

The Indian Law Reports

CIVIL MISCELLANEOUS

Before Tek Chand, J.

MANGO RAM AND OTHERS,—*Petitioners*

versus

THE STATE OF HARYANA AND OTHERS,—*Respondents*

Civil Writ No. 2008 of 1967

November 9, 1967

Punjab Agricultural Produce Markets Act (XXIII of 1961)—S. 36—Analysis of—Emergency powers of the State Government under—When can be exercised—Provisions of sections 35 and 36—Whether substitutive.

Held, that analysis of section 36 of Punjab Agricultural Produce Markets Act, 1961, is that its heading is "Emergency powers", which means that the provisions have to be invoked not in an ordinary case but only when there is an emergency. A case for emergency occurs when there is sudden or unexpected happening, an unforeseen occurrence or condition. The word 'emergency' does not readily admit of a precise definition which may be enumerative. The word "emergency" is used when there is an unforeseen combination of circumstances calling for an immediate action. Another feature of section 36 is that it does not refer to any misconduct or to a legal or void act of any member of the Committee individually or collectively. The section only refers to a 'situation' having arisen. Such a situation may arise because of an improper conduct of the members of the Committee. Situation may also be an eventuality for which the members of the Committee may not be saddled with responsibility. The word 'situation' indicates relative position or combination of circumstances at a given moment. The word is also used in the sense of a critical, trying, or an unusual state of affairs. The word is also used in the sense of a conjunction or combination of circumstances. If there is a deadlock or a stalemate the Committee cannot function. It can be said, that such a situation has arisen if the members of the Committee were to refuse to work or became incapable of working whether in consequence of their own volition or despite their will, as when they are all involved in an accident. In such a case, it can be said that situation within the contemplation of section has arisen. Such a situation will also arise where all members were to resign, thus, making the functioning of the Committee impossible and defeating the carrying

out of the purposes of this Act. The use of the word "purpose" in plural with section is not without significance and an emergency cannot be said to have arisen if any one of the purpose cannot be carried out temporarily. So long as a Market Committee is functioning, the provisions of section 36 cannot be invoked on the ground that it is not working rightly, but wrongly. Hence all the above-stated conditions have to be fulfilled before the State Government can exercise emergency powers under this section. (Paras 16 and 17).

Held, that if the intention of the State Government is to supersede the Committee, requirements of section 35 of the Act have to be satisfied and action taken under that provision. In the matters of supersession of Committees, the provisions of section 35 are exhaustive. No other consideration for supersession of Committees is contemplated by the framers of the Act. The provisions of sections 35 and 36 are not substitutive. (Para 19)

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing notification dated 14th September, 1967.

H. L. SARIN, SENIOR ADVOCATE WITH BALRAJ BAHL AND BHAL SINGH MALIK, ADVOCATE, for the Petitioners.

C. D. DEWAN, DEPUTY ADVOCATE-GENERAL, HARYANA, FOR ADVOCATE-GENERAL (HARYANA) for Respondents 1 and 2, R. S. MITTAL, ADVOCATE, for Respondents 4 to 25 and K. N. RAINA, ADVOCATE, for RAJINDER SACHAR, ADVOCATE, for the Respondent No. 3.

ORDER

TEK CHAND, J.—This is a petition under Articles 226/227 of the Constitution of India in which Shri Mange Ram and 8 others pray for the issuance of an appropriate writ quashing the Notification (Annexure 'D'), dated 14th September, 1967, passed by the State of Haryana, stating that a situation had arisen in which the purposes of the Punjab Agricultural Produce Markets Act, 1961 could not be carried out in accordance with provisions of that Act, by the Market Committee, Gannaur, district Rohtak; and, therefore, under section 36 of the Act, the Governor was pleased to declare that the functions of the Market Committee would be exercised by the Sub-Divisional Officer (Civil), Sonapat. The facts and circumstances giving rise to this writ petition are that the Market Committee, Gannaur, was established and constituted under sections 11 and 12 of the Punjab Agricultural Produce Markets Act, 1961 (hereinafter called the 'Act') and the 9

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petitioners were its duly appointed members. The first petitioner was its Chairman and the second Vice-Chairman. This was in accordance with the Notification, dated 30th September, 1966 (Annexure 'A'). The term of the office of the members of the Committee is two years and is to expire on the 30th of September, 1968. The petitioners claim that as members of the Committee they had been performing their duties enjoined by law honestly and efficiently. They then refer to certain party factions in the State of Haryana subsequent to the creation of the two States. For purposes of decisions of this case, it is not necessary to refer to the portions of the petition containing accusations and recriminations. On 7th of June, 1967, the first petitioner was approached by the Manager of the Gannaur Co-operative Marketing Society with the complaint that some foodgrain licensees were inciting others to suspend business on that day. After necessary enquiry, two such licensees were found by the Committee to be indulging in activities detrimental to the interests of trade and proper functioning of the Market and were contravening the conditions of the licence. The Committee, therefore, suspended the licence of these two concerns on 28th of June, 1967 and 11th of July, 1967, respectively for a period of 14 days,—*vide* Annexures 'B' and 'C'. Respondent No. 3, Shri Rajinder Singh, M.L.A., of Sonapat, got false complaints submitted to the Government against the petitioners and influenced the Government to issue the Notification under section 36 of the Act, putting an end to the functions of the Market Committee,—*vide* Annexure 'D'. The Notification has been impugned on the ground that it is illegal, arbitrary, without jurisdiction and unconstitutional. It was also alleged that the impugned order had been passed under political pressure and was *mala fide* and the powers under section 36 have been abused and that no show-cause notice was issued to the petitioners and no proper opportunity of hearing was given to them. Written statements in this case have been filed by the respondents denying the allegations of bad faith and want of jurisdiction. It has been stated that the principles of natural justice and fair play were fully observed and that an enquiry against the petitioners was held by the Deputy Minister for Agriculture in their presence and they had been given full opportunity to represent their case. A situation had arisen in which the purposes of the Act could not be carried out. Under section 36, it was not necessary to give reasons for the action taken. Moreover, the action having been taken under section 36, was of administrative character. The grounds and justifications were stated in the report of the Deputy Minister. It was further alleged. "The situation which necessitated

action being taken under section 36 arose out of the Punjab Re-organisation Act, 1966, whereby the State Agricultural Marketing Board was kept joint and by the bifurcation of which the Haryana Government along with the Punjab Government have moved the Central Government. Action could not be taken under section 35 because in that case the assets of the Committee would have vested in the State Agricultural Marketing Board, which would have created further complications in bifurcation of the Board. It is expected to be bifurcated soon". The written statements of all the respondents are similarly worded. It may be mentioned that after the writ petition had been filed 22 persons made an application to this Court for being impleaded as respondents and this application was allowed. These respondents have also filed a written statement which is similar to that filed by respondents 1 and 2 and reference may be made to two Annexures filed by the respondents. The subsequently added respondents filed Annexure R-1, which is a representation addressed to the Chief Minister complaining against the conduct of petitioner No. 1, the Chairman. It was alleged that the licence of two leading licensees of Gannaur Market Committee had been suspended on frivolous grounds and their case is now pending with the Government and the Board. As a result, all the licensees were perturbed. It was also stated that one Shri Mangal Sain, auctioneer, had been suspended on the ground that he had remained absent. They prayed in their complaint that the Market Committee was incompetent to perform the duties and also abused its powers and should be superseded and some official be appointed Administrator and the election may be ordered.

(2) It seems that the Chief Minister ordered an enquiry to be made by the Deputy Minister, who submitted the report on 1st of September, 1967. This report also has been marked as Annexure R-1. Enquiry was made on the basis of four allegations, one of which was found to be unproved. The Deputy Minister reported on the first allegation that the Chairman had no ground for suspending the two licensees as they had never gone on strike. Their suspension was an abuse of power by the Market Committee and an instance of their highhandedness. The Deputy Minister recommended that it was a fit case for supersession of the Market Committee under section 36 of the Act. The second allegation pertained to the suspension of the services of Shri Mangal Sain, auctioneer. The Deputy Minister expressed the view that this suspension was absolutely unjustified. Regarding the third allegation, which related to the appointment of

one Nafe Singh as Supervisor, the Deputy Minister said that this appointment was irregular and was an instance of favouritism on the part of the Market Committee. His conclusion on the strength of the three above allegations was that the Market Committee had abused its power and had been inefficient and was incompetent to function properly. He concluded by observing—

“I would, therefore, recommend for its supersession under section 36 of the Punjab Market Committees Act, 1961, The C.M. may kindly approve of it”.

(3) On this report it was decided by the Government to take action under section 36 of the Act and in consequence, Notification (Annexure 'D') was published in the *Haryana Government Gazette*, on September 14, 1967. The nine petitioners, the Chairman and the members of the Committee, have filed this writ petition, finding themselves aggrieved in consequence of the Notification.

(4) The main question in this case is whether the State Government in taking action under section 36 did so in accordance with law and within its jurisdiction and not as a result of any improper or ulterior motive. Before determining whether the powers were exercised under section 36 in accordance with law and jurisdiction, the relevant provisions of the Act must be considered.

(5) The Punjab Agricultural Produce Markets Act, 1961 (23 of 1961) was passed to consolidate and amend the law relating to the better regulation of the purchase, sale, storage and processing of agricultural produce and the establishment of markets for agricultural produce in the State of Punjab, as stated in the preamble. Under the definition section 2(b), “Board” means the State Agricultural Marketing Board constituted under section 3; and “Committee” means a Market Committee established and constituted under sections 11 and 12. Under section 3, the State Government is empowered to constitute a State Agricultural Marketing Board consisting of 15 members. This Board, as provided by sub-section (9), exercises superintendence and control over the Committees and the Chairman of the Board may call for any information or return relating to agricultural produce from a Committee.

(6) Under section 10(2), the Chairman of the Board may cancel or suspend or grant licences. The proviso to sub-section (2) of section 10 enables the Chairman of a Committee, under intimation to the

Chairman of the Board, to suspend a licence for a period not exceeding fifteen days and before giving such an order, the Chairman of the Committee is required to give an opportunity to show cause why such an order should not be made. It was in the exercise of powers under section 10(2) first proviso, that the petitioner No. 1, Chairman of the Committee, suspended the licence of two persons for a period of 14 days, as per Annexures 'B' and 'C'. Under sub-section (4) of section 10, a right of appeal to the aggrieved person is provided to the Chairman of the Board, where the order under appeal is passed by the Chairman of the Committee. In this case the two persons adversely affected by orders of suspension for a period of 14 days filed an appeal to the Chairman of the Board, which was pending when the petition of writ had been filed.

(7) Under section 11, the State Government has the power by notification to establish a Market Committee for every notified market area.

(8) Section 12 deals with the Constitution of a Market Committee, providing that some members are to be nominated and others elected. Proviso to sub-section (3) contemplates that the State Government may appoint the requisite number of persons to the Committee on its own motion and notify the appointments so made. Sub-section (4) provides that where a Committee is constituted for the first time, all the members including the Chairman and Vice-Chairman thereof shall be nominated by the State Government. Subject to provisions of section 17, such members shall hold office for a period not exceeding 3 years, as may be prescribed. Section 17 deals with the filling of vacancies, when any member dies, resigns, ceases to reside permanently in the notified market area or becomes incapable of acting as a member of a Committee.

(9) The combined effect of section 12(4) and section 17 is that the nominated members are entitled to hold office up to a maximum period of three years. The Market Committee, Gannaur, was constituted for the first time and, therefore, all its members were nominated.

(10) Section 13 deals with the duties and powers of a Committee and under sub-section (3) it may issue licences to brokers, weighmen and Co. and also renew, suspend or cancel them. Section 15 empowers the State to remove by notification any member, who in its opinion, has been guilty of misconduct or neglect of duty or has lost the qualification, after communicating to him the reasons for his

proposed removal and after giving to him an opportunity of tendering an explanation. Section 35 of the Act provides for supersession of Committees, if, in the opinion of the State Government, it is incompetent to perform or persistently makes default in performing the duties imposed on it by the Act or abuses its powers. There is a proviso requiring a duty on the part of the State to give a reasonable opportunity to the Committee for showing cause against the proposed supersession. Sub-section (2) provides that upon publication of a notification superseding a Committee, all assets shall vest in the Board and it is within the discretion of the State Government to constitute either a new Committee under section 12 or such other authority for carrying out the functions of the Committee. After the above order has been made, the assets and liabilities vest in the Board. But when a new Committee or authority is constituted, the assets and liabilities are deemed to have been transferred to that body. It is also provided that whenever the assets of a Committee vest in the Board and no new Committee or authority is appointed in its place, the Board shall employ the balance of the assets remaining after the discharge of the subsisting legal liabilities of the Committee for any object of public utility in the area specified in the notification issued under section 6. Section 36 under the heading "Emergency powers" is reproduced below:—

Section 36. "If at any time the State Government is satisfied that a situation has arisen in which the purposes of this Act cannot be carried out in accordance with the provisions thereof, the State Government may by notification—

- (a) declare that the functions of a Committee shall, to such extent as may be specified in the notification, be exercised by the Board or such person or persons as it may direct; or
- (b) assume to itself all or any of the powers vested in or exercisable by a Committee;

and such notification may contain such incidental and consequential provisions as may appear to the State Government to be necessary or desirable for giving effect to the objects of the notification."

Section 40 provides appeal from the order passed by a Committee under section 13 or by the Chairman under sub-section (5) of section 33 to the Board in the manner prescribed by rules. Under section 43

of the Act, which confers rule making power upon the State Government, Punjab Agricultural Produce Markets (General) Rules, 1962 have been made.

(11) In the case of a Committee constituted for the first time, rule 8 provides that a panel of names equal to double the number of members to be nominated shall be sent to the State Government and the members nominated under section 12(4) shall hold office till the election or appointment, as the case may be, of their successors is notified under sub-section (3) of section 12 or for a period of two years, whichever may be earlier. Thus the tenure of the nominated members is to last up to elections or up to two years, whichever is earlier. Rule 10 provides that the Chairman of the Committee shall be its chief executive officer and it will be his duty to send report to the Chairman of the Board about the annual assessment of the work of the Secretary. Rule 40, which is important, lays down an elaborate procedure for appeals to be preferred under section 10(4), section 29(3) and section 40 and they are to bear a Court fee stamp of rupee one. They have to be presented to the appellate authority in the form of a memorandum by the appellant or his duly authorised agent. A period of limitation is provided and it is required that the appeal shall be decided after notice to and hearing the parties concerned. A copy of the decision on the appeal is to be supplied free of charge to the Board or the Committee concerned, and on demand to the appellant on specified payment. The set-up of the appellate Tribunal indicates that the pattern is the same as in the case of a judicial or quasi-judicial appellate authority. In this case, it has already been stated that an appeal from the order of the Chairman suspending two licence-holders had been preferred by them to the Board. This appeal partook of a quasi-judicial character.

(12) Before dealing with the main arguments, a minor matter urged in para 13(iii) may be disposed of. The reason given by the State for taking action under section 36 was that the Board was kept joint of the two States after the bifurcation and action could not be taken under section 35, because in that case the assets of the committee would have vested in the State Agricultural Marketing Board and this would have created further complication in bifurcation of the Board. The above reason appears to be erroneous. As indicated already, all assets and liabilities vesting in the Board under section 35(2)(b) shall be deemed to have been transferred in the new Committee or other authority the moment such a body is constituted.

There is no force in the contention that such assets would be vesting in the Joint Board for the two States. If the Government had chosen to act under section 35, it would not have been confronted with any eventuality of the nature referred to in para 13(iii) of the written statement.

(13) The order of the Chairman of the Committee from which appeals are provided under rule 40 is of a quasi-judicial character. It has already been stated that appeal from this order was pending when resort was had by the State Government to section 36. It has now been urged that the Board has announced its decision. It has agreed with the finding of the Chairman as to the impropriety of the conduct of the two licence-holders who had been suspended for 14 days, but has reduced the period of suspension to three days. In other words, the Board has not considered that the order of Chairman's suspension was unjustified. It was also urged that the alleged impropriety regarding the suspension of Mangal Sain, auctioneer, on grounds alleged to be flimsy could have been taken up in appeal. Similarly, the appointment of Shri Nafe Singh as supervisor, if it was against the rules, could also be got refuted by the Chairman of the Board in the exercise of his powers under rule 10. The three charges against the Chairman were either appealable or reviewable by the authority of the Board.

(14) I may now turn to the main contention of the petitioners, that to the facts and circumstances of this case, section 36 has no applicability particularly in view of action being available under section 15 or section 35 of the Act. The basis for the action which has been taken was the report Exhibit R-1, dated 1st September, 1967 of the Deputy Minister in which he found three charges proved against the Chairman. As no other grounds have been alleged, it may be safely presumed that there were no other reasons which led to the taking of the impugned action. The allegations being against the Chairman, it was open to the State Government to remove him under section 15. The allegations, if true, pointed to his misconduct and the appropriate provision for his removal or for the removal of other members was section 15. But, before the State Government can notify the removal of a member under this section, it is incumbent upon it to communicate to the member concerned the reasons for his proposed removal and he has to be given an opportunity of tendering an explanation in writing. Section 15 is applicable for the removal of any member, one or more or even all, if they were

guilty of misconduct. The only condition was communicating of reasons and giving to such a person or persons an opportunity of tendering an explanation in writing. It is contended on behalf of the petitioners that action was not taken under section 15, because the State Government did not want to comply with the requirements of the proviso which are in accordance with the requirements of the rule of natural justice. Neither reasons were communicated nor was an opportunity given to tender an explanation in writing.

(15) It is then argued that if the State Government was of the view that a Committee was incompetent to perform, or persistently made default in performing its duties, or abused its powers, it could be superseded. According to the conclusion formed by the Deputy Minister in his report (Exhibit R-1), the Market Committee had abused its power and had been inefficient in its working. He also thought that it was incompetent to function properly and he had recommended its supersession not under section 35 but under section 36. The only provision in the Act which deals with "Supersession of Committees" is section 35. The only pre-condition was that before issuing a notification superseding the Committee, the State Government was bound under law to give a reasonable opportunity to the Committee for showing cause against the proposed supersession, and further, it had to consider the explanations and objections, if any, of the Committee. As has already been noticed, no such opportunity, as was contemplated by proviso to Section 35(1), was afforded. The subject-matter of the report clearly falls within the ambit of section 35(1) and yet action was recommended by the Deputy Minister and taken by the State Government under section 36 which does not refer to supersession of Committees or to the grounds mentioned in section 35(1). The argument of the learned counsel for the petitioners is that this provision like section 15 was bypassed in order to avoid compliance with the condition of giving of reasonable opportunity and considering of explanations and objections, which is one of the important requirements of the rule of natural justice. Sections 15 and 35 were avoided in order to overcome the requirements of the rule of natural justice, which in this case were also statutory and, therefore, mandatory requirements under sections 15 and 35. There is force in this contention. In para 13 of the written statement filed on behalf of respondents 1-3, it was said that the principles of natural justice and fair play had been fully observed inasmuch as in the enquiry held against the petitioners by the Deputy Minister, they were given full opportunity to represent their case. All that has been

said in the report of the Deputy Minister was that the Chairman was present during the course of the enquiry. His presence was said to be an occasion when he could give reply to queries made from him is not sufficient. In order to comply with the rule of fair play and also with the requirements of the proviso to section 15 and to section 35, the reasons for the proposed removal are to be communicated and an opportunity to tender an explanation in writing is also to be afforded. The mere presence or association of the Chairman with the enquiry was not tantamount to giving an opportunity to the Committee for showing cause against proposed supersession. It was not even reasonable. I do not agree with the contention of the learned counsel for the respondents that the requirements of the rule of natural justice and fair play, or of the respective provisos to sections 15 and 35 had been complied with. Even if it be assumed that presence or association of the Chairman was compliance with the requirements of the principles of natural justice, that would not apply to the other either petitioners with respect to whom it is not claimed on behalf of the respondents, that they were either present or associated with the enquiry, or given an opportunity to explain any action which could be said to have been proposed against them. The members of the Committee other than the Chairman were not given any such opportunity and there was not even a semblance of an attempt to comply with the rule. If action had been taken under section 35 after giving opportunity, there would have been no complication of the type mentioned in para 13(iii) of the written statement of respondents 1 to 3. This feature has already been commented upon above.

(16) Section 36 may now be analysed. Its heading is "Emergency powers", which means that the provisions have to be invoked not in an ordinary case but only when there is an emergency. A case for emergency occurs when there is sudden or unexpected happening, an unforeseen occurrence or condition. The word 'emergency' does not readily admit of a precise definition which may be enumerative. The word "emergency" is used when there is an unforeseen combination of circumstances calling for an immediate action. According to Webster, emergency is "an unforeseen combination of circumstances or the resulting state that calls for immediate action". It is also used in the sense of "distressing event or condition that can often be anticipated or prepared for but seldom exactly foreseen"

According to Shorter Oxford Dictionary, 'emergency' is "the sudden or unexpected occurrence; a juncture that arises or 'crops up'; a sudden occasion". There is no indication whatsoever in the notification of the State Government (Annexure 'D') of the nature of emergency, which called for an invocation of the emergency powers. That notification, as a matter of fact, contains no reference to any emergency having arisen or the powers being exercised on account of emergency.

(17) Another feature of section 36 is that it does not refer to any misconduct or to a legal or void act of any member of the Committee individually or collectively. The section only refers to a situation having arisen. Such a situation may arise because of an improper conduct of the members of the Committee. Situation may also be an eventuality for which the members of the Committee may not be saddled with responsibility. The word 'situation' indicates relative position or combination of circumstances at a given moment. The word is also used in the sense of a critical, trying or an unusual state of affairs. The word is also used in the sense of a conjunction or combination of circumstances. If there is a deadlock or a stalemate the Committee cannot function. It can be said, that such a situation has arisen if the members of the Committee were to refuse to work or became incapable of working whether in consequence of their own volition or despite their will, as when they are all involved in an accident. In such a case, it can be said that situation within the contemplation of section has arisen. Such a situation will also arise where all members were to resign. Thus functioning of the Committee became impossible. A situation would be said to have arisen defeating the carrying out of the purposes of this Act. The use of the word "purposes" in plural is not without significance and an emergency cannot be said to have arisen if any one of the purposes cannot be carried out temporarily. So long as a Market Committee is functioning, the provisions of section 36 cannot be invoked on the ground that it is not working rightly, but wrongly. If the Committee was incompetent to perform its duties or persistently made default, recourse to section 35 will be the appropriate remedy. The Act was enacted for several purposes. If, as in this case, two licence-holders were suspended for a fortnight, or an auctioneer had been suspended on flimsy grounds, or a supervisor had been wrongly appointed, or in his appointment, favouritism had played a part, it cannot be said that the purposes of the Act cannot be carried out. The word 'can' indicates powers or capacity to carry out the purpose

indicating, that it is impossible to do so and not that the Committee will not do so. The three charges which the Deputy Minister found proved in his report are, neither indicative nor exhaustive of the purposes of the Act. What the Chairman did, was that he exercised a power given to him under the Act, and in order to carry out a purpose of the Act. To suspend licences of the licence-holders is a power conferred by the Act and its exercise can be a purpose of the Act. If the power is wrongly exercised, there are other provisions in the Act for rectifying the wrong, or for taking action against the Member or the office-bearer responsible for the wrong.

(18) The reasons which have led the State to take action under section 36 are disclosed in the report of the Deputy Minister (Exhibit R-1). According to him, three out of four allegations were substantiated and he thought that it was clear, that the Market Committee, Gannaur had "abused its power and has been inefficient in its working". The report does not refer to any act from which inefficiency or incompetency has been deduced. Assuming these features were there, they are covered by sections 15 and 35 of the Act under which appropriate action could be taken. Finally, the Deputy Minister has made recommendation for the Committee's "supersession under section 36" of the Act. The "supersession of Committees" is provided under section 35 but not under section 36 which refers to "emergency powers". If the Deputy Minister had recommended supersession under section 35, that recommendation would have been logical on the premises. It is difficult to say whether the Deputy Minister was really thinking of section 35 and inadvertently wrote section 36. This seems probable. Assuming he deliberately thought of section 36, when he was recommending action under the wrong section and was overlooking the specific provisions of section 35. The learned counsel for the petitioners has referred to *Puran Singh v. State of Puniab and others* (1), as an instance, illustrative of the appropriate invocation of section 36. It was a case in which the election programme relating to the Market Committee, Kaithal, had been set aside. This meant that till fresh elections were held there was no Market Committee in existence. The next question is, whether there is any indication indicative of any reason, for taking action against the entire Market

(1) I.L.R. (1966) 1 Punj. 751=1966 P.L.R. 25.

Committee. In the complaint addressed to the Chief Minister by respondents 4 to 25, the allegations are against the Chairman and nothing specific is imputed against any member or members of the Market Committee. The report of the Deputy Minister on this complaint does not refer to any specific act of misconduct on the part of any one of the eight petitioners other than the Chairman. On behalf of the Chairman, it was said that his act which formed the subject matter of the first charge relating to the suspension for a fortnight of two licence-holders was the subject matter of appeal by the persons concerned to the Board. The decision in this appeal was made on 9th of October, 1967. The Board has upheld the act of the Chairman in so far as the question of the guilt of the two licence-holders was concerned. The only difference is that the period of suspension was reduced. There was, thus, no difference of view as to default having been committed by those against whom action was taken by the petitioner No. 1, but only as to the gravity of their offence. The Deputy Minister when submitting his report, dated 1st September, 1967 (Annexure R-1) did not wait for the Board's decision on appeal from the impugned order of petitioner No. 1, but proceeded to express his view on the first allegation. The appellate powers of the Board are statutory, whereas the enquiry and report by the Deputy Minister was administrative. In this case, the view expressed by the Board in the discharge of its appellate powers deserved to prevail over the Government's administrative action. Section 10 of the Act is the relevant provision, and the power has been exercised by the Chairman of the Board under sub-section (2), which includes the right to suspend a licence for a period not exceeding five months for the first breach, and not exceeding nine months from the second breach, and not exceeding one year for every subsequent breach. The first proviso to the sub-section refers to the powers of the Chairman of the Committee to suspend a licence for a period not exceeding fifteen days. According to sub-section (4), a person aggrieved by an order passed by the Chairman of the Board may appeal to the State Government within one month of the making thereof. The Government has not waited for the order of the Chairman of the Board. The aggrieved party could challenge the order of the Chairman of the Board before the State Government. In this case, the statutory provision has been bypassed by the State Government.

(19) The next question is that the emergency powers of the State Government under section 36 can arise only when the State Government is satisfied that a situation has arisen "in which the purposes of

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the Act cannot be carried out in accordance with the provisions thereof". Can it be said in this case that by the act of the Chairman suspending two licence-holders for a period of fifteen days, the purposes of this Act cannot be carried out, when there are a large number of licence-holders? However, the order of the Chairman of the Committee was not final being appealable first before the Chairman of the Board and then before the State Government. Similarly, can it be said that the act of suspension of an auctioneer on possibly flimsy grounds was of such gravity as to stand in the way of the effectuation of the purposes underlying the Act? Again, the appointment of a supervisor, assuming it to be against rules, could not furnish a reason for taking action under section 36. This provision is intended for a totally different purpose, when the object of the Act cannot be carried out. It does not deal with the misconduct of the Chairman, or with the misdeeds of the members of the Committee. There is no proof whatsoever of any lapse of the Committee, and none has been alleged in the charges which were enquired into by the Deputy Minister. On the assumption that the act of the petitioners, of the Chairman or and, of the members of the Committee was such which should have justified their suspension before issuing a notification to that effect, the State Government was bound to give a reasonable opportunity to the Committee for showing cause against the proposed supersession. There is no allegation that the Committee was "incompetent to perform or persistently make default in performing the duties imposed upon it by or under this Act, or abuses its powers". It is conceivable that on realising, that the conditions, subject to which, resort could be had to section 36, did not exist, action under that section was not taken. Can it then be argued with any consistency that action under section 36 was justified, even if the Committee was neither incompetent to perform, nor had persistently made default, in the discharge of its duties or had abused its powers. In matters of supersession of Committees, the provisions of section 35 are exhaustive. No other consideration for supersession of Committees is contemplated by the framers of the Act. The provisions of sections 35 and 36 are not substitutive. The crux of the allegations in Annexure R-1 is the impugned conduct of the Chairman of the Committee, petitioner No. 1. If the State Government was of the opinion that he had been guilty of misconduct or neglect of duty, he could have been furnished with reasons for his proposed removal, and after giving him opportunity of tendering his explanation in writing, his removal could be notified. Associating him during the

enquiry conducted by the Deputy Minister was not a sufficient compliance with the requirements of section 15. There is no suggestion of any grievance against all the members of the Committee and it is confined to the Chairman alone. If it was the intention of the Government to remove other members also, requirements of section 15 had to be satisfied and action taken under that provision. For similar reasons, as appertain to section 35, section 36 is no substitute for section 15 and for misconduct; if any, committed within contemplation of section 15, action under section 36 was not justified as that refers to an entirely different contingency or eventuality. There is no support for the argument that under section 36, the State Government could take action in all such cases which were covered by sections 15 and 35. That does not appear to me to be the intention of the statute. The contingencies under which provisions of a particular section are to be called into action are distinct and separate, and were not intended to overlap.

(20) At this stage, I may refer to the reported decisions to which my attention has been drawn by the learned counsel. The word 'emergency' was explained in *Des Rai v. Emperor* (2), and it was observed, that the unforeseen combination of circumstances might not take place all at once, but gradually. When the culminating point is reached, an immediate action may be rendered necessary. As already discussed in detail, the emergency as visualised in this decision could not be said to have taken place, and this was never the case of the parties, when the State decided to take action under section 36.

(21) The next question relates to the ambit within which the High Court can interfere in matters which depend upon the subjective satisfaction of the State Government. A Division Bench decision of this Court in *State of Punjab v. Sugna Ram* (3) on Letters Patent Appeal was cited, wherein it was held that the orders passed by the State Government under section 16(1) (e) of the Punjab Municipal Act were subject to scrutiny by this Court with a view to check two matters; firstly, whether the grounds of removal are not extraneous to the conduct of the member as such and, secondly, if the grounds are not extraneous, to see, that the act or acts done by the member in disregard of his duty are such, as can shock a reasonable

(2) A.I.R. 1930 Lah. 781.

(3) 1964 P.L.R. 828

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mind. There is a considerable authority for the view that the grounds which led to the removal of a member of a local body should be either germane or relevant to the specific provisions, and where the facts are altogether extraneous or are not germane or relevant to the provisions of law under which action is taken, the Government's order is liable to be struck down. Reference may be made to *Satya Dev v. State of Punjab and another* (4) and *Bhagat Ram Patanga v. The State of Punjab* (5).

(22) In *Municipal Committee, Kharar, District Ambala v. The State of Punjab and others* (6), section 238 of the Punjab Municipal Act was examined. This section related to the power of Provincial Government to supersede a Committee in case of incompetency, persistent default or abuse of powers. The section provided that reasons for such a removal had to be stated in the notification declaring that the Committee was superseded. These provisions are analogous to section 35 of the Punjab Agricultural Produce Markets Act, 1961. It was held in that case that the reasons and the conclusions arrived at on account of a consideration of those reasons were two distinct matters. The repeating of the conclusion necessary to supersede a municipality under section 238 of the Act, cannot possibly be equated to the reasons impelling such a decision. The mere copying of the words of the section into the notification amounts only to notifying the conclusions of the Government and is no substitute whatever for the statutory requirement of notifying the reasons leading the Government to take action in question. The notification in order to be valid must accordingly set out all the necessary facts precisely and the notification should be a speaking one. A duty is cast on the State Government to act in accordance with the principles of natural justice while coming to an objective finding, on some objective material placed before it which should justify the supersession of a municipality. The only point of distinction in this case is that under section 36, the question of giving an opportunity does not arise, as that is not requirement of the provision.

(23) My attention was drawn to *P. J. Irani v. State of Madras and another* (7), which was a case arising out of Madras Buildings (Lease and Rent Control) Act (25 of 1949). The Supreme Court in that case, expressed the view that where an individual order of Government

(4) I.L.R. (1964) 1 Punj. 878—1964 P.L.R. 381.

(5) C.W 22 of 1963 decided on 18th September, 1963.

(6) A.I.R. 1967 Punj. 430.

(7) A.I.R. 1961 S.C. 1731.

exempting certain premises was passed for reasons which did not fall within the purpose for which the power was conferred by section 13 of the Act, the order itself would be one discriminatory of the tenant occupying the premises as violating the fundamental right to equal protection of the laws. In such an event, Article 226 would be available to set aside such an order. In that case, a point was urged on behalf of the State, that the order granting the exemption was an executive or an administrative order which was not amendable to being quashed by the issue of a writ of certiorari. The Supreme Court found the objection without substance where the order of exemption was passed for reasons which did not fall within the purpose for which the power was conferred by section 13 of that Act. It was observed:—

“Besides, even if the order did not violate Article 14 (of the Constitution of India) still if the High Court were right in the view that the same was beyond the powers conferred on Government by section 13 of the Act, we see no substance in the contention that the Court lacks power under Article 226 to set aside an *ultra vires* order vitally affecting a person's right to statutory protection against eviction. We do not consider that immunity from interference by the Courts could be sought for orders which are plainly *ultra vires* merely because they were passed bona fide in the sense of being without indirect motive.”

(24) From the facts and circumstances of this case, it is clear that the intention of the Government was to supersede the Market Committee as it thought that it had committed acts which fell within the mischief of section 35 of the Punjab Agricultural Produce Markets Act, 1961. That provision and also of section 15 embodies the rule of natural justice, of being confronted with the allegations against the members, and of giving them an effective opportunity of meeting them. With a view to avoid giving of these rights to the members of the Committee, resort was had to Section 36. It has already been considered that the considerations for applicability of section 36 are distinct and do not in fact exist in this case. This is clear from the perusal of the report of the Deputy Minister (R/1). The taking of action under section 36 was not justified on the proved and admitted facts and circumstances of this case. Recourse to these provisions was colourable with a view to avoid compliance with the provisions of section 35 which required the giving of reasonable opportunity to the Committee or showing cause against the proposed supersession. The supersession of the Committee without notice,

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without any advance information of enquiry and without giving them an opportunity to submit their explanation in writing, was contrary to principles of natural justice. What happened in this case was, that the ostensible grounds for action against the petitioners were those which were to be found in section 35, but resort was made to section 36 in order to deprive the petitioners of the safeguards specified in section 35.

(25) No serious argument was offered on behalf of the State that the report of the Deputy Minister (R/1) was on the basis of the requirements of section 35. There was no attempt made to suggest, that any emergency had come into being and the powers exercised under section 36 were in consequence of such an emergency. There was no reference to the purposes of the Act which could not be carried out in accordance with the provisions thereof. In the circumstances, no attempt was made to justify the applicability of section 36 as there was not even a semblance of the conditions justifying recourse to that provision. Reliance was placed on behalf of the respondent State upon a decision in *Radeshyam Khare and another v. The State of Madhya Pradesh and others* (8) for the proposition, that a writ of certiorari would not lie to correct the errors of a statutory body which was entrusted with purely administrative functions. That was a case under C.P. and Berar Municipalities Act, 1922. Section 53-A (1) empowered the State Government, in case it found that a Municipal Committee was not competent to perform the duties imposed on it or it considered that a general improvement in the administration of the Municipality was likely to be secured by the appointment of an Executive Officer, the State Government may by an order stating the reasons, therefore, appoint an Executive Officer of the Committee for a period not exceeding 18 months. On the appointment of the Executive Officer, the State Government was to determine from time to time which powers, duties and functions of the Committee were to be exercised and performed by him, either in addition to, or to the exclusion of, the exercise of those powers by the Municipal Committee. The wording of section 53-A, in the view of the Supreme Court, made it clear that the action was to be effective for a temporary duration. Another provision of the Act which came up for consideration was section 57 which is similar to section 35 of the Puniab Agricultural Produce Markets Act, 1961. It provided that if a Committee was not competent to perform or persistently made default in the

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

performance of the duties or exceeded or abused its power to a grave extent, the State Government might by an order stating the reasons therefor dissolve such Committee and might order a fresh election to take place. As the effect of this order was extremely drastic and the very existence of the Committee itself could be put an end to, the legislature gave some protection to the Committee and accordingly it provided by sub-section 5 that no order should be passed until reasonable opportunity had been given to the Committee to furnish an explanation. Thus, in the provision which was drastic, a safeguard was provided though there was no such safeguard in section 53-A because that order was of a temporary duration and did not put an end to the very existence of the Committee. The Supreme Court after scrutinising the provisions of the Act did not consider section 53-A to be unconstitutional. In that case, section 53-A not being drastic was not considered to be violative of Article 14 of the Constitution. The Municipal Committee was neither superseded nor dissolved but only some of its powers were taken away and conferred on the Executive Officer whose tenure could not last beyond 18 months. The provisions of section 53-A of the C.P. and Berar Municipalities Act are not comparable to section 36 of the Punjab Agricultural Produce Markets Act which are extremely drastic as it confers unlimited power on the Government to assume jurisdiction for any length of time.

(26) For facts of the case of Radeshyam Khare were distinguishable the reasoning of the Supreme Court cannot be invoked to the facts and circumstances of this case. After taking into consideration the arguments addressed in this case, I am of the view that the order of the State Government doing away with the Market Committee by means of the impugned notification is not sustainable and in the circumstances was passed without jurisdiction and on grounds which did not exist. I would, therefore, quash the impugned order of the Government of Haryana as contained in the notification No. 8560-Agr. II(IX)-67/23338, dated the 14th September, 1967 (Annexure D) and I order accordingly. The parties will bear their own costs.

(27) I may mention that in the alternative, learned counsel for the petitioners, had contended that in any case section 36 being violative of Article 14 of the Constitution was liable to be struck down. I have not thought it necessary to give a decision on this point.