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behalf of all the partners, and not only such of them as are shown in the Register as such, and all the partners must be "the persons suing" contemplated in section 69(2) of the Act. I am, therefore, of the opinion that the appeal was correctly decided by the learned Single Judge and the present appeal must be dismissed. As was quite proper, the parties have already been left to bear their own costs throughout, and they may also be left to do so in this appeal.

Harbans Singh, J.

HARBANS SINGH, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before Inder Dev Dua and Harbans Singh, JJ.

SATYA DEV,—*Petitioner*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents*

Civil Writ No. 696 of 1963.

1963

Dec., 3rd.

Punjab Municipal Act (III of 1911)—Section 16(1)(c) and (2)—Continuing an encroachment, which came into existence long before a person became a member of the committee—Whether amounts to "flagrant abuse of his position as a member"—Government's decision that the member is guilty of flagrant abuse of his position as a member—Whether justiciable.

Held, that continuing an encroachment, which came into existence long before a person became a member, and not demolishing the same, cannot be said to be an act directly connected with his position as a member particularly when there is no allegation or suggestion that he, by his influence or presence in the municipal committee, had prevented any proper action to be taken in the matter. The act which can properly form the basis of formation of an opinion by the State Government that a member had been guilty of a flagrant abuse of his position as a member

within the meaning of clause (c) of sub-section (1) of section 16 of the Punjab Municipal Act, 1911, must have some reference to his position as a member.

Held, that the Court can go into the question whether, in the circumstances of the case, a member has been guilty of an act which is in disregard of his duty and which amounts to abuse of his position as a member and whether that act is such as would shock a reasonable mind and, therefore, amounts to flagrant abuse of his position as a member.

Case referred by the Hon'ble Mr. Justice Inder Dev Dua, on 9th August, 1963, to a larger bench for the decision of an important question of law involved in the case and the case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice Inder Dev Dua and the Hon'ble Mr. Justice Harbans Singh, on 3rd December, 1963.

Petition under Article 226 of the Constitution of India praying that a writ of mandamus,certiorari, *or any other appropriate writ, order or direction be issued quashing the order of the Punjab Government, dated 15th April, 1963, by which the petitioner has been removed from the membership of the Municipal Committee, and has been disqualified for a period of 2 years, and directing the Punjab Government to allow the petitioner to function as a member of the Municipal Committee, Meham, for the remaining period of his term.*

ANAND SARUP AND R. S. MITTAL, ADVOCATES, for the Petitioner.

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL AND P. C. JAIN, ADVOCATE, for the Respondents.

JUDGMENT

HARBANS SINGH, J.—This writ petition, which has come before us on being referred by my learned brother Dua, J., arises in the following circumstances. Sometime before 1958, the petitioner Satya Dev, who is a resident of Meham in district Rohtak, constructed Harbans Singh, J.

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some steps and a sloping culvert called Gau Ghat, in front of the main gate of his house. The Municipal Committee, Meham, served a notice in the year 1958 calling upon him to demolish the Gau Ghat as well as the steps, etc., on both sides, i.e., the eastern and western, of the municipal drain. The petitioner filed a suit seeking a permanent injunction restraining the municipal committee from demolishing the above-mentioned structure, which suit was dismissed by the trial Court on 19th of March, 1959. Against this decree, an appeal was filed and before the lower appellate Court, the petitioner gave up his claim to maintain the structure on the eastern side of the municipal drain and with regard to the structure on the western side of the municipal drain the appeal was accepted and the injunction prayed for issued on 24th of August, 1959. An appeal against this order was filed by the municipal committee which is still pending in the High Court.

On 21st of January, 1961, the petitioner was elected as a member of the Municipal Committee, Meham and he took oath of his office on 24th of February 1962. A notice was served by the municipal committee on the petitioner to remove the encroachment on the eastern side about which the petitioner had himself given up the claim. Meanwhile it appears that inasmuch as the structures on the eastern side over the municipal drain were necessary for the reasonable user of the petitioner's property, on the matter being referred to the District Development and Panchayat Officer, who was incharge of the Municipal Committee Meham, it is stated, he made a recommendation that those structures be either sold to the petitioner or be leased out to him on *teh bazari*. Before this matter could be decided, on 10th of September, 1962, the Punjab Government served a notice on the petitioner purporting to be one under the proviso to section (1) of the Punjab Municipal Act calling upon him

show cause why he should not be removed from the membership of the Municipal Committee, Meham. The cause was shown by the petitioner and, *inter alia,* he stated as follows:—

> "So far as the eastern side of the municipal drain is concerned, I had given up my claim on it and it has not been demolished to keep the *status quo* as the appeal is pending in the High Court. However, I undertake to demolish it, if the Government is pleased to direct in that way. This was only to maintain the present position of the site for the proper appreciation of the facts by the Hon'ble High Court."

On 15th of April, 1963, however, the Government, under clause (c) of sub-section (1) of section 16 of the Punjab Municipal Act (hereinafter referred to as the Act, removed the petitioner from the membership of the municipal committee (*vide* annexure 'A') and further disqualified him for a period of two years under sub-section (2) of section 16 of the Act. The present writ has been filed by the petitioner challenging the above-mentioned order.

The main ground urged on behalf of the petitioner was that the act of the petitioner in not demolishing the structure on the eastern side of the municipal drain in the circumstances of the case could, in no way, be treated to be "flagrant misuse of his position as a member of the Municipal Committee, Meham" and thus, the order of the Government removing him is beyond their jurisdiction.

In the return filed it was, *inter alia,* stated as follows—

> (1) that the committee could sell or sanction on *teh bazari* the land only on receipt of

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any written request from a defaulter and in this case the petitioner did not make any application to the Committee;

(2) that the petitioner ignored the notice served on him on 9th of January, 1962, for removing the encroachment;

(3) that, on 19th of February, 1963, the petitioner was requested to deposit a sum of Rs. 215.60 nP. as *teh bazari* fee up to 10th of December, 1962, and to obtain permission of the municipal committee but he even ignored this notice also. The petitioner did not deliberately pay the legitimate dues of the committee. This clearly shows that he had also been responsible for loss of municipal funds. In case the petitioner had been an ordinary citizen, he would not have acted like that because as is apparent, on 26th of April, 1963, immediately after his removal from the membership of the committee, he paid the said amount.

With regard to the last-mentioned point, it has to be noted that the notice to show cause was served on the petitioner on 10th of September, 1962, and it did not, and, in fact, could not take into consideration or mention the circumstance of the request of the municipal committee for payment of Rs. 215.60 nP., on 19th of February, 1963, which, it is stated, was not promptly complied with. It is, therefore, clear that the Government could not have taken into consideration this circumstance and there is no categorical affidavit to the contrary and, consequently, it is not necessary for us to consider whether this circumstance of not making prompt payment demanded on 19th of February, 1963, is or is not a proper or valid

ground for the removal of the petitioner. It is further to be noted that in the demand there was no time limit fixed by which the payment was desired to be made.

The sole question before us, therefore, is whether the Government could remove the petitioner for the default made by him in not removing the encroachment even after he was served with a notice, dated 9th of January, 1962, to do so. The relevant sub-clause (e) of section 16(1) of the Act is as follows:—

> "16 (1) The State Government may, by notification, remove any member of the committee—
>
> (e) 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."

The relevant portion of the notice in this case (annexure (C)) is as follows:—

> "Even in the Civil Court you confessed that you had made an encroachment. Even then you failed to remove the encroachment on the eastern side of the drain. The proper course for you was that you should have applied to the committee for allowing you the encroachment and should have paid *teh bazari* on the land encroached upon. You acted like this thinking your position as a member of the said committee that no one could check you."

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Reference here may also be made to the report of the District Development and Panchayat Officer (Local Bodies), Rohtak, dated 30th of May, 1962, on the file produced on behalf of the respondent. The relevant portion of this report runs as follows:—

> "I visited Meham on 24th May, 1962, in connection with complaint filed by President, Municipal Committee, Meham, against Shri Satya Dev * * for encroachment on public street and recorded the statement of Shri Satya Dev * * * * *
> This fact of the encroachment is proved beyond doubt but since the location of the house of Shri Satya Dev is at a higher level than the street, it is essential that he should have connecting pavement with the street. Thus, a lenient view has to be taken on this encroachment which has been necessitated by the particular situation of the house. In my view, the ends of justice would be met after he pays for this land, occupied by him unlawfully, to the municipal committee. In case the committee agrees, a proposal for sale of land should be submitted to this office for taking further action in this behalf."

From the above, the following facts clearly emerge—

(1) that the municipal committee originally claimed that they had a right to demolish the structures both on the eastern as well as on the western side;

(2) that in the suit filed by the petitioner it has been held by the appellate court that

the municipal committee has no right to demolish the structure on the western side;

(3) that the structures on the eastern side are no doubt encroachments but these encroachments came into existence long before the petitioner became a member of the committee;

(4) that the matter with regard to the western side is *sub judice* in the High Court;

(5) that on 9th of January, 1962, the municipal committee called upon the petitioner to demolish the structure on the eastern side of the drain;

(6) that this encroachment on the eastern side is necessitated by the particular situation of the house of the petitioner which is at a higher level than the street and that the District Development and Panchayat Officer, after inspection of the spot, had definitely recommended that the matter should be compounded by selling the land underneath the encroachment to the petitioner.

The points that arise for consideration are, first whether continuing an encroachment, which came into existence long before the petitioner became a member of the committee, amounts to "flagrant abuse of his position as a member", and secondly, whether this Court can go into this question if once the State Government, in the impugned notification, declares that the Government is satisfied that the petitioner is guilty of flagrant abuse of his office, by continuing the aforesaid encroachment.

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On behalf of the State reliance is mainly placed on a Full Bench decision reported in *Joginder Singh* v. *The State of Punjab and another* (1), for its contention that this Court is precluded from going into the question whether the State Government had no ground for coming to the conclusion that there had been flagrant misuse of his position by the petitioner as a member of the committee. The observations relied upon are at page 279 of the report in P.L.R. and are as follows:—

> "What 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'."

From this, it was urged that it is for the State Government to form an opinion in question and that this Court cannot go into the question. I am afraid, the observations, referred to above, particularly when they are read in conjunction with what precedes the same, do not lead to any such interpretation. The very fact that the learned Judge actually considered the circumstances in that case and had observed that if the allegations of fact were true then the State Government could well have held that the petitioner had flagrantly abused his position, goes to show that the Court can go into the question whether, in the circumstances of the case, a member has been guilty of an act which is in disregard of his duty and which amounts to abuse

(1) I.L.R. (1963) 1 Punj. 588=1963 P.L.R. 267.

of his position as a member and secondly whether that act is such as would shock a reasonable mind and, therefore, amounts to flagrant abuse of his position. The point whether the Court can go into such a question was urged before Grover, J., in *Bhagat Ram Patanga* v. *The State of Punjab* (2). At page 508 of the report, it is stated as follows:—

> "It may be that it is for the State Government to form the opinion whether a person has been guilty of flagrant abuse of his position as a member of the committee but if on the facts stated either in the order or in the show-cause notice which preceded the order, it is apparent that those facts were altogether extraneous or were not germane or relevant to the provision of the law under which action is taken, then the orders must be struck down."

Reliance for this was placed on *P. J. Irani* v. *State of Madras* (3). In this case before Grover, J., a member was removed on the ground that in the meeting for the election of the President of the committee, which he attended, the petitioner in that case was "a supporter of the group" headed by Om Parkash Agnihotri, who, during the course of the meeting, became unruly and began to tear his clothes and that the petitioner then managed to bring some outsiders into the hall to cause disturbance at the meeting and thus failed to maintain the decorum and did not care to obey the chair. This was considered by the Government as a flagrant abuse of his position by the petitioner and he was directed to be removed. The learned Judge came to the conclusion that the grounds which led to the making of the orders removing the petitioner were "neither germane nor relevant to the provisions of

(2) I.L.R. 1964 (1) Punjab 500.
(3) A.I.R. 1961 S.C. 1731.

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section 16(1)(e) of the Act. Whatever misconduct was attributed to the petitioners was not of such a nature as could have the remotest connection with the discharge of their duty as members of the committee and although lack of decorum and dignity and introducing incitement and unruly element in a solemn meeting of the committee was much to be deprecated, if true, but that could not justify the removal of the petitioners on the ground that they had flagrantly abused their position as members of the committee." The same learned Judge in another writ petition *Waryam Chand* v. *State of Punjab* (C.W. 535 of 1961), decided earlier, had taken the same view where a member was removed on the ground that he had "managed to construct a door and a wall in shop No. 720 during the month of February, 1960, without getting the building plan sanctioned from the committee." The question posed by the learned Judge was as follows:—

> "Assuming that this charge was well founded, the question arises whether this would constitute a flagrant abuse of his position as a member of the committee by the petitioner on which ground alone his removal was ordered."

The learned Judge, after considering the provisions of sections 189 and 199 of the Act, came to the conclusion that "if he (petitioner) infringes the statutory provisions or the by-laws, he renders himself liable to punishment under section 199. It is not possible to see how making any construction without sanction involves a flagrant abuse of position as a member of the committee, for any individual house-owner can make such an erection, irrespective of the fact whether he is a member of the committee or not. Such an abuse of position as a member can only be established by some further act or acts on the part of the

member by which he may have prevented the officers of the committee from interfering while the unauthorised construction is being made or by not taking any action subsequent to such construction. There is no allegation or suggestion whatsoever either in the return or in the charge preferred against the petitioner or in final order * * * that he took any undue advantage of his position as a member. The learned Judge further referred to *Shri Purshotam Chandra* v. *State of Uttar Pradesh and another* (4), in which on somewhat similar provision, the petitioner was removed on the ground that he had constructed a building without the sanction of the municipal board. Grover, J., quoted with approval the observations made by Mootham, C.J., who, while delivering the judgment of the Division Bench, referred to the decision of the Privy Council in *Hubli Electricity Company Limited* v. *Province of Bombay* (5). These observations may usefully be reproduced here:—

> "Section 40(3) of the U.P. Municipalities Act confers upon the State Government the power to remove a member. It can do so if in its opinion he has so flagrantly abused his position as a member that his further continuance in office is against the public interest. In order to entertain an opinion for the purposes of this sub-section the State Government must necessarily entertain a view as to whether the conduct complained of, is in his capacity as a member. This, however, is a question of law, and we do not think that it was the intention of the legislature that the State Government's view on that question should be final. If the State Government removes a member for misconduct unconnected

(4) 1957 A.L.J. 885.
(5) 76 I.A. 57.

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with his position as a member then it has done something for which the sub-section provides no warrant, and its opinion in the words of the judgment in the *Hubli Electricity Company's case* (5), is not such an opinion as is referred to in the section."

The view taken by the Allahabad High Court, further, was that a person cannot be said to have flagrantly abused his position merely because in some way he contravenes any of the provisions of the Act or by-laws made thereunder. The act which can properly form the basis of formation of an opinion by the State Government that there had been a flagrant abuse, must have some reference to his position as a member.

The facts of *Joginder Singh's case* (1) were quite different. The allegations against Darbari Lal, one of the petitioners in that case, were that, *inter alia*, he had been keeping his truck on a part of the municipal road without paying any *teh bazari* to the committee and that he had imported goods into the municipal area on two different occasions by evading payment of octroi duty and he did this and other similar acts while sitting as a member of the committee. In paragraph 15 of the judgment at page 278, it was observed as follows:—

"* * * 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 detention."

In the present case, there is no encroachment after the petitioner had become a member. The encroachment made by him before he became a member was not unknown to the municipal committee and was the subject-matter of protracted litigation between the municipal committee and the petitioner, and consequently, no question arises of his having avoided "detection" by using any influence of his office as a member and the mere fact that he did not promptly demolish the encroachment cannot be said to be an act which has any connection with his position as a member. It is further clear from the report of the Block Development and Panchayat Officer that this encroachment was, more or less, an encroachment of necessity. Again, it cannot be denied that the question as to whether the encroachment alleged by the municipal committee to have been made by the petitioner even on the western side of the municipal drain was justified or not, is not finally at rest and the municipal committee is agitating this matter before the High Court. Though in that appeal the question of the eastern side is not directly involved because *qua* that the petitioner had given up his claim,

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yet the plea taken in his explanation that he had not demolished the encroachment so that the *status quo* may be maintained in case it becomes necessary for that matter to be taken into consideration while deciding the appeal, cannot be said to be altogether frivolous, and, in any case, he had in categorical terms stated in the explanation that if he is directed to demolish that portion immediately, he would comply with the orders of the Government. Be that as it may, to my mind, it is clear that continuing an encroachment, which came into existence long before a person became a member, and not demolishing the same, cannot be said to be an act directly connected with his position as a member particularly when there is no allegation or suggestion that he, by his influence or presence in the municipal committee, had prevented any proper action to be taken in the matter. In fact, we have it on the record that not only a regular notice was given to the petitioner to demolish the encroachment but a complaint was made by the President of the committee, on the basis of which the District Development and Panchayat Officer had visited the place, inspected the spot and made a report.

In view of the above, therefore, I feel that the order of the Government removing the petitioner from the membership and disqualifying him is without jurisdiction and not in accordance with law. I, therefore, accept this petition and make the rule absolute and quash the impugned order. The petitioner will have his costs which are assessed at Rs. 100.

Dua, J.

DUA, J.—I fully agree with the reasoning and the conclusion of my learned brother. In view, however, of the importance of the question raised, I would like briefly to express my views in regard to the respondents' contention that the decision of the State Government is sacrosanct and completely immune from

judicial scrutiny by this Court. The argument advanced is that if the State Government has formed the opinion that the petitioner "has flagrantly abused his position as a member of the Committee", then it must be held to be conclusive and binding on this Court in proceedings under Article 226 of the Constitution. The Full Bench decision of this Court in *Joginder Singh's case* (1) on which mainly reliance has been placed for this proposition, in my opinion, does not support the extreme submission. Nor does the language of section 16 of the Punjab Municipal Act justify it.

As has often been said, it is reasoning and judgment and not bald literalness of the language used in a statute which should guide the judicial research for the true legislative intent. Of course, it does not mean that in the garb of attempting to get at the legislative design, the Court can re-write a statute or give a construction of which the language is not susceptible or which is repugnant to its terms, for, the judicial power is primarily concerned with what the law is or has been and not with what the law shall be; the Courts' only concern being the administration of justice in accordance with law. Statutory interpretation, if I may so put it, is not considered an exact science; and perhaps at times it may call for judicial statesmanship of a high order. In so far as the question posed before us is concerned, I may with advantage quote some instructive observations from a recent decision of a bench of five Judges of the Supreme Court in *Board of High School* v. *Ghanshayam Das Gupta, etc.* (6), in which a passage from the judgment of S. R. Das, J., (as he then was), in the *Province of Bombay* v. *Khusuhaldas* (7), has also been reproduced:—

> "What constitutes 'a quasi judicial act', was discussed in the *Province of Bombay* v.

(6) A.I.R. 1962 S.C. 1110.
(7) A.I.R. 1950 S.C. 222 : 1950 S.C.R. 621.

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Khushaldas S. Advani (7). The principles have been summarised by Das, J. (as he was then), at p. 725 (of S.C.R.) (at p. 260 of A. I. R.) in these words:

"The principles as I apprehend them are:—

(i) that if a statute empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a *lis* and *prima facie* and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and

(ii) that if a statutory authority has power to do any act which will prejudicially affect the subject then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially.

In other words, while the presence of two parties besides the deciding authority will *prima facie* and in the absence of any other factor impose upon the authority the duty to act judicially, the absence of two such

parties is not decisive in taking the act of the authority out of the category of quasi-judicial act if the authority is nevertheless required by the statute to act judicially".

These principles have been acted upon by this Court in later cases: see *Nagendra Nath* v. *Commissioner of Hills Division* (8), *Radhe-Shyam Khare* v. *State of Madhya Pradesh* (9), *G. Nageswara Rao* v. *Andhra Pradesh State Road Transport Corporation* (10), and *Shivji Nathubhai* v. *Union of India* (11). Now it may be mentioned that the statute is not likely to provide in so many words that the authority passing the order is required to act judicially that can only be inferred from the express provisions of the statute in the first instance in each case and no one circumstance alone will be determinative of the question whether the authority set up by the statute has the duty to act judicially or not. The inference whether the authority acting under a statute where it is silent has the duty to act judicially will depend on the express provisions of the statute read along with the nature of the rights affected, the manner of the disposal provided, the objective criterion if any to be adopted, the effect of the decision on the person affected and other indicia afforded by the statute. A duty to act judicially may arise in widely different circumstances which it will be impossible and in-

(8) 1957 S.C.R. 1240 : A.I.R. 1958 S.C. 398.
(9) 1959 S.C.R. 1440 : A.I.R. 1959 S.C. 107.
(10) 1959 Supp. (1) S.C.R. 319 : A.I.R. 1959 S.C. 308.
(11) 1960—2 S.C.R. 775: A.I.R. 1960 S.C. 606.

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deed inadvisable to attempt to define exhaustively (*vide* observations of Parker, J., in *R.* v. *Manchester Legal Aid Committee* (12)."

The Supreme Court in the reported case then took into consideration the fact that there was no express provision in the relevant Act or the Regulations casting a duty on the Examination Committee to act judicially, as also the fact that there was nothing express from which it could be said that the Committee was not under a duty to act judicially. As a matter of fact, it appears, that in that case there was no express provision even for calling for an explanation from the examinee concerned and for hearing him. These factors were, it is significant, not considered conclusive on the question of the quasi-judicial nature of the proceedings. It would, in my opinion, be fruitful to reproduce at this stage the rule which was being construed by the Supreme Court:—

> "It shall be the duty of the Examinations' Committee subject to sanction and control of the Board:—
>
> (1) to consider cases where examinees have concealed any fact or made a false statement in their application forms or a breach of rules and regulations to secure undue admission to an examination or used unfair means or committed fraud (including impersonation) at the examination or are guilty of a moral offence or indiscipline and to award penalty which

(12) (1952)—2 Q.B. 413.

may be one or more of the following:—

(i) withdrawal of certificate of having passed the examination;

(ii) cancellation of the examination;

(iii) exclusion from the examination."

Wanchoo, J., speaking for the Court, expressed its opinion on the nature of the functions of the Committee in these words:—

"Even though calling for an explanation and hearing the examinee may not have been made expressly obligatory by the Act or the Regulations, it is obvious that the Committee when it proceeds to decide matters covered by R. 1(1) will have to depend upon materials placed before it, in coming to its decision. Before the Committee decides to award any penalty it has to come to an objective determination on certain facts and only when it comes to the conclusion that those facts are established that it can proceed to punish the examinee concerned. The facts which the Committee has to find before it takes action are—

(i) whether the examinee has concealed any fact or made a false statement in his application form; or

(ii) whether the examinee has made a breach of the Rules and Regulations to secure undue admission to an examination; or

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(iii) whether the examinee has used unfair means at the examination; or

(iv) whether the examinee has committed fraud (including impersonation) at the examination; or

(v) whether the examinee is guilty of moral offence or indiscipline.

Until one or other of these five facts is established before the Committee, it cannot proceed to take action under R. 1(1). In order to come to the conclusion that one or other of these facts is established, the Committee will have to depend upon materials placed before it, for in the very nature of things it has no personal knowledge in the matter. Therefore, though the Act or the Regulations do not make it obligatory on the Committee to call for an explanation and hear the examinee, it is implicit in the provisions of R.1(1) that the Committee must satisfy itself on materials placed before it that one or other of the facts is established to enable it to take action in the matter. It will not be possible for the Committee to proceed at all unless materials are placed before it to determine whether the examinee concerned has committed some misconduct or the other which is the basis of the action to be taken under R. 1(1). It is clear, therefore, that consideration of materials placed before it is necessary before the Committee can come to any decision in the exercise of its powers under R. 1(1) and this can be the only manner in which the Committee can carry out the duties imposed on it."

And again, a little lower down:—

"Considering, therefore, the serious effects following the decision of the Committee and the serious nature of the misconduct

> which may be found in some cases under R. 1(1), it seems to us that the Committee must be held to act judicially in circumstances as these. Though, therefore, there is nothing express one way or the other in the Act or the Regulations casting a duty on the Committee to act judicially, the manner of the disposal, based as it must be on materials placed before it, and the serious effects of the decision of the Committee on the examinee concerned, must lead to the conclusion that a duty is cast on the Committee to act judicially in this matter particularly as it has to decide objectively certain facts which may seriously affect the rights and careers of examinees, before it can take any action in the exercise of its power under R. 1(1). We are, therefore, of opinion that the Committee when it exercises its powers under R. 1(1) is acting quasi-judicially and the principles of natural justice which require that the other party (namely, the examinee in this case), must be heard, will apply to the proceedings before the Committee".

The rules of natural justice were, as just shown, held to apply to the Examination Committee. I have considered it expedient and indeed necessary to quote somewhat exhaustively from this decision in order properly to ascertain and discover its true *ratio decidendi* or the principle enunciated in it. The same bench of the Supreme Court applied the same test to the proceedings before Board of Revenue, U.P., acting under the Indian Stamp Act in *Board of Revenue* v. *Vidyavati* (13). Both these decisions of the Supreme

(13) A.I.R. 1962 S.C. 1217.

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Court were followed by a Full Bench of this Court (Tek Chand, Khanna, JJ., and myself) in *Bhikhan and others* v. *The Punjab State and others* (14). I may make it clear that the rules of natural justice must not be confused or mixed up, as it happens at times, either with '*jus-naturale*' or with the procedure of the ordinary Courts.

The representative institutions like the local self-Government bodies have, in our republican system of democratic set-up, a special importance, and as at present advised, I find it somewhat difficult to persuade myself to hold that the Legislature has intended to confer on the State Government an absolute and uncontrolled power, by merely forming or expressing its subjective opinion, not only to remove whomsoever it likes from the membership of the municipal committee, to which he has been duly elected by the electorate, but also to deprive him of his valuable right of franchise, and then to claim complete immunity from judicial scrutiny under Article 226 of the Constitution.

As I understand the position, it is not at all necessary for spelling out a duty to act judicially that the right invaded or affected should be a right to property or a fundamental right; any right of vital importance to a citizen as such, according to the ratio of the various decisions of the Supreme Court, as I read them, taken with other relevant circumstances, may be sufficient to lead a judicial mind to such a conclusion.

An electoral right or a right of franchise, even if it relates only to local self Government bodies like the municipal committee, appears to me to be of more than ordinary importance in our democratic set-up, which is basically founded upon the doctrine of elective representation, for, this right clearly determines

(14) I.L.R. (1963) 1 Punj. 660 : 1963 P.L.R. 368.

as to who is to run these committees on behalf of the people, and, in my humble opinion, it would be a constitutional incongruity to unduly be-little the importance of this right and to leave to the uncontrolled, and, if I may say so, for all practical purposes, arbitrary opinion of the executive administrator. It need hardly be emphasised that the executive administrator is, generally speaking, far closer to the political arena than the Court and, therefore, prone to be more easily—however unconsciously—amenable to the stresses, strains and subtle influence of power politics, The executive or the administrative wing of the Government, as common experience also shows, is apt to be influenced (at times perhaps unduly) in the discharge of its mixed duties by considerations of administrative convenience at the cost of the rule of law; such influences insidiously producing a state of mind incompatible with objective impartiality. It is precisely this tendency which the real core of the rule of law is designed to curb through judicial scrutiny by this Court within the constitutional limits.

Now, if the power of removing and disqualifying the duly elected representatives of the people is properly exercised, it may promote the cause of democracy, but if abused it may lead to totalitarianism. Democracy, being fully conscious of the corrupting effects of unchecked power upon human nature and of the fact that an average human being is not so angelic as to be safely entrusted with power over his fellow-beings, for the exercise of which he cannot be called to account, thus seeks, *inter alia,* to devise a system of checks and balances, encourages vigorous opposition and insists on limited duration of Government's tenure of office. It is apparently by this method that we in this Republic are striving in our constitutional set-up to ensure to the people effective and proper safeguard of their constitutional and statutory

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rights. It may, therefore, appropriately be emphasised that it is the effectiveness of the judicial scrutiny that sustains and vitalizes the democratic system of Government of our pattern by preserving, promoting and strengthening the citizens' faith in the checking potentialities of the rule of law which is one of the basic pillars of our Constitution. In the case before us, therefore, to exclude this Court's power is difficult to sustain on principle. The ratio of the Full Bench decision and of the various decisions of the Supreme Court noted above also do not support the argument of exclusion. As concluded by my learned brother in his lucid and well-considered judgment, the impugned order is outside the law and without jurisdiction.

With these observations, I entirely agree with the order proposed.

B.R.T.

REVISIONAL CRIMINAL

Before Shamsher Bahadur, J.

GURBAX SINGH,—*Petitioner*

versus

MOHD. SHAFI AND OTHERS,—*Respondents*

Criminal Revision No. 721 of 1963.

1963

Dec., 17th.

Code of Criminal Procedure (Act V of 1898)—Section 145—Land attached during the proceedings under and leased out to the highest bidder—Such a lessee—Whether a tenant as defined in Section 9 of the Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—Balance of lease money due—Whether can be recovered after the termination of proceedings under section 145.

Held, that the concept of a tenant under the Pepsu Tenancy and Agricultural Lands Act, 1955, is the same as under the Punjab Tenancy Act and a person who gave