CIVIL APPELLATE SIDE

Before S. S. Sandhawalia, C.J. and Surinder Singh, J.

JATHEDAR JAGDEV SINGH KHUDIAN and others,—*Appellants.*

versus

THE STATE OF PUNJAB,—*Respondent.*

Letters Patent Appeal No. 514 of 1980.

July 15, 1981.

Punjab State Agricultural Produce Markets Act (XXIII of 1961)—Sections 3, 15 and 35—Board consisting of nominated members suspended by the government—No show cause notice to the Board on its members—Principle of audi alteram parte—Whether attracted—Word 'suspend' used in section 3(8)—Whether to be equated with supersession.

Held, that neither the factum of being a nominated member of the Committee nor the distinction between a corporate body and its individual members is at all relevant to the issue of civil consequences ensuing to such a legal body or for the purposes of exclusion of principles of natural justice on these grounds. The action of the Government in suspending the Punjab Agricultural Marketing Board would entail civil consequences to the Board itself and at once attract the principles of natural justice to the situation. Merely because an opportunity to show cause is provided under section 3(7) of the Punjab Sale Agricultural Produce Markets Act, 1961 and not so expressly provided under section 3(8) of the Act would not raise an irrebutable inferrence that the principles of natural justice are deliberately excluded from the later provision. Undoubtedly this is a relevant consideration but by itself it is not conclusive on the point. Again action under section 3(8) undoubtedly entails civil consequences of the most serious nature and indeed they may be termed as both penal and civil consequences in so far an inference of either corruption or grave mis-management would arise and cannot be easily separated from an order of supersession of the whole Board. Therefore, it is the later and the weightier consideration that has to be given pre-eminence and a right of natural justice has to be read into section 3(8) and is not to be easily displaced by any possible inference of the exclusory rule. (Paras 12, 13 and 20).

Held, that the words 'suspend the Board' employed in section 3(8) of the Act have a very peculiar connotation in this context and can be slightly misleading if superficially viewed. The word 'suspend' used herein has not been employed in its ordinary sense

of a temporary or interlocutory order of suspension which may necessarily be followed by a regular order of supersession or removal. Supersession of the Board under section 3(8) of the Act is in essence its supersession or removal as such. The relevant provisions of the Act do not at all contemplate the passing of any subsequent order of removal or supersession. Indeed such a suspension is to be followed by the constitution of the Board within six months from the date of its suspension in view of the proviso to section 3(8) of the Act. The end result is that the first Board is virtually obliterated. It, therefore, appears to be plain that the action of the Government in suspending the Board is tantamount to and in its real sense is equivalent to its supersession or removal followed by the constitution of a new Board later. (Para 15).

Letters Patent Appeal under Clause X against the judgment given by Hon'ble Mr. Justice I. S. Tiwana, on 30th May, 1980 in C.W.P. No. 1069 of 1980.

Kuldip Singh, Advocate, with R. S. Mongia & T. S. Doabia, Advocates, *for the Petitioner.*

J. L. Gupta, Advocate with Jagdish Singh & G. C. Gupta, *for the State.*

JUDGMENT

S. S. Sandhawalia, C. J.

(1) Whether the principle of *audi alteram partem* is attracted in the event of the suspension of the State Agricultural Marketing Board by the State Government under section 3(8) of the Punjab State Agricultural Produce Markets Act, 1961, has come to be the spinal issue in this appeal under Clause 'X' of the Letters Patent.

2. In exercise of the powers under section 3(1) of the Punjab State Agricultural Produce Markets Act, 1961 (hereinafter referred to as the Act) the State Government constituted the Punjab Agricultural Marketing Board (hereinafter referred to as 'the Board'), consisting of the six appellants, that is, appellant No. 1, Jathedar Jagdev Singh Khudian as the Chairman and the other five as non-official members thereof, besides six official members, through a notification dated May 12th, 1978. However, on March 18, 1980, this Board was suspended by the State Government in

exercise of its powers under section 3(8) of the Act by a notification in the following terms:—

> "Whereas it has come to the notice of the Government of the State of Punjab that the Punjab State Agricultural Marketing Board (hereinafter referred to as 'the Board') has incurred financial expenditure without detailed examination of the implications involved, has neglected the duties imposed upon it under the Punjab Agricultural Produce Markets Act, 1961, and has failed to execute development work to any significant extent and, therefore, it is satisfied that the Board is not functioning properly;
>
> NOW, THEREFORE, in exercise of powers conferred upon him under sub-section (8) of section 3 of the Punjab Agricultural Produce Markets Act, 1961, the President of India is pleased to suspend the Board with immediate effect.
>
> 2. The President of India is further pleased to appoint Sardar Paramjit Singh, IAS, Financial Commissioner, Development and Secretary to Government of Punjab, Department of the Agriculture to exercise the functions of the Board and its Chairman till such time as a new Board is constituted."
>
> PARAMJIT SINGH,
> Financial Commissioner Development
> and Secretary to Government, Punjab,
> Agriculture and Forest Departments."

3. The present appellants preferred a writ petition impugning the aforesaid suspension primarily on the ground that no show cause notice whatsoever was given to the Board itself or too the petitioners individually before passing the order of suspension. This was alleged to be in flagrant violation of the well known principles of natural justice or the rule of *audi alteram partem*. Further it was the stand of the petitioner-appellants that there was no material with the State Government at the time of the passing of the impugned order for reaching any objective satisfaction about the non-functioning of the Board.

4. The petitioner-appellants' stand was controverted on behalf of the State Government by a firm stand that neither the Act itself nor the principles of natural justice call for any show cause notice to the Board or to the petitioners individually and further there was more than ample material before the respondent State to justify the passing of the order of suspension.

5. In an elaborate judgment the learned Single Judge came to the conclusion that neither the provisions of the Act, (so far as these relate to the suspension of the board as such), envisage the issuance of any prior notice to the Board, nor the rules of natural justice or the principle of *audi alteram partem* is attracted to the facts of this case. He further held that in fact the applicability of such a rule is excluded by necessary intendment by provisions of sub-sections (7) and (8) of section 3 and sections 15 and 35 of the Act. On the factual aspect he took the view that there was adequate material on the record before the respondent State for recording its satisfaction which ultimately led to the passing of the order of suspension of the Board.

6. Now the very sheet anchor of the learned counsel for the appellants case is the recent judgment of their Lordships of the Supreme Court in regard to the supersession of the New Delhi Municipal Committee reported as *S. L. Kapoor* v. *Jagmohan* (1), Mr Kuldip Singh in substance submitted that this judgment concludes the matter in his favour and is in terms on all fours with the present case.

7. We are of the view that there is substantial, if not total, merit in the aforesaid submission. Indeed Mr. J. L. Gupta, learned counsel for the respondent was fair enough to concede that on some aspects of the present case *S. L. Kapoor's case* (supra), is conclusively in favour of the appellants. It is, therefore, apt at the outset to deal with that aspect of the case which is covered by the aforesaid binding precedent.

8. Now a close analysis of the learned Single Judge's lucid judgment would indicate that he rightly spelled out that the basic

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

ssue was whether any explanation or hearing to the Board or its individual members was a pre-requisite before the impugned action of suspension of the Board could be taken by the State Government. In rendering an answer in the negative to this issue the learned Single Judge rested himself on two basic premises, which may best be recalled in his own words:—

> "Here the petitioners were nominated as members of the Board by the Government in its absolute discretion. It is not a case of their assuming of their office through election or selection."

and secondly:

> "The learned counsel for the petitioners has not been able to point out as to what civil consequences or the civil rights of the Board were infringed when the impugned order suspending the Board as such was passed. The Board as such, to my mind has no rights about the breach of which it can possibly complain. I asked Mr. Kuldip Singh to refer to any judgment wherein it might have been held that the suspension or supersession of a nominated statutory body in exercise of an administrative power by the State Government, the civil rights of the said body stood infringed or violated."

9. It is manifest from the above that the twin consideration that weighed heavily, if not over-whelmingly with the learned Single Judge was the status of the appellants, being merely nominated members of the Board, and the premise that the Board being a legal entity different from the individual members and the Chairman could itself suffer no civil or evil consequences through its suspension or supersession.

10. It would appear that when the matter was debated before the learned Single Judge, the aforesaid two issues were obviously not free from difficulty. However, the controversy appears to us as now having been set at rest and put beyond the pale of any doubt by the judgment of their Lordships in *S. L. Kapoor's case*,

(supra). Therein also the Lt. Governor of the Union Territory of Delhi had appointed nine non-official members and four *ex officio* members to the New Delhi Municipal Committee to hold office for a period of one year. However, well before the expiry of the aforesaid term the Lt. Governor exercising powers under section 238 (1) of the Punjab Municipal Act superseded the New Dehli Municipal Committee with immediate effect. Two of the non-official nominated members of the superseded New Delhi Municipal Committee, namely, Shri S. L. Kapoor and another preferred a civil writ petition in the Delhi High Court for quashing the order of supersession, but the same was dismissed by a Full Bench of five Judges. In the appeal before their Lordships of the Supreme Court it was forcefully contended by the learned Attorney General that neither the Committee nor its members had any beneficial interests in the continuance of the Committee, and, therefore, the supersession of the Committee did not involve any civil consequences, and the rule of *audi alteram partem* would not be attracted.

11. Categorically repelling the aforesaid contention after a full examination both on principle and a number of precedents including those of the Privy Council and the House of Lords, their Lordships have concluded as follows:—

> "We have already referred to some of the relevant provisions of the Punjab Municipal Act, to indicate some of the rights and duties of the Committee under the Act. A Committee as soon as it is constituted at once, assumes a certain office and status is endowed with certain rights and burdened with certain responsibilities, all of a nature commanding respectful regard from the public. To be stripped of the office and status, to be deprived of the rights, to be removed from the responsibilities, in an unceremonious way as to suffer in public esteem is certainly to visit the Committee with civil consequences. In our opinion, the status and office and the rights and responsiblities to which we have referred and the expectation of the Committee to serve its full term of office would certainly create sufficient interest in the Municipal Committee and their loss, if superseded, would entail

civil consequences so as to justify an insistence upon the observance of the principles of natural justice before an order of supersession is passed."

12. It would be evident from the above that neither the factum of being a nominated member of the Committee nor the distinction between a corporate body and its individual members was held to be at all relevant to the issue of civil consequences ensuing to such a legal body or for the purposes of exclusion of principles of natural justice on these grounds. With great respect, therefore, it appears to us that the twin premise which underlies the judgment of the learned Single Judge is now unsustainable in view of the binding observation in *S. L. Kapoor's case* (supra). Inevitably, therefore, the finding on both these points has to be and is hereby reversed.

13. Once it is so, it necessarily follows that the impugned action herein would entail civil consequences to the Board itself and at once attract the principles of natural justice to the situation. It is in this context that one has now to examine the additional finding of the learned Single Judge that the applicability of the rule of *audi alteram partem* is excluded by necessary intendment by the provisions of sub-sections (7) and (8) of section 3 and sections 15 and 35 of the Act.

14. Inevitably the controversy in this context must revolve around the relevant provisions of the statute. It, therefore, becomes necessary to read the relevant provisions thereof :—

Section 3(7): The State Government may, by notification remove any member of the Board other than an official member,—

(a) if he has become subject of any of the disqualifications specified in sub-section (5); or

(b) if he is, in its opinion, remiss in the discharge of his duties; or

(c) if he has without the permission of the Chairman of the Board and in the opinion of the State Government without sufficient cause absented himself for

not less than three consecutive meetings of the Board;

and may appoint another member in his place in the manner provided in clause (b) of sub-section (1) from the category to which the removed member belongs:

PROVIDED that before removing a member the reasons for the proposed action shall be conveyed to him and his reply invited within a specified period and duly considered:

PROVIDED further that the term of office of the member so appointed shall expire on the same date as the term of office of the vacating member would have expired had the latter held office for the full period allowed under sub-section (4) unless there be delay in appointing a new member who succeeds the member first mentioned above in which case it shall expire on the date on which his successor is appointed by the State Government.

(8) The State Government shall exercise superintendence and control over the Board and its officers and may call for such information as it may deem necessary and, in the event of its being satisfied that the Board is not functioning properly or is abusing its powers or is guilty of corruption or mis-management it may suspend the Board and, till such time as a new Board is constituted, make such arrangements for the exercise of the functions of the Board and of its Chairman as it may think fit :

PROVIDED that the Board shall be constituted within six months from the date of its suspension.

* * * * * *

Removal of members :

15. The State Government may by notification remove any member if, in its opinion, he has been guilty of misconduct or neglect of duty or has lost the qualification on the strength of which he was appointed:

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

* * * * * * .

5. *Supersession of Committees*:

(i) If in the opinion of the State Government a Committee is incompetent to perform or persistently make defaults in performing the duties imposed on it by or under this Act or abuses its powers, the State Government may, by notification supersede the Committee :

PROVIDED that before issuing a notification under this sub-section the State Government shall give a reasonable opportunity to the Committee for showing cause against the proposed supersession and shall consider the explanations and objections, if any, of the Committee."

15. Ere I proceed to closely examine to interpret the aforesaid provisions, it deserves highlighting that this has to be done against the background of the salient features; the first is, that words 'suspend the Board' employed in section 3(8) of the Act, have a very peculiar connotation in this context and if one may say so can be slightly misleading if superficially viewed. The word 'suspend' used herein has not been employed in its ordinary sense of a temporary or interlocutory order of suspension which may necessarily be followed by a regular order of supersession or removal. It is virtually the common case that the suspension of the Board under section 3(8) of the Act is in essence, its supersession or removal as such. The relevant provisions of the Act do not at all contemplate the passing of any subsequent order of removal or supersession. Indeed such a suspension is to be followed by the constitution of the Board within six months from the date or suspension in view of the proviso to section 3(8) of the Act. The end result is that the first Board is virtually obliterated. It, therefore, appears to be plain that the impugned action of suspending the Board is tantamount to and in its real sense is equivalent to its supersession or removal, followed by the constitution of a new Board later. One has, therefore, to disabuse one's mind from any

misleading inference that the suspension of the Board herein is either interlocutory or of a temporary nature. Indeed, Mr. J. L. Gupta, learned counsel for the respondent-State did not controvert this proposition. It is, therefore, in these very terms that the learned Single Judge did construe the action as is evident from a close reading of his judgment. I, therefore, proceed on the hypothesis that despite the ambivalent language used in section 3(8) the essence of the action there is the supersession of the Board itself. Secondly a new dimension has now been given to the whole matter by the binding precedent in *New Delhi Municipal Committee's case* (supra). As already stands noticed, the learned Single Judge viewed this aspect of the exclusion of the principle of natural justice on the broad assumption that no civil consequences ensued to the Board as such or in any case if they did they were too indirect and marginal in nature to be taken notice of. Their Lordships of the Supreme Court in the above mentioned case have now held to the contrary by observing that grave civil consequences positively ensue to a legal corporate body as such in the event of its supersession or removal. In view of this binding precedent, the matter can now be examined only on the firm foundation that the action under section 3(8) of the Act of the supersession of the Board involves direct and grave civil consequences to the Board as such.

16. On the aforesaid twin premises it would indeed be well settled that the rule of *audi alteram partem* would be at once attracted in the case which entails civil consequences. Now it is the common case that the statute does not expressly or in terms exclude the principle of natural justice in the context of an action under section 3 (8) of the Act. The sole question that, therefore, survives to be examined is — whether these principles which are otherwise pristinely and directly applicable are impliedly excluded by necessary intendment from the other provisions of the Act? To determine this question the true principle applicable has been succinctly formulated by Lord Sachs in *Pearlberg* v. *Varty* (*Inspector of Taxes*) (2), in the following words:—

> " .. .. As I understand the principles laid down in the Wiseman case and in the others cited to us, the application of an otherwise appropriate rule of natural justice

(2) (1971) 2 All. E.R. 552.

is only to be regarded as excluded if the legislature expressly so states or if there is a clear implication to that effect. In the instant case there is no express exclusion and accordingly the question is whether there has been manifested a clear implication."

17. Now applying this principle of a clear implied exclusion of the rule of natural justice one must inevitably turn a little more closely to the provisions of Section 3(8) of the Act. It is a sound canon of construction that such an implied exclusion has to be inferred from the language of the statute itself, its larger purpose and the juxta-position and inter-play of the various provisions of the Act itself. Now it is virtually the undisputed case that Section 3(8) of the Act cannot be finically dissected into water-tight compartments. Either the principles of natural justice are attracted in the event of the suspension of the Board with regard to all the grounds therein or they are not. A close analysis of the Section would show that the suspension of the Board may be based on the following three distinct situations either individually or perhaps collectively as well:—

(i) On the satisfaction of the State Government that the Board is not functioning properly;

(ii) On the satisfaction of the State Government that the Board is guilty of corruption; and

(iii) On the satisfaction of the Government that the Board is guilty of mis-management.

18. It would be evident from the above that three prescribed situations—the one about being guilty of corruption is gravely stigmatic and is not something which can be totally impersonal. A finding that the Board is guilty of corruption cannot, but bring inevitably a malicious taint of blameworthiness to the individual members who constitute the Board. Equally, it would directly and squarely attract the gravest disrepute to the Board collectively as well. Therefore, the gravest civil and if one may say so evil consequences would ensue from the order of suspension under Section 3(8) of the Act both collectively to the Board and individually to

the members thereof if the suspension is based on the finding of corruption. It would appear unimaginable that in such a situation a public finding of corruption be given collectively and individually without obtaining a hint of an explanation or affording any hearing to the persons, or the legal body stigmatically affected thereby. Again what is so said in the context of corruption would at a slightly lower level be equally applicable in a finding of grave mismanagement by the Board. It would thus be manifest that in both the situations, the principles of natural justice would normally be so sharply and clearly attracted that it can only be by the most unequivocal exclusion thereof that one could possibly arrive at a conclusion that they should not be applied. The graver the stigmatic nature of the order of suspension or the evil consequences ensuing therefrom, the greater would be the need for the accrual of the right of natural justice to meet a charge so serious and all-prevading. In view of the reiteration and extension of the rule by their Lordships in *S. L. Kapoor's case* (supra) now only a direct or a near direct implied prohibition by the statute itself can possibly bar the applicability of the rule of natural justice in the present situation.

19. With great respect to the learned Single Judge it appears to us that it is not easy to infer a clear implied prohibition of the rules of natural justice from the other provisions of the Act. A similar argument of exclusion by necessary implication was also raised in *S. L. Kapoor's case* (supra), but categorically repelled with the following observations:—

> "One of the submissions of the learned Attorney General was that when the question was one of disqualification of an individual member, Section 16 of the Punjab Municipal Act expressly provided for an opportunity being given to the member concerned whereas Section 238(1) did not provide for such an opportunity and, so, by necessary implication, it must be considered that the principle *audi alteram partem* was excluded.
>
> We are unable to agree with the submission of the learned Attorney General. It is not always a necessary inference that if opportunity is expressly provided in one provision and not so provided in another, opportunity is to be considered as excluded from that other provision. It may be

a weighty consideration to be taken into account but the weightier consideration is whether the administrative action entails civil consequences. .....".

20. Now applying the aforesaid authoritative emunciation, it would follow that merely because an opportunity to show cause is provided under section 3(7) of the Act and not so expressly provided under section 3(8) of the Act would not raise an irrebutable inference that the principles of natural justice are deliberately excluded from the later provision. Undoutedly this is a relevant consideration but by itself it is not conclusive on the point. Again the second consideration envisaged by their Lordships is — and what they have called the weightier one—whether the administrative action entails civil consequences. As I have highlighted earlier, action under section 3(8) undoubtedly entails civil consequences of the most serious nature and indeed they may be termed as both penal and evil consequences in so far as an inference of either corruption or grave mis-management would arise and cannot be easily separated from an order of the supersession of the whole Board. Therefore it is the later and the weightier consideration that has to be given pre-eminence in view of the dictum of their Lordships of the Supreme Court and a right of natural justice has to be read into section 3(8) and is not to be easily displaced by any possible inference of the exclusory rule.

21. It appears to me that when the learned Single Judge considered the matter there was undoubtedly much to be said for the view he had taken and we would have been loth to dislodge it, but for the fact that the binding precedent in *S. L. Kapoor's case* has materially altered the situation. In our view the afore-quoted observations from the said case virtually conclude the matter in favour of the appellants and with the greatest respect we have to hold that the finding of the learned Single Judge that the principles of natural justice are inferentially excluded from section 3(8) of the Act is not now sustainable and has consequently to be reversed.

22. As is manifest from the above, the issue herein is now largely covered by *S. L. Kapur's case* (supra). However, it is of interest to note that this High Court had earlier taken a similar

view in the context of the unamended section 238 of the Punjab Municipal Act in *The Municipal Committee, Kharar* v. *The State of Punjab and others* (3). Equally it is worthy of notice that the Legislature itself later has amended section 238,—*vide* Punjab Act No. 24 of 1973 whereby the principle of natural justice has been incorporated in the statute itself by sub-section (3) of the amended section.

23. In fairness to Mr. J. L. Gupta we must, however, advert to his attempted reliance first on the Full Bench judgment of this Court in *Gurcharan Singh* v. *State of Haryana and others* (4). What fell for consideration there was the provisions of section 27 of the Punjab Co-operative Societies Act and the crucial issue raised was whether the principles of natural justice were equally attracted in the inter-locutory suspension of an Executive Committee of a Co-operative Society under sub-section (1-A) of the aforesaid section. The statute therein had expressly provided for an opportunity to the Committee or any of the members prior to the supersession or the latter's removal under sub-section (1) but had pointedly excluded any such opportunity in the case of mere suspension under sub-section (1-A), A plain reading of the Full Bench judgment would show that it was held that suspension herein was obviously inter-locutory as a prelude to supersession and by itself led to no permanent civil consequences. It was in that context that it was held that the exclusory rule was clearly attracted in the context of suspension alone under sub-section (1) (A). We are of the view that *Gurcharan Singh's case* (supra), is wholly distinguishable and further that its ratio is in no way affected by *S. L. Kapoor's case* (supra).

24. Similar considerations seems to apply in case of the Full Bench judgment in *Mota Singh and others* v. *The State of Punjab and others* (5). What fell for consideration in the said judgments were the recently inserted provisions of sub-sections (8) to (12) of Section 13 of the Punjab Co-operative Societies Act, 1961. Construing the same it was held that it was not the requirement of

(3) A.I.R. 1967 Punjab 430.
(4) 1979 P.L.R. 170
(5) 1979 P.L.J. 129.

natural justice that a copy of the proposed order of amalgamation should be sent under certificate of posting to every member of the Society or Societies concerned, when the legislature had not advisedly said so and had confined the provisions only to the Society itself and its creditors. It deserves highlighting that the aforesaid provisions had themselves given a right to a member of the society to prefer objections and also the option of withdrawing his share, deposits, or loan as the case may be. It was in this context that the Full Bench held that the requirement of the service of a copy of the proposed order of amalgamation under certificate of posting to every member of the Society could not be inserted in the statute by a process of interpretation or a tortuous invocation of the rules of natural justice. It is thus plain that *Mota Singh's case* (supra) is plainly distinguishable. Lastly in this context Mr. Gupta had placed reliance on the Single Bench judgment in *S. Ajaib Singh Machaki, Administrative Member, Punjab State Electricity Board, Patiala* v. *The State of Punjab and another* (6). Therein what fell for construction was section 10 of the Electricity Supply Act, 1940 with particular reference to sub-section (5) thereof with regard to the removal of the Chairman and the members of the Board constituted under the said Act. What calls for pointed notice in the context of this case is first the fact that the petitioner therein was only the administrative member of the Punjab State Electricity Board, Patiala and not the Board collectively or its members. A close reading of the said judgment would show that even though all the observations made therein may not now be tenable in view of the authoritative pronouncement in *S. L. Kapoor's case* (supra), yet the learned Judge held it as a fact that the consideration of the entire matter in the high level meeting in which all the members of the Board participated was itself sufficient opportunity to explain and show cause even if the same could be deemed to be implicit under Section 10(5) of the Act. That judgment would, therefore, be sustainable at least on that limited ground and its ratio on this point does not in any way conflict with the view we are inclined to take. Consequently, we do not propose to examine the correctness or otherwise of the ancillary observations made in *Ajaib Singh Machaki's case* (supra).

(6) C.W.P. 2211 of 1977 decided on 2nd December, 1977.

25. It would be thus plain that the aforesaid three authorities strenuously relied-on on behalf of the respondent-State, do not in any way aid its stand. In the light of the aforesaid discussion we are constrained to allow this appeal and set aside the judgment of the learned Single Judge. Annexure P/2 is consequently quashed. It was the common case of the parties that the three years' tenure of the appellants would expire on May 12, 1981 and inevitably, therefore, they would not now be entitled to the reinstatement as members of the Board. However, the appellants would be plainly entitled to all the consequential reliefs flowing inevitably from the quashing of the impugned order. In the peculiar circumstances of the case, we leave the parties to bear their own costs.

Surinder Singh, J.—I agree.

H.S.B.

CIVIL APPELLATE SIDE

Before S. S. Sandhawalia C.J. and R. N. Mittal, J.

RAM NIWAS and others,—*Appellants.*

versus

RAKESH KUMAR and others,—*Respondents.*

Letters Patent Appeal No. 291 *of* 1976.

July 16, 1981.

Code of Civil Procedure (V *of* 1908)—*Order* 6 *Rule* 2—*Pleadings*—*Suit for ejectment on the ground of tenancy—Plaintiff pleading title and parties leading evidence thereon—No specific issue framed regarding title—Decree for possession on the basis of title—Whether could be passed in such a suit.*

Held, that it is well-settled that if the parties know that a point arises in a case and they produce evidence on it though it does not find place in the pleadings and no specific issue has been framed on