioner.

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL and CHETAN DASS, DEPUTY ADVOCATE-GENERAL, for the Respondents.

ORDER

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DULAT, J.—These five petitions (Civil Writ 127 of 1961, Civil Writ 106 of 1961, Civil Writ 1939 of

1961, Civil Writ 1240 of 1961 and Civil Writ 1241 of 1961), were argued before us one after the other, and, although the facts are in each case different and we thought, at one stage, of dealing with them separately, we find it proper, in order to avoid repetition, to dispose of them together, for a good deal of the argument in all these cases turns on matters which are common to them.

To put it shortly, these petitions question the validity of five decisions made by the State Government under the Punjab Municipal Act, 1911, one of the decisions being under section 14 of that Act and the remaining four under section 16. Section 14 says—

> "14. Notwithstanding anything in the foregoing sections of this chapter, the State Government may, at any time, for any reason which it may deem to affect the public interests, or at the request of a majority of the electors, by notification, direct—
>
> (a) * * * * *
>
> (b) * * * * *
>
> (e) that the seat of any specified member, whether elected or appointed, shall be vacated on a given date, and in such case, such seat shall be vacated accordingly, notwithstanding anything in this Act or in the rules made thereunder."

Section 15 deals with the resignation of members of a Committee and then comes section 16 which, omitting the irrelevant portion, says—

> "16. (1) The State Government may, by notification, remove any member of a Committee . . . . . if, in the opinion of the

State Government, he has flagrantly abused his position as a member of the Committee or has through negligence or misconduct been responsible for the loss, or misapplication of any money or property of the Committee."

This is followed by a proviso in these words—

Provided that before the State Government notifies the removal of a member under this section, the reasons for his proposed removal shall be communicated to the member concerned, and he shall be given an opportunity of tendering an explanation in writing."

Sub-section (2) of section 16 then says, again omitting the irrelevant portion—

"16. (2) A person removed under this section ..... shall be disqualified for election for a period not exceeding five years",

and sub-section (3) says—

"16. (3) A person whose seat has been vacated under the provisions of section 14(e) may be disqualified for election for a period not exceeding five years."

The State Government thus stands vested with two powers, namely, (1) the power under section 14 to order that the seat of any specified member shall be vacated on a given date which can be done "for any reason which it may deem to affect the public interest", and (2) the power to remove any member of a Committee under section 16 on the ground, among others, that "in the opinion of the State Government", the member concerned "has flagrantly abused his position as a member of the Committee". It is also clear that if removal is ordered under section 16 of the Act, the member so removed has to be "disqualified for election for a

period not exceeding five years". If the seat of a member is ordered to be vacated under section 14, he may or may not be disqualified for election, the period again being not exceeding five years. Further section 14 does not mention any notice to be given to the member concerned. Section 16, on the other hand, requires a notice containing the reasons for the proposed removal to be given to the member and also an opportunity of tendering an explanation in writing. The main controversy in the present cases turns on the proper construction of the provisions of sections 14 and 16 of the Municipal Act.

On the 23rd September, 1960, Shri Joginder Singh, petitioner, (in Civil Writ 127 of 1961), who was till then a member of the Municipal Committee, Mukerian, was ordered to vacate his seat. The notification was issued under section 14, and it said—

"* * * * the Governor of Punjab, for reasons of public interests, is pleased to direct that the seat of Shri Joginder Singh, Member, Municipal Committee, Mukerian, in the Hoshiarpur District, shall be vacated from the date of publication of this notification in the State Gazette and to direct further that under sub-section (3) of section 16 *ibid* he shall be disqualified for election for a period of three years from the date specified above." Civil Writ 127 of 1961, questions the validity of the Governor's order. The other four cases arise out of the removal of four Municipal Commissioners under section 16.

Ram Kishan, petitioner, (in Civil Writ 106 of 1961), was a member of the Municipal Committee, Bassi Pathanan, district Patiala. He was, in fact, the President of that Committee. He was sent a notice on the 3rd August, 1960, the notice being under section 16, and that notice mentioned several

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reasons for his proposed removal on the ground that he had abused his position both as a member as well as President of the Committee, and that he had been responsible for causing a loss of Rs. 600 to the Municipal funds. He was asked to send his explanation within 21 days. He did not do so, and on the 18th January, 1961, the Governor, by notification ordered his removal on the ground that he had flagrantly abused his position as a member of the Committee, and further directed that he be disqualified for election for a period of two years. Civil Writ 106 of 1961, is against the Governor's order.

The remaining three petitioners, Shri Darbari Lal, Shri Lal Chand and Shri Gian Chand (in Civil Writs 1239, 1240 and 1241 of 1961, respectively), were members of the Municipal Committee, Abohar, Shri Lal Chand, being the Senior Vice-President and Shri Gian Chand, the Junior Vice-President. Each of them was sent a notice on the same date, being the 8th July, 1961, and in each case the notice mentioned several reasons for the proposed removal, again on the ground that the member concerned had flagrantly abused his position as a member of the Committee. Each of them submitted an explanation and, after considering those explanations, the Governor on the 6th September, 1961, made an order, by notification, removing each of them under section 16, and further ordered that each of them be disqualified for a period of three years. Civil Writs 1239, 1240 and 1241 of 1961, challenging the validity of the three decisions.

One argument common to all these petitions is that a member of a Municipal Committee has a right to sit on the Committee and, when his seat is required to be vacated under section 14 of the Punjab Municipal Act or he is removed under section 16 of the Act, his precious right is taken away

from him and before that can be permitted, he must have a right to be heard, and not only that but a right to examine the evidence said to exist against him and to rebut that evidence, more or less, like a litigant has such a right during ordinary litigation. This right, according to the argument, or rather this obligation on the part of the competent authority before taking a decision, rests not on the nature of the act performed nor on the terms of the statute empowering such an act but on an overriding principle that nobody's rights can be jeopardised without a proper hearing. This argument, it will be noticed, seeks to lift the controversy above the question, whether the decision of the State Government in such cases as the present is an administrative act or a quasi-judicial act, and also above the necessity of considering the statutory provisions governing the power of the State Government. It assumes, on the other hand, some rule above the ordinary law of the country with which, if I have understood the argument rightly, the appropriate Legislature cannot interfere. I am, however, unable to find any foundation for such a sweeping claim, and the decisions of the Supreme Court, which have been placed before us, do not support such a claim. An early decision *Province of Bombay* v. *Khushaldas S. Advani* (1), provides a direct answer to the substance of this submission. In that case, a flat in Bombay in the occupation of Khushaldas Advani was requisitioned by the State Government under the Bombay Land Requisition Ordinance of 1947. Khushaldas Advani was not allowed any opportunity of being heard against the order and he, therefore, filed a writ petition in the Bombay High Court to quash the requisitioning order. The High Court agreed and quashed the order. On appeal, however, the Supreme Court reversed that decision, holding that the order of the

(1) A.I.R. 1950 S.C. 222.

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State Government was an administrative order and not a judicial or a quasi-judicial decision and it was, therefore, not open to scrutiny by the High Court. Fazal Ali J., who shared the view of the majority, observed that the simplest way to decide that case was to "try to construe correctly section 3 of the Ordinance under which this case has arisen", and he later quoted with approval the dictum of Lord Halsbury in *Mayor etc. of Westminister* v. *London and North Western Railway Co.* (2), stating—

> "Where the Legislature has confided the power to a particular body with a discretion how it is to be used, it is beyond the power of any Court to contest that discretion. Of course, this assumes that the thing done is the thing which the Legislature has authorised."

Das, J., again agreeing with the majority view, observed—

> "It is well established that if the Legislature simply confides the power of doing an act to a particular body if in the opinion of that body it is necessary or expedient to do it, then the act is purely an administrative, i.e., an executive act as opposed to a judicial or quasi-judicial act, and, in the absence of proof of bad faith, the Court has no jurisdiction to interfere with it and certainly not by the high prerogative writ of *certiorari.*"

It is clear from facts involved in that case that the right of the petitioner, Khushaldas Advani, to

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(2) (1905) A.C. 426.

occupy the flat, had been infringed by the requisitioning order, and the learned Judges of the Supreme Court, who dissented emphasised that circumstance, but even their conclusion rested on the view that the particular power vested in the Government was not merely administrative but quasi-judicial in nature and this, in turn, they concluded from the terms of the Ordinance itself, and there was no appeal to any superior law overriding the terms of the relevant statute. The submission, therefore, that the question, whether the orders of the State Government now in dispute are administrative or quasi-judicial is immaterial, has, in my opinion, no validity.

In the course of arguments before us repeated mention was made of the rules of natural justice, and it was said that every authority empowered to decide any matter touching the rights of a citizen has to observe those rules which are, more or less, unalterable and which do not depend on the expresses terms of a statute. The answer, again, is provided by the Supreme Court. In *the New Prakash Transport Co. Ltd.*, v. *The New Suwarna Transport Co. Ltd.*, (3), Sinha, J. said emphatically—

> "* * * *It has got to be observed that the question whether the rules of natural justice have been observed in a particular case must itself be judged in the light of the constitution of the statutory body which has to function in accordance with the rules laid down by the legislature and in that sense the rules themselves must vary."

Later on, he had occasion to observe—

> "How far judicial opinion may vary as to the content of the rule of natural justice

(3) A.I.R. 1957 S.C. 232.

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is amply illustrated by the case of *Rex* v. *Local Goernment Board, Ex parte Arlidge* (4), at different stages."

The particular case before the Supreme Court had arisen under the Motor Vehicles Act, and, when finally disposing of the case, Sinha, J., said—

> "Keeping in view the observations of this Court quoted above and the principles of natural justice dicussed in the several authorities of the highest Courts in England, we have to see how far the provisions of the Motor Vehicles Act and the rules framed thereunder justify the criticism of the High Court that the Appellate Authority did not give full and effective opportunity to the first respondent to present his point of view before it."

It, therefore, comes to this that when a question arises whether a statutory authority has or has not acted in accordance with law, the terms of the statute setting up that authority have to be examined and the Court has to decide, in view of the statutorty provisions, whether the Authority concerned has exceeded its power or acted in a manner contrary to the statutory provisions. It is, therefore, neither permissible nor in any sense proper to invoke the assistance of any outside rule, whether of natural justice or otherwise. It is equally clear that it is only when a statutory authority is required by the appropriate statute to act in a judicial or quasi-judicial manner that any question of any rule of natural justice really arises. In every case, therefore, the real question always is whether the terms of the particular statute setting up the particular authority have been observed or violated.

(4) (1913) 1 K.B. 463.

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It is possible now to turn to the individual cases. First is Joginder Singh's case, whose seat was ordered to be vacated under section 14 of the Act. It is said on his behalf that he should have been given notice and afforded a hearing before the State Government took its decision. The frame of section 14, however, does not support this view, for it authorises the State Government to order a seat to be vacated "for any reason which it may deem to affect the public interests". There is nothing in the section requiring any notice or hearing. The omission is significant in view of a clear provision in section 16 of the same Act which does require that a member, before he is removed, must be given notice embodying the reasons for his proposed removal and given an opportunity to tender an explanation. It is unthinkable that this kind of provision was inadvertently and not deliberately omitted from section 14. The same conclusion follows from the language itself, for all that it requires is that the State Government must think that public interest requires a particular seat to be vacated. I should have thought that the decision in *Khushaldas Advani's case* (1), concludes this matter, for the language of the Ordinance considered by the Supreme Court in that case was very similar to what section 14 of the Punjab Municipal Act says, although, of course, the context was different. The matter, however, does not rest there, for more recently in *Radeshyam Khare and another* v. *The State of Madhya Pradesh and others* (5), the Supreme Court had occasion to consider a provision of a Municipal Act, being section 53-A of the C. P. and Berar Municipalities Act, 1922, The State Government had, acting under section 53-A, appointed a servant of

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

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Government as the Executive Officer of the Committee, finding that the Committee was not competent to perform the duties imposed on it, and that a general improvement in the administration of the Municipality was likely to be secured by the appointment of a Government servant. A question arose in that case whether, before the State Government made its decision, a notice to the Municipal Committee along with an opportunity of being heard was necessary. The Supreme Court found that there was no such obligation under the Act, as the power entrusted to the State Government was in its nature administrative and did not have to be performed in a judicial or quasi-judicial manner. That decision of the Supreme Court is very much in point, for, to some extent, both parties depend on it. The main question, as I have indicated, there was whether the act of the State Government was administrative or quasi-judicial, for, in the latter case alone was there any need, according to the Supreme Court, to observe any rule of natural justice. S. R. Das, C. J., after considering the language of the particular provision and the nature of the power exercised by the State Government, came to the firm conclusion that the State Government had, while acting under section 53-A of the C.P. and Berar Municipalities Act, merely performed an administrative function, and, as it did not have to be done judicially or quasi-judicially, there was no obligation to hear anybody. Having thus disposed of the case, the learned Chief Justice, went on to say something about the rule of fairplay, and it is on those brief observations that Mr. Gujral for the petitioner particularly depends. What he said was this—

> "To say that action to be taken under section 53-A is an administrative action is not

to say that the State Government has not to observe the ordinary rules of fair-play. Reference to the observations made by Fortesque J. In *Dr. Bentley's case* about God asking Adam and Eve whether they had eaten the forbidden fruit appearing in the judgment of Byles J. in *Cooper* v. *Wandsworth Board of Works* (6), is apposite. The decision in the last-mentioned case clearly establishes that in some cases it may be necessary to give an opportunity to a party to have his say before an administrative action is taken against him. But that is quite different from the well ordered procedure involving notice and opportunity of hearing necessary to be followed before a quasi-judicial action, open to correction by a superior Court by means of a writ of *certiorari,* can be taken. The difference lies in the manner and mode of the two procedures. For the breach of the rules of fair-play in taking administrative action a writ of *certiorari* will not lie."

The learned Chief Justice then considered the nature of the enquiry that had in that case been held and he found that the petitioners-appellants had no cause for grievance. From these observations concerning fair-play arises the suggestion that while, if a particular power is to be exercised in a judicial or quasi-judicial manner, strict observance of the rules of natural justice involving notice and hearing is necessary, there is even in the case of administrative action a rule of fair-play which is equally obligatory, and the rule of fair-play is that a hearing to the interested party must

(6) (1863) 14 C.B. (N.S.) 180 : 143 E.R. 414.

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be given in some form or another. This argument omits to notice what the learned Chief Justice himself said in the end of his observations, namely—

> "For the breach of the rules of fair-play in taking administrative action a writ of *certiorari* will not lie."

Mr. Gujral contends that this only means that the remedy by way of *certiorari* may not be open, but that relief by way of *mandamus* can still be afforded, and he suggests that if in the case before the Supreme Court the petitioners had asked for relief by *mandamus* alone, they would have succeeded. It is true that in *Radeshyam Khare's case* (5), the main prayer was for *certiorari*, so that the impugned order of the State Government could be quashed. There was, however, an ancillary praper by way of *mandamus*, and I cannot think that just because the petitioners there had omitted to ask for a simple writ of *mandamus* and had ill-advisedly prayed for both *certiorari* and *mandamus*, the Supreme Court denied the petitioners appropriate relief. What the observations of the learned Chief Justice really come to, in the particular context, is, simply this that although the Courts are powerless to do anything if an administrative or executive act has been performed, even if in its performance some unfairness in the ordinary sense has occurred, it is wise for everybody concerned to observe the ordinary rules of fair-play. I say this because out of the other four learned Judges of the Supreme Court in that case none adverted to this aspect of the matter, and the only learned Judge, who did so briefly (Kapur, J.), was not entirely in agreement with the view taken by the two English authorities mentioned by S. R. Das, C.J. Kapur, J., in this connection, referred to several English decisions and one of those,

B. Johnson & Co. (Builders), Ltd., v. *Minister of Health* (7), contains an interesting discussion of the phrase "duty to act fairly" which, I think, helps to understand the meaning of S. R. Das, C.J., when he spoke of the ordinary rules of fair-play. Lord Greene, M.R., said there—

> "* * * * * every Minister of the Crown is under a duty, constitutionally, to the King to perform his functions honestly and fairly and to the best of his ability, but his failure to do so, speaking generally, is not a matter with which the Courts are concerned. As a Minister, if he acts unfairly, his action may be challenged and criticised in Parliament. It cannot be challenged and criticised in the Courts unless he has acted unfairly in another sense, *viz.*, in the sense of having, while performing quasi-judicial functions, acted in a way which no person performing such functions, in the opinion of the court, ought to act. On the assumption, for instance, that the respondents are wrong in their contention, and that there was no obligation to disclose these documents, I can well understand some people might say : 'Well, unless there was some other objection, the Minister ought, in fairness, to have let these people know what he had got in his file on this particular topic'. If the Crown is right and the respondents are wrong, the statement that in fairness he ought to have disclosed that information means nothing more than that, as a Minister is expected to act fairly, he might have

(7) (1947) 2 All. E.R. 395.

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been expected to do it. It would not mean that his failure to do it amounted to a breach by him of any duty imposed on him by law which could be discussed and enforced in the courts. On the other hand, if the expression 'bound to act fairly' is used in strict reference to his semi-judicial functions, it then bears a totally different meaning. It then means, not that a Minister must be expected under his general duty to act fairly, but that, if he does not act fairly, he breaks a rule laid down by the courts for the behaviour of a quasi-judicial officer. Therefore, it is important, in my opinion, if that phrase is used, to be quite sure in which of those two senses it is being used."

On reading through the judgment of the learned Chief Justice in *Radeshyam Khare's case,* (5), it appears to me that he was referring to rules of fair-play in the first of the two senses mentioned by Lord Greene, for not only he says quite clearly that the breach of the rules of fair-play does not invite action by way of *certiorari,* but even before then he had concluded that the decision of the State Government was not a judicial or quasi-judicial decision.

It was suggested on behalf of the petitioner that the view taken by the Supreme Court in *Khushaldas Advani's case* (1), was, to some extent, modified in *Radeshyam Khare's case* (5), and that that particular case would have been decided the other way if three of the learned Judges had not been of opinion, that, as a matter of fact, some kind of enquiry had been held in the presence of the officers of the Municipal Committee before action

was taken by the State Government, As far as I can see, however, only one learned Judge, Bhagwati J., chose to base his decision on that particular fact, and the other learned Judges decided the case, except, of course, Subba Rao, J., who was dissenting all along, on the ground that the decision of the State Government was merely administrative and the Courts, therefore, were not competent to interfere. It is quite true that S. R. Das, C.J., and also Kapur, J., referred to the actual enquiry that had been held, but neither of them said that it was the kind of enquiry that they would have expected a quasi-judicial authority to make. Nor is it right to say that the Supreme Court in *Radeshyam Khare's case,* (5), in any sense, modified the view previously expressed in *Khushaldas Advani's case* (1) and, in fact, passage after passage from it was quoted with approval by the Supreme Court in the later decision. Considering, the language of section 14 of the Punjab Municipal Act and the other provisions of the same Act, to which our attention has been invited, there is, I find, no escape from the conclusion that when the State Government orders a seat to be vacated, it does not, and is not required to, perform any judicial or quasi-judicial function, and no rule of natural justice, therefore, comes into the picture. As I have said, the provision of law does not require any notice or hearing, and the grievance, therefore, that there was none in this case, has no legal foundation.

Mr. Gujral's next submission is that on the facts mentioned in the return filed by the State Government, it would appear that action against Joginder Singh should have been taken under section 16 of the Punjab Municipal Act, which provides for the removal of a member, and that the decision of the State Government, therefore, should

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be deemed to have been made under section 16, and hence notice should have been given to him. The return says in one paragraph that the Deputy Commissioner of the district had reported that Joginder Singh's activities were detrimental to communal harmony and calculated to cause a breach of the peace and disturbance of public tranquillity. Mr. Gujral refers to section 16(1)(d) of the Municipal Act which says that the State Government may remove any member "if his continuance in office is, in the opinion of the State Government, dangerous to the public peace or order", and contends that this is a special provision which covered the petitioner's case and recourse ought to have been had to it instead of what, counsel contends, is a general provision in section 14. Reliance for this argument is placed on a decision of this Court in *Harnam Singh Modi* v. *The State* (8), which does to some extent support Mr. Gujral's argument. The authority of that decision, however, stands entirely shaken by the decision of the Supreme Court in *Radeshyam Khare's case* (5), for in that case an exactly similar argument was addressed to the Supreme Court, and it was said that action should have been properly taken by the State Government under another section instead of the particular section under which action was actually taken, and it was urged that on the facts the notification of the State Government should be taken to have been made under the provision of law which was particularly applicable. The argument was repelled by the Supreme Court, and the Court said, as the headnote shows, that inasmuch as the Government is not obliged to act under either section at all, it would be entirely for the Government to consider whether it would take action under one or the

(8) (1958) 60 P.L.R. 394.

other provision of law. It was noticed that the exercise of the powers under both sections overlapped to some extent, but was no ground for saying that action actually taken under one section should in law be deemed to have been taken under another. In the face of this decision it is, in my opinion, idle to suggest that in the present case, although the State Government ordered Joginder Singh's seat to be vacated under section 14 of the Punjab Municipal Act, that decision should in law be considered a decision removing him from the Municipal Committee under section 16 of that Act. It is obvious that the State Government was competent to order that the particular seat should be vacated, if it found, as indeed it did, that, "for any reason" affecting the public interests it was necessary to do so. It was equally open to the State Government to order the petitioner's removal if the State Government found that his continuance in office was dangerous to the public peace or order. The State Government decided to act under section 14, and the suggestion seems to me unfounded that it must be deemed to have acted under section 16, merely because the State Government might well have done so.

Mr. Gujral next urges that even if no notice was necessary to the petitioner before his seat was ordered to be vacated, a notice was necessary when the State Government came to consider whether the petitioner should be disqualified under sub-section (3) of section 16, the argument being that section 16 does contemplate a notice as mentioned in the proviso to sub-section (1). This argument overlooks the fact that it is sub-section (1) of section 16, which provides for the removal of a member and contains the proviso in question, and the proviso expressly refers to the

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removal of a member. Then comes sub-section (2) which provides for disqualification of a member who has been removed. Then follows sub-section (3) which has nothing to do with the removal of a member and which says this—

> "16(3). A person whose seat has been vacated under the provisions of section 14(e) may be disqualified for election for a period not exceeding five years."

It is clear that this particular sub-section may well have been put in section 14 of the Act, for it has no connection with the matter of the removal of a member of which alone section 16, sub-section (1) speaks, and the mere fact, therefore, that it is actually enacted in the form of sub-section (3) of section 16, seems to be of no consequence. What is significant is that while sub-section (1) of section 16 does provide for a notice, neither section 14 nor sub-section (3) of section 16 makes any mention of any notice. The argument, as I understand, is that the proviso to sub-section (1) of section 16 providing for an notice must also be read into sub-section (3), but I am not aware of any rule of construction by which a proviso expressly enacted in one connection must some how be forced into another provision dealing with another matter. As I read sub-section (3) of section 16, there seems no warrant for the suggestion that a notice is necessary before the State Government can decide whether a member, whose seat has been vacated under section 14(e), is to be disqualified or not, and, if disqualified, for what period of time. These are matters left by the statute entriely to the discretion of the State Government, and again there is no indication that the discretion is to be exercised judicially or quasi-judicially. The conclusion must be that like the vacating of a seat the

disqualification of a member, whose seat is vacated, is left to be decided by the State Government as an administrative decision. There is, in the circumstances, no substance in the grievance that notice was not given to the petitioner in connection with his disqualification.

Finally, Mr. Gujral contends that the action of the State Government was dishonest and not a *bona fide* decision under the Punjab Municipal Act. The petition does contain this allegation and the express ground mentioned in support of it is that the petitioner belongs to the Akali Party which was agitating for the creation of a Punjabi Suba and the State Government was opposed to that demand, and, therefore, decided to order the petitioner to vacate his seat. This has been firmly denied on behalf of the State Government and there is no evidence and no clear circumstance to show that the decision of the State Government was taken not in the public interest but because of some extraneous considerations. The petition alleged that the State Government had in order to punish the members of the Akali Party removed all such persons from the membership of "Municipal Committees, Gram Panchayats and other elected bodies, besides cancelling their business quotas, arms licences and other licenses throughout the State". It is true that if these allegations were proved, there would have been good ground for the suggestion that the petitioner may also have been punished for a similar reason which might have been a ground for holding that the decision of the State Government was not honest. The allegations made, however, remain unproved and the petitioner has been unable to even mention the particulars of the various members of the Municipal Committees or Gram Panchayats or other elected bodies or of the various

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licences hinted at by him, and the allegation, therefore, remains merely an allegation which, as I have already mentioned, is solemnly denied by the State Government. It is, in the circumstances, impossible to hold that the decision of the State Government was in that sense dishonest. Joginder Singh's petition must, therefore, fail.

Next comes the set of three petitions concerning three members of the Municipal Committee, Abohar, removed under section 16 of the Punjab Municipal Act, on, the 6th September, 1961, the members being Darbari Lal, his brother Lal Chand, and Gian Chand. Notice under the proviso to section 16(1) of the Act was sent to Darbari Lal on the 8th July, 1961, and it contained six allegations of fact on which the State Government proposed to take action, holding that he had "flagrantly abused his position as a member of the Committee" within the meaning of section 16(1)(e) of the Act. The first two allegations were that on two different occassions Darbari Lal had evaded payment of octroi duty, although importing goods into the Municipal area. The third allegation was that he had kept his truck on a part of the Municipal Road, without paying any *tehbazari* to the Committee. There was then an allegation that without obtaining proper sanction, a shop had been leased out to Darbari Lal's son, the rent for which had seldom been paid in time, and that his son had constructed a verandah in front of that shop without paying *tehbazari.* It was also alleged that a plot belonging to the Municipal Committee was taken by Darbari Lal without proper sanction and the rent not paid in time, and finally it was alleged that Darbari Lal had constructed a wall of his house encroaching on a part of the Municipal land.

It was suggested at one stage that these allegations, even if true, did not amount to any abuse of his position as a member of the Committee by Darbari Lal, because what he had possibly done was done by him not as a member of the Committee but as an ordinary citizen. The argument, however, could not be pressed very far for the obvious reason that, if in fact a member of a Municipal Committee proceeds to encroach on Municipal land and imports goods into the Municipal area and avoids payment of octroi duty and does other similar acts while sitting as a member of the Committee, he does in a real sense abuse his position as a member of the Committee. It is no answer, in my opinion, for him to say that those acts were not, as they indeed could never have been, done in exercise of his powers as a member of the Committee. The whole point is this that as a member of the Committee he is expected to prevent encroachments on Municipal land and evasion of octroi duty, and he cannot be permitted to himself indulge in such activities consistently with his duties, and, if he does so, he is flagrantly abusing his position. It has to be remembered that as a member of the Committee such a person is in fact better placed to break the law, as his office is to some extent a shield against prompt detection. Some emphasis was laid on the expression 'flagrantly' used in section 16(1)(e), and it was said that, even if the petitioner had broken the law to the detriment of the Municipal Committee on one or two occasions, it cannot be said that he had "flgrantly abused his position", the suggestion being that the expression ' flagrantly' indicates that the abuse of position must have occurred over a long period of time and in connection with repeated acts. I do not think the words "flagrantly abused his position as a member of the Committee" carry any such implication. What

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the clause means is that if a member of a Committee, in disregard of his duty, does any act or acts, which shock a reasonable mind, then he can be removed by the State Government, and again it is the State Government that has to form that opinion. I am quite clear that if the allegations of fact made against the petitioner were true, then the State Government could well have held that the petitioner had "flagrantly abused his position as a member of the Committee".

Mr. Sarin's main contention is that the allegations of fact were not true, and that the petitioner was prevented from showing this, as no enquiry into the facts was held in his presence, and the evidence or the information on which the State Government decided to act was never allowed to be tested. The submission amounts to this that, whenever the State Government proposes to remove a member under section 16 of the Punjab Municipal Act, it must not only do what section 16 requires, but something more by way of a proper enquiry at which he is faced with the evidence against him and at which he is allowed to produce evidence in rebuttal. In the alternative, Mr. Sarin urges that the meaning of the proviso to section 16 (1), that the member concerned is to be given an opportunity of tendering an explanation, is that he is to be allowed to have the whole information and evidence examined in his presence and further evidence, if necessary, heard. Here, again, the argument seeks to take the matter out of the express terms of the statute or read into it something which is not there at all. The proviso simply says this—

> "Provided that before the State Government notifies the removal of a member under this section, the reasons for his

proposed removal shall be communicated to the member concerned, and he shall be given an opportunity of tendering an explanation in writing."

These requirements were admittedly fulfilled in the present case, for the reasons of his proposed removal were communicated to the petitioner, and he did tender an explanation in writing which was considered by the State Government. What is sought to be read into this provision or superimposed on it is another requirement, namely, a judicial enquiry, as is held in the ordinary Courts. I am unable to see how any such thing can be read into the terms of this statute or in any other manner implied by the provisions contained in it. Mr. Sarin says that if any fact has to be considered by the State Government and an opinion formed in respect of it, then the only way to proceed is judicially, and the conclusion must be that since the State Government is required to form its opinion about certain facts while removing a member, it must necessarily proceed to determine those facts in a judicial or quasi-judicial manner. I am, however, wholly unable to agree that a fact is incapable of being discovered except in a judicial or quasi-judicial manner, for, if that were so, then every administrator who, like anybody else, has to take his decision by discovering the relevant facts, would in every case be bound to proceed judicially, even when taking an administrative decision. The fallacy lies in thinking that the manner in which the ordinary Courts proceed is the only manner in which a fact can be properly discovered. What has to be ascertained in the present case is whether the State Government, when considering the removal of a member under section 16, is at any stage required to proceed judicially. It is true that the State Government has to form an

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opinion whether the particular member has or has not "flagrantly abused his position as a member of the Committee", but there is no indication that it must do so in a judicial or quasi-judicial manner except to the extent mentioned in the proviso in question, the requirements of which are only two—(1) that reasons for the proposed removal must be communicated to the member, and (2) that he must be allowed an opportunity of tendering an explanation in writing. In the face of these explicit terms, which both define and limit the nature of the proceedings, it is, in my opinion, idle to suggest that something more is necessary.

The other two cases are similar. About Lal Chand the State Government formed the opinion that he had "flagrantly abused his position as a member of the Committee", and the reasons were that he had encroached on Municipal land at several places, that his son had taken some land for which he was paying very small *tehbazari* of Rs. 2 to Rs. 3 per month, whereas it should have been at least Rs. 20 per month, that a portion of a plot was leased to his son, Kundan Lal, which he had sublet at a profit to another person but had not paid rent to the Municipal Committee in time, that he had without obtaining proper sanction leased out a shop to his son, Kundan Lal, and, similarly, that another two plots had been leased out to the same son of his but the rent had not been paid in time, and that yet another plot of land had been leased to him without proper sanction of the Deputy Commissioner and, once again, a portion of it had been sublet at a profit to another person.

Against the third petitioner, Gian Chand, who was the Junior Vice-President, the allegations were even more serious. It was said that he had got hold of a Municipal file concerning the enquiry pending against Darbari Lal, and proceeded

to create evidence on the file to exonerate Darbari Lal and in that connection he got some false receipts prepared and incorrect entries made in the Municipal records. That enquiry against Darbari Lal concerned the import of certain goods by him without payment of octroi duty and the charge against Gian Chand was that, to shield Darbari Lal, he had, as, Junior Vice-President, been instrumental in the creation of evidence to show that octroi duty had in fact been paid. In both these cases, the reasons for the proposed removal were furnished, and each of them, that is, Lal Chand and Gian Chand, submitted an explanation, and it was after the consideration of the explanations that the State Government decided to remove them both. The contention again is that the reasons have no necessary connection with the abuse of his position by the member concerned, but again I find it hard to agree that the allegations, if true, could not be the basis of a conclusion that the member had in each case "flagrantly abused his position", the conclusion being, of course, left by the statute to be drawn by the State Government.

In these cases, again, Mr. Sarin suggests that apart from removal, the matter of disqualification required a separate notice under section 16, but this contention has even less force, in these cases, for disqualification of a member removed under section 16 is a necessary consequence, and subsection (2), which provides for such disqualification, does not require any further notice to the member concerned. It is, therefore, difficult to agree that the statutory requirements have not been complied with in these cases.

There remains the final argument that the three members in these cases were dishonestly removed not because the State Government really thought

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that they had flagrantly abused their position but because they belonged to a different political party and were likely to hinder the election of the members of the ruling party. The allegations made, in this connection, and they are identical in the three cases, are that a fresh election to the Abohar Municipal Committee was to be held shortly after a Minister of the State Government visited Abohar in October, 1960, at which election the three petitioners had intended to stand, and that, since they were likely to succeed, the State Government, decided to remove and disqualify them. It is alleged that on the 16th June, 1961, the preparation of the fresh electoral-roll was taken in hand and objections were to be invited by the 3rd July, 1961, and that, to prevent the petitioners from standing for election, the State Government issued notice to them under section 16 of the Municipal Act on the 8th July, 1961. It is admitted, however, that the removal actually took place on the 6th September, 1961, and before that nomination papers had been filed by all the candidates seeking election to the Municipal Committee. The operation of the order of the State Government was stayed by this Court, and the petitioners were allowed to take part in the election, and it does not appear that they were very successful. More important is the circumstance that the actual enquiries into the allegations made against the petitioners were started long before any question of fresh elections had arisen. It was suggested that the enquiries were not *bona fide* and only a show of enquiry was made in each case. To clear our mind concerning the *bona fides* of the enquiry made, we sent for the enquiry files in all these cases, and counsel agreed that we might look at them, and these files showed that, after complaints had been received, an enquiry in each case was instituted,

and the officer on the spot had those enquiries made and then sent a detailed report to Government, and it was on the basis of those reports that further action was taken. It has, of course, been denied on behalf of the State Government that action in the present cases was taken on any ground other than the grounds mentioned in the notices, and there is no material and no circumstance to support the suggestion that the enquiry was merely a make-believe in each case, and that the real motive for the removal of each petitioner was some extraneous consideration. It is, in the circumstances impossible to conclude that the action of the State Government was not *bona fide*. In my opinion, therefore, there is no force in any of the three petitions, that is, of Darbari Lal, Lal Chand and Gian Chand.

The last petition is by Ram Kishan, who was a member of the Municipal Committee, Bassi Pathanan. He was also the President of that Municipal Committee, and the argument in support of his petition is somewhat different. Notice was issued to Ram Kishan under section 16 (1) of the Act, mentioning the reasons for his proposed removal, and the main reason mentioned was that in dealing with the tenders concerning a contract for the supply of certain registers and forms to the Municipal Committee, Ram Kishan petitioner had shown undue favour to one of the parties submitting the tenders, and that the contract in question was given to him at an excessive rate resulting in a loss of about Rs. 600 to Municipal funds. It was said in that connection that the tenders were irregularly dealt with and certain alterations had been made in the quotations, that the quality and the quantity of the goods supplied was not verified, and that a high tender amounting to about Rs. 981 was wrongly

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and dishonestly accepted. The notice called upon the petitioner to show cause why he should not be removed from membership and Presidentship of the Municipal Committee. Ram Kishan did not submit any explanation and, instead, after the expiry of the period of 21 days, mentioned in the notice, he sent a telegram asking for an extension of time. The show-cause notice was issued on the 3rd August, 1960, and the request for extension of time was made a week after the expiry of 21 days. On the 9th September, 1960, Government refused to extend the time, but it is clear that even up to then no explanation was tendered by the petitioner. Further, the order of removal was actually made on the 18th January, 1961, and up-til then Ram Kishan had tendered no explanation. The State Government decided on the 18th January, 1961, that the petitioner should be removed from the Committee, and a notification was accordingly issued removing him and disqualifying him for a period of two years. The notification clearly said that the Governor was satisfied that Ram Kishan "had flagrantly abused his position as a member of the Committee", and that he was being removed from such membership.

Mr. Bahri contends, first, that sufficient opportunity was not afforded to the petitioner to tender his explanation, as contemplated by the proviso to section 16 of the Punjab Municipal Act, but this contention has little force in view of what I have already stated. It is impossible to agree that the 21 days' time fixed in the notice was not adequate and no satisfactory reason is forthcoming why within that time an explanation was not tendered. Nor is it clear why, even after the period of 21 days had expired, the petitioner did not submit an explanation. In the telegram, which the petitioner sent, it was vaguely stated that he had been indisposed, but no attempt has been made before us

to substantiate that vague allegation. It is, therefore, impossible to take the petitioner's grievance seriously.

Mr. Bahri then urges, and that is the main argument in this case, that the acts imputed to the petitioner were done by him as President of the Municipal Committee, and, if the acts were wrongful, he could and might have been removed from that office but could not have been removed from the membership of the Municipal Committee. This argument almost seeks to divide the petitioner's personality into two, that is, as a member of the Municipal Committee and as the President of the Municipal Committee. It is, I think, hardly possible to do so. The petitioner was a member of the Municipal Committee, and only as such he could have been its President. If, therefore, while being a member of the Municipal Committee, he tampered with Municipal records in order to show favour to a particular contractor and in collusion with the Secretary, as is the allegation, he got an excessive tender accepted for the supply of inferior goods, he cannot be said to have acted only as the President of the Committee without any connection with his being a member of the Committee. It is true that the State Government may well have decided to remove him from the office of the President, but if, the State Government found, as Government did in this case, that he had by his acts "flagrantly abused his position as a member of the Committee", it cannot be said that the conclusion had no basis. Considering the intimate relationship between the two positions held by the petitioner, it is, I think, hardly possible to ascribe any dishonest act of his to one position rather than the other, for dishonest conduct, such as is found in this case, relates to both capacities. The argument, therefore, that on the allegations

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he could have been removed only from the office of the President, cannot, in my opinion, be sustained. No other matter is seriously pressed in support of Ram Kishan's petition which must, in the circumstances, fail.

For the reasons mentioned above, all the petitions in my opinion, fail and I would dismiss them but, in all the circumstances, not burden the petitioners with costs.

Tek Chand, J.

TEK CHAND, J.—I agree with the order proposed.

D. K. Mahajan J.

D. K. MAHAJAN,—I agree.

B.R.T.

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