LETTERS PATENT APPEAL.

Before Bhandari, C. J., and Chopra, J.

SHRI HARNAM SINGH MODI,—*Appellant*

versus

THE STATE OF PUNJAB,—*Respondent.*

Letters Patent Appeal No. 3 of 1957

Punjab Municipal Act (III of 1911)—Sections 14 and 16—Respective scope of—Member of a Municipal Committee removed from his office on the ground that he has flagrantly abused his position as a member—Removal. whether under section 14 or 16—Member whether entitled to be informed of the reasons of his proposed removal and to be afforded an opportunity of tendering an explanation —Member removed without framing charges and without opportunity of tendering explanation—Whether entitled to mandamus to restore him to his office—Interpretation of statutes—Marginal notes to the sections—Whether can be taken into consideration in interpretting the section—Conflict between two provisions of a statute—Which one to prevail.

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May, 23rd

Held, that section 14 of the Punjab Municipal Act was enacted primarily with the object of empowering the State Government to change the constitution of any municipal committee and not for the purpose of getting rid of members on account of their personal disqualifications and in order to give effect to the change, to declare that the seat of any member shall be vacated. The fact that the statute has made no provision for notice or hearing in respect of a person who is required to vacate his seat under section 14 and the fact that it has made such provision in respect of a person who is proposed to be removed under section 16 lead one strongly to the conclusion that in one case the removal is made on account of the abolition of office and in the other for a reason touching his qualifications or his performance of its duties, showing that he is not a fit or proper person to hold office. If a member is removed with the object of reducing the number of seats, he is removed for the purpose of reconstituting the committee and not for the purpose of eliminating a person who is not fit to hold his office. He is not removed for any

reason personal to him or for a defect of character which the law or the sound public opinion pronounces to be sufficient to justify a forfeiture of the office. Protection against removal does not provide protection against reduction for economy, and a person who is removed from office on the ground that the office itself has been abolished and not on a ground affecting his own competency or fitness, is not entitled to claim that he should be afforded an opportunity of being heard. It is not surprising in the circumstances that the Legislature has refrained from making a provision in regard to notice and hearing in respect of a member who is required to vacate his seat under section 14.

Held, that section 16 specifies the causes for which a member may be removed and declares the conditions and limitations under which the State Government may act. As the express mention of one thing implies the exclusion of another, the enumeration of certain conditions precludes the idea that there would be others not expressed. A member can be removed only for a legal cause, that is one or more of the causes enumerated in the section and not for any cause which the State Government may think sufficient. An attempt to remove a member for any cause not affecting his competency or fitness would be in excess of power and equivalent to an arbitrary removal. If, therefore, it is proposed to remove a member for a legal cause set out in the body of section 16, the power of removal cannot be exercised without affording the person concerned an opportunity of tendering his explanation.

Held, that where the allegation against the appellant was that he had deliberately miscounted the votes which had been polled for the two candidates with the object of showing favour to a member of his party and of defeating the legitimate claims of a member of the opposite party, and thus flagrantly abusing his position as a member of Municipal Committee, his case is governed by the special provision embodied in clause (e) of Section 16 and the State Government was under a statutory obligation to proceed under the provisions of section 16 to communicate to the appellant the reasons for his proposed removal and to afford him an opportunity of tendering his explanation. The State Government failed to discharge this obligation for no charges were formulated or communicated and no opportunity was given to the appellant to refute the said

charges. The appellant is, therefore, entitled to mandamus that he should be restored to the office from which he has been wrongly and improperly removed.

Held, that although a marginal note is inserted merely for convenience of reference and although generally speaking it is inadmissible as an element bearing upon the intention of the legislature, it is entitled to some consideration as indicating the intention of the legislature by which it was adopted.

Held, that when two provisions of a statute are in conflict with each other, an effort should be made to reconcile them. If the conflict is irreconcilable the later provision overrides the earlier and the special provision, wherever it occurs, overrides the general. Thus, where there is in the same statute a specific provision and also a general one which in its most comprehensive sense would include matters embraced in the former, the particular provision must be operative and the general provision must be taken to affect only such cases within its general language as are not within the provisions of the particular provision.

Case law discussed.

Letters Patent Appeal under clause 10 of the Letters Patent against the judgment of Honourable Mr. Justice Bishan Narain, dated the 28th December, 1956, in C.W. 369/56.

F. C. MITTAL, P. C. PANDIT, GOMTI PARSHAD, GANGA PARSHAD JAIN and H. L. SARIN, for Appellant.

L. D. KAUSHAL, Deputy Advocate-General, for Respondent.

JUDGMENT

Bhandari, C. J.

BHANDARI, J.—These two appeals under clause 10 of the Letters Patent raise a common question of law, namely, whether a member of a municipal committee, who is removed from office on the ground that he has flagrantly abused his position

as a member, is entitled to be informed of the reasons of his proposed removal and to be afforded an opportunity of tendering an explanation.

The first appeal has been presented by one Shri Harnam Singh Modi who was elected a member of the Municipal Committee of Ferozepore in the year 1955 and President of the said Municipal Committee in the same year. A meeting of the Municipal Committee was held on the 12th July, 1956, for the election of the two Vice-Presidents. As only two candidates, namely, Shri Lachhman Das Kochar and Bawa Pritam Singh had been proposed for election, all that was to be determined was as to who was to be the senior and who was to be the junior Vice-President. After the ballot-papers were taken out of the ballot-box, the petitioner counted them and declared that eight votes had been tendered for Lachhman Das and six for Pritam Singh. Lachhman Das was accordingly declared to be the Senior Vice-President and Bawa Pritam Singh as the Junior Vice-President.

After the results had been announced and after the meeting had come to a close, Pritam Singh requested the petitioner to recount the votes which had been polled for each of the two candidates. The petitioner handed over the ballot papers to Pritam Singh to satisfy himself as to the number of votes which had been cast for each candidate. Recounting of the votes disclosed the fact that seven votes had been cast in favour of each of the two candidates. Pritam Singh and his supporters requested the petitioner to place on record the mistake which had occurred in counting and the petitioner acceded to this request despite the protest of the opposite party. The result which had already been declared, however, could not be

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interfered with in spite of the discovery of the error. The petitioner, however, hastened to inform the Deputy Commissioner, Ferozepore, as to the proceedings which had taken place and the subsequent discovery of the mistake. The Deputy Commissioner advised the petitioner to place the facts before Shri H. S. Kwatara, a Magistrate of the first class, and the same day the petitioner brought to his notice all that had taken place during and at the conclusion of the meeting. The Magistrate sent for all the members of the Municipal Committee on the 18th July, 1956. The petitioner and five members of his group met him in the Court-room, but the members of the opposite group led by Pritam Singh failed to appear. On the 14th August, 1956, the State Government issued a notification in which they declared that the seat of the petitioner as a member of the Municipal Committee had been vacated under section 14(a) of the Punjab Municipal Act and that he had been disqualified for election for a period of three years under section 16(3) of the said Act.

On the 28th August, 1956, the appellant presented a petition under Article 226 of the Constitution in which he complained that no notice was issued to him to show cause against the action which was proposed to be taken in regard to him, that he was not even aware of the fact that Government proposed to take action against him, that if an opportunity had been afforded to the appellant of showing cause he would have satisfied the Punjab Government that the error was committed in good faith through inadvertance and not with any intention to cause harm or injury to Bawa Pritam Singh or to favour Shri Lachhman Das, that as soon as the mistake was brought to the notice of the petitioner he took immediate steps to place on record the circumstances in which the mistake happened to be committed,

that he brought all the facts to the notice of the Deputy Commissioner without loss of time, that the case of the petitioner cannot be said to fall within the mischief of section 14 and that the punishment contemplated by section 16(3) was wholly unjustified. It was vaguely alleged that the removal of the appellant was actuated by political bias and personal dislike of the party in power and that party is leaning towards another individual for whom the place was desired. It was prayed that an appropriate writ should be issued to the State Government restraining it from giving effect to their notification of the 14th August, 1956, as the order contained in the notification unseating the petitioner was opposed to law and rule of natural justice and therefore, void and of no effect.

The second appeal has been presented by one Sadhu Ram, a member and President of the Municipal Committee of Moga. His term as President was to expire on the 26th August, 1956, and a notice was accordingly issued that the new President would be elected on the 9th September, 1956. A day before the date of the said election the State Government issued a notification in which it was declared that in exercise of the powers conferred by section 14(a) of the Punjab Municipal Act, the Governor of Punjab was pleased to direct that the seat of Shri Sadhu Ram shall be vacated with effect from the date of the notification and to direct further that under section 16(3) of the said Act he shall be disqualified for election for a period of three years from the date of the said notification. The appellant alleges that copies of the Gazette Extraordinary containing this notification were sent by special messenger on that very day for distribution amongst the citizens of Moga. The appellant was informed of this notification at about 11 o'clock on the night

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of the 8th September, that is a few hours before the time of the election. It is contended that prior to the publication of the notification the appellant did not have the vaguest idea that any action was proposed to be taken against him. No charges were framed and none were communicated to him. No explanation was demanded or given. The appellant attributes his misfortune to the fact that he happens to belong to a party which is in opposition to the ruling party and to the fact that the latter was anxious to supplant the appellant by one Tirath Raj Vaid who was elected as President on the 9th September. The appellant presented a petition under Article 226 of the Constitution in which he requested the Court to issue a mandamus to the State Government calling upon it to restore the appellant to the membership of the committee and to remove the disqualification for election which had been wrongfully imposed upon him.

These two petitions came up for consideration before a learned Single Judge of this Court. It was argued before the learned Single Judge that although the allegations against the petitioners fall within the ambit of section 16(1), Government had taken action with ulterior motives under section 14(a) with the object of depriving the petitioners of their right to make representations under section 16(1). The learned Judge came to the conclusion that it was open to Government to take action either under section 14(a) or under section 16(1) and that the mere fact that Government had taken action under one provision of law rather than another was not indicative of its *mala fides*. In this view of the case the learned Single Judge dismissed both the petitions. The appellants have come to this Court in appeal, and the question for this Court is whether the learned

Single Judge has come to a correct determination in point of law.

I shall deal only with the case of Shri Harnam Singh Modi for the arguments which are applicable to his case apply also to the case of Shri Sadhu Ram.

Section 14 of the Punjab Municipal Act is in the following terms:—

Powers of the state Government over the constitution of committee

"14. Notwithstanding anything in the foregoing sections of this chapter, the State Government may at any time, for any reason which it may deem to affect the public interests, or at the request of a majority of the electors, by notification, direct—

(a) that the number of seats on any committee shall be increased or reduced;

(b) that any places on a committee which are required to be filled by election shall be filled by appointment, if a sufficient number of members has not been elected;

* * * * * * *

(c) that the seat of any specified member, whether elected or appointed, shall be vacated on a given date, and in such case, such seat shall be vacated accordingly, notwithstanding anything in this Act or in the rules made thereunder."

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Section 16 reads as follows:—

Powers of the state Government as to removal of members

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

(a) if he refuses to act, or becomes, in the opinion of the State Government, incapable of acting, or has been declared a bankrupt or an insolvent or has been convicted of any such offence or subjected by a criminal court to any such order as implies, in the opinion of the State Government, a defect of character which unfits him to be a member;

(b) if he has been declared by notification to be disqualified for employment in, or has been dismissed from, the public service and the reason for the disqualification or dismissal is such as implies in the opinion of the State Government a defect of character which unfits him to be a member;

(c) if he has without reasonable cause in the opinion of the State Government absented himself for more than three consecutive months from the meetings of the committee;

(d) if his continuance in office is, in the opinion of the State Government, dangerous to the public peace or order;

(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;

* * * * * *

(f) in the case of an elected member, if he has, since his election, become subject to any disqualification which, if it had existed at the time of his election, would have rendered him ineligible under any rule for the time being in force regulating the qualifications of candidates for election, or if it appears that he was at the time of his election subject to any such disqualification;

(g) if, being a legal practitioner, he acts or appears in any legal proceeding on behalf of any person against the committee, or on behalf of or against the Government * * * * * * where in the opinion of the State Government such action or appearance is contrary to the interests of the committee.

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

(2) A person removed under this section * * * * or whose election or appointment has

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been deemed to be invalid under the provisions of sub-section (2) of section 24, or whose election has been declared void for corrupt practices or intimidation under the provisions of section 255, or whose election the State Government has under section 24 refused to notify, shall be disqualified for election for a period not exceeding five years;

Provided that a person whose election or appointment has been deemed to be invalid under the provisions of sub-section (2) of section 24, shall not be disqualified for election or appointment for a period exceeding two years from the date of disqualification.

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

The first point for decision in the present case is whether in view of the maxim of common law that no man should be condemned unheard, it was the duty of the State Government, before ordering the removal of the appellant, to afford him a reasonable opportunity of being heard and to explain and refute the allegations made against him and to defend, enforce and protect his right. It has long been recognised in England that substantial notice and fair hearing are prerequisite to every proceeding by which life, liberty or property is jeopardised. The rule was well stated in *Murdock* v. *Phillips Academy* (1), when discussing the summary removal of a professor of an Academy by resolution of the Board of Visitors, Chief Justice Shaw said:—

"From the tenure of the plaintiff's office, it is quite clear that he was not liable to

(1) 12 Pick (Mass) 244

be removed by the trustees, upon mere considerations of expediency or convenience, nor unless he had forfeited his office for some of the causes mentioned in the statutes.

The question then recurs, did the trustees, in this proceedings, profess to act judicially, and was it conducted in such a manner as to give it the force and effect of adjudication of forfeiture and deprivation of office for misconduct? To ascertain what is necessary to be done in the ordinary course of proceedings, according to the ecclesiastical law, to cause a legal deprivation of the incumbent the rules are thus laid down. 2 Burn's Ecclesiastical Law 145: 'These things must concur: 1. A monition or citation of the party to appear. 2. A charge given him, to which he is to answer, called a libel. 3. A competent time assigned for the proofs and answers. 4. A liberty for counsel to defend his cause, and to except against the proofs and witnesses. 5. A solemn sentence, after hearing all the proofs and answers. These are the fundamentals of all judicial proceedings in the ecclesiastical courts, in order to a deprivation; and if these things be not observed, the party hath just cause of appeal, and may have a remedy by a superior court.' It is not to be insisted on, that in exercising the powers vested in a new jurisdiction, where no forms are prescribed, any precise course as to forms must be followed; but these rules indicate the course which must in substance be

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pursued by every tribunal acting judicially upon the rights of others. If the trustees at the time considered themselves as acting judically, we think they virtually disregarded these salutary rules."

It is well settled by the weight of authority in England that the power to appoint to an office or position necessarily carries with it the power of removal and that in the absence of constitutional or statutory restrictions, the power of removal is an incident to the power of appointment. No notice and hearing are necessary when the officer holds office at the pleasure of the appointing power or when the legislature does not designate the term of office, or when the latter does not require that the removal be for cause, or when the removal depends on the exercise of personal judgment on the question whether cause for removal exists. If, however, the officer has under the law a fixed term of office and if he is not removable except for definite and specified causes, then the power of removal cannot, in the absence of the positive mandate of statute, be exercised without notice or hearing (*Ossgood* v. *Nelson* (1), Ex parte *Ramshay* (2), *Willis* v. *Gipps* (3), *Bagg's case* (4), *see also Rex* v. *Liverpool* (5).

Similar considerations apply to members of a municipal corporation. A person who is elected a member of a municipal corporation in accordance with the provisions of a statute possesses certain rights which can be taken away

(1) Law Reports 5 H.L. 636
(2) 18 Q.B. 173
(3) (1846) 13 Eng. Reprint 536
(4) 11 Coke 93
(5) 2 Burr 723

only in accordance with the provisions of the statute. It follows as a consequence that the power of removal which destroys the member's franchise must be specifically conferred by the law of the corporation or by the law of the land, and when so conferred must be exercised strictly within the language of the grant and only for the causes enumerated therein. The proceedings for removal must comply with the necessary legal formalities laid down by the statute or the statutory rules and the courts will decline to uphold the validity of a removal unless the ground for removal is one recognised by the governing statute.

A question at once arises whether it is absolutely essential to the validity of the removal of a member of a municipal corporation that the member should be notified of the charges against him and afforded a reasonable opportunity of being heard in defence, and whether he is entitled to the same rights and privileges in regard to notice and hearing as are available to a Government servant. A distinction must be drawn between the removal of a member of a corporation whereby his franchise is taken away and the removal of a Government servant whereby his services are terminated. In the former case the member has rights granted by the Legislature of which he cannot be deprived except for one or more of the causes set out in the body of the governing statute; while in the latter case the Government servant holds office at the pleasure of the State and may be dismissed for any cause which the appointing authority may consider to be reasonable though in view of the constitutional provision enacted in Article 311 an order of dismissal, removal or reduction cannot be passed against him without affording him an opportunity of being heard. In an American case (*State* v.

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New Orleans (1), a distinction was made between officer's holding by election or appointment, and the rule relating to the removal of both classes was brought out with admirable clarity:—

> "If an officer has no franchise in his office, that is to say, if the nature of his office is a mere employment, the power to remove may be exercised without notice or hearing; subject to the liability of the corporation to an action in damages for breach of contract, if, by removing or discharging him, a contract has been violated. But where there is a franchise in the office resulting from an election or at appointment for a term established by law, there must be a charge against him, stated with substantial certainty, though not necessarily with the technical precision required in indictments; notice must be given of the time and place fixed for the hearing of such charge: reasonable opportunity must be afforded to answer the same; and to produce testimony; and the officer is entitled to be heard and defended by counsel, to cross-examine witnesses, and to except to the proof against him. If the charge be not denied, still it must, if not admitted, be examined and proved. And where the specific charge, stated is insufficient to justify removal or where being suffiicient, there is no evidence to sustain it, the officer is entitled to a mandamus to restore him."

The legal consequences which flow from the above discussion are that the procedure which

(1) 107 La. 632

should be observed in securing the removal of a member of a municipal corporation must be regulated strictly by the statute by which the corporation has been constituted and erected. If the statute declares expressly or by necessary implication that a member be removed summarily, no notice or hearing is necessary. If the statute declares that he should be afforded an opportunity of being heard in defence before the order of removal is passed, he must be afforded that opportunity. If the statute vests the power of removal in the discretion of any person or authority (as in section 14) or if the power of removal depends on the exercise of personal judgment on the question whether the cause for removal exists, the member is not entitled to notice or hearing before the order of removal is passed. If the statute declares (as in section 16) that the reasons for the proposed removal of a member shall be communicated to him and he shall be given an opportunity of tendering an explanation in writing, that procedure must be followed. If a statute empowers a person or authority to remove another for cause without specifying the procedure which should be followed in making this order the member cannot be removed without knowledge of the charges and an opportunity to be heard. It is contrary to principles of justice, equity and good conscience that a person who has under the law a fixed term of office, should be condemned unheard and Courts are always reluctant to countenance the exercise of such arbitrary power, unless under the positive mandate of law either deliberately or by the aid of judicial interpretation. In *Miles* v. *Stephenson* (1), the Court observed:—

> "It is the utmost stretch of arbitrary power and despotic denial of justice to strip

(1) 30 Atlantic Reporter 646

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an incumbent of a public office and deprive him of its emoluments and income before its prescribed term has elapsed, except for legal cause, alleged and proved, upon any impartial investigation after due notice."

But the law is not silent in the present case in regard to notice and hearing. Section 14 declares expressly that the State Government may in its discretion direct that the seat of any specified member shall be vacated on a particular date. No notice or hearing is necessary if a removal is ordered under the provisions of this section. Section 16 enacts that a member may be removed only for one or more of the causes set out in the body of the section, but declares that an order of removal shall be passed only after the member concerned has been afforded an opportunity of tendering his explanation. The question which arises in the present case is not so much as to whether notice and hearing should have been given under section 14 but as to whether it was within the competence of the State Government to order the removal of the appellant under section 14 instead of under section 16.

Section 14 was enacted primarily with the object of empowering the State Government to change the constitution of any municipal committee and in order to give effect to the change, to declare that the seat of any member shall be vacated. This is clear from a number of circumstances. In the first place, the marginal note which is descriptive of the subject-matter of the section, shows that the section relates to the "powers of the State Government over the constitution of committee". Although a marginal note is inserted merely for convenience of reference

and although generally speaking it is inadmissible as an element bearing upon the intention of the Legislature, it is entitled to some consideration as indicating the intention of the Legislature by which it was adopted. Secondly, it is significant that most of the powers refer to the constitution of the committee. Clause (a), for example, empowers the State Government to direct that the number of seats on any committee may be increased or reduced. This power can be exercised only if the State Government is vested with the power to direct that the seat of any specified member shall be vacated on a particular date, for the power to reduce must necessarily carry with it the power to remove. Thirdly, it is noteworthy that although section 16 confers power on the State Government to order the removal of any member of the committee, no such power has been conferred by section 14. Indeed, expressions like "remove" and "removal" are conspicuous by their absence. Fourthly, it may be mentioned that the powers conferred upon the State Government to direct that the seat of a specified member shall be vacated is similar in many ways to the power of Government to direct that a certain post shall be abolished for financial or other reasons. Fifthly, it is significant that although the Legislature has empowered the State Government to direct that a specified seat shall be vacated, it has placed no obligation on the said Government to afford the member whose seat is required to be vacated a reasonable opportunity of being heard in his defence. It is of course within the competence of the Legislature to confer upon Government the power to remove a member without cause, but in the absence of such cause the Court is entitled to presume that the Legislature intended that every member shall be entitled to hold office for the

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term for which he was appointed or until his seat is vacated under section 14 or until he is removed from membership for one or more of the causes set out in section 16. The fact that the statute has made no provision for notice or hearing in respect of a person who is required to vacate his seat under section 14 and the fact that it has made such provision in respect of a person who is proposed to be removed under section 16 lead one strongly to the conclusion that in one case the removal is made on account of the abolition of office and in the other for a reason touching his qualifications or his performance of its duties, showing that he is not a fit or proper person to hold office. If a member is removed with the object of reducing the number of seats, he is removed for the purpose of reconstituting the committee and not for the purpose of eliminating a person who is not fit to hold his office. He is not removed for any reason personal to him or for a defect of character which the law or the sound public opinion pronounces to be sufficient to justify a forfeiture of the office. Protection against removal does not provide protection against reduction for economy, and a person who is removed from office on the ground that the office itself has been abolished and not on a ground affecting his own competency or fitness, is not entitled to claim that he should be afforded an opportunity of being heard. It is not surprising in the circumstances that the Legislature has refrained from making a provision in regard to notice and hearing in respect of a member who is required to vacate his seat under section 14.

But we are presented at the threshold with a difficulty which cannot be easily surmounted. Sub-section (3) of section 16 empowers the State Government to declare that a person whose seat

has been vacated under the provisions of clause (e) of section 14 may be disqualified for election for a period not exceeding five years. Why should a person who is removed from the membership of a committee on the ground only that the number of seats on the committee has been reduced, be disqualified from contesting further elections? Could the Legislature have intended that the power of ordering the removal of members should be exercised not only for the purpose of effecting changes in the constitution of the committee but also for the purpose of getting rid of members who are not fit to hold the offices occupied by them? It seems to me that the original intention of the Legislature was that the provisions of section 14 should be employed only for the purpose of altering the constitution of the committee. It is for this reason that the section contains no provision for notice and hearing. But a small error which crept in when the statute was enacted has changed the entire aspect. Sub-section (2) of section 16 as originally enacted, provided as follows:—

> "(2) A person removed under this section *or whose seat has been vacated under the provisions of section* 14(e) * * * * shall be disqualified for election for a period not exceeding five years."

The Legislature must have realized that the words "or whose seat has been vacated under the provisions of section 14(e)" were completely out of place, for there is no earthly reason why a person who is required to vacate his seat not on the ground of incompetency or unfitness but on the ground that the number of seats on the committee has been reduced for financial or other reasons *shall* be disqualified for election for a certain period. There is no indication on the file as

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to when the Legislature discovered the mistake but it is manifest that when the statute was amended in the year 1935, it proceeded to omit the words "or whose seat has been vacated under the provisions of section 14(e)."

Had the Legislature contented itself with this amendment the problem with which we are confronted to-day may not have arisen. But unfortunately for the appellant and others similarly situated the Legislature proceeded to insert the following new sub-section in section 16, namely:—

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

The only change effected by these two amendments was that instead of imposing an obligation on the State Government to disqualify a person for a certain period, a discretion was vested in the State Government to disqualify him or not to disqualify him as the circumstances of the case may require. I am of the opinion that this section was intended originally to be brought into play only when the State Government wanted to remove persons for the purpose of reconstituting the committee and not for the purpose of getting rid of members on account of their personal disqualifications. The amendments which were actually effected, however, lead one to a contrary conclusion. The fact that the State Government was empowered to disqualify a person for a certain period appears to indicate that the help of this section can be involved not only for the purpose of removing a member for reconstituting the committee but also for the purpose of removing a member who is not fit to retain his seat on the committee.

Section 16 specifies the causes for which a member may be removed and declares the conditions and limitations under which the State Government may act. As the express mention of one thing implies the exclusion of another, the enumeration of certain conditions precludes the idea that there should be others not expressed. It seems to me, therefore, that a member can be removed only for a legal cause, that is, one or more of the causes enumerated in the section and not for any cause which the State Government may think sufficient. An attempt to remove a member for any cause not affecting his competency or fitness would be in excess of power and equivalent to an arbitrary removal. If, therefore, it is proposed to remove a member for a legal cause set out in the body of section 16, the power of removal cannot be exercised without affording the person concerned an opportunity of tendering his explanation.

The manifest purpose, policy or intent of the Legislatures, as gathered from the context, appears to be that the State Government should be at liberty at any time for any reason which it may deem to affect the public interests, to direct that the seat of any specified member shall be vacated on a given date (section 14) and that the State Government should be at liberty at any time to remove any member of the committee for cause (section 16). The first is a general provision and the second a specific or particular one.

It is an old and familiar principle that when two provisions of a statute are in conflict with each other, an effort should be made to reconcile them. If the conflict is irreconcilable the later provision overrides the earlier and the special provision, wherever it occurs, overrides the general. Thus, where there is in the same statute a specific provision and also a general one which in its most

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comprehensive sense would include matters embraced in the former, the particular provision must be operative and the general provision must be taken to affect only such cases within its general language as are not within the provisions of the particular provision. (*Mulji Tribovan Sevak* v. *Dahar Municipality* (1)). The allegation against the appellant was that he had deliberately miscounted the votes which had been polled for the two candidates with the object of showing favour to a member of his party and of defeating the legitimate claims of a member of the opposite party. His case is governed clearly by the special provision embodied in clause (e) of section 16 for the allegation against him was that he had flagrantly abused his position as a member of the Municipal Committee. As there is a specific provision in the statute and a general one and as the case is governed by the specific provision it is that specific provision that must govern the case and not the general one (*Bhana Mahan* v. *Emperor* (2)) The State Government were, in my opinion, under a statutory obligation to proceed under the provisions of section 16 to communicate to the appellant the reasons for his proposed removal and to afford him an opportunity of tendering his explanation. The State Government failed to discharge this obligation for no charges were formulated or communicated and no opportunity was given to the appellant to refute the said charges. It may be that the appellant tendered some sort of an explanation to the district authorities but that is not the explanation which the law contemplates. The opportunity of tendering an explanation which the law contemplates is an opportunity to tender an explanation after the charges have been framed

(1) A.I.R. 1922 Bombay 247 F.B.
(2) A.I.R. 1936 Bombay 256

and communicated to the person concerned and not an opportunity to tender an explanation to charges which may or may not be framed or to charges which may or may not be communicated. I entertain no doubt in my mind that the statutory formalities have not been complied with and that the appellants are entitled to a mandamus that they should be restored to the office from which they have been wrongly and improperly removed.

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CHOPRA, J.—I agree.

Chopra, J.

B.R.T.