**AFR**

**RESERVED**

**Writ C No 8179 of 2015**

**Paras Jain**

**Vs**

**State of U P & 5 Ors**

**Appearance:**

**For the petitioner:** Mr Vivek Kumar Singh, Advocate

**For the respondents:** Shri C B Yadav, Additional Advocate General, with Shri Shashank Shekhar Singh, Addl CSC for the State

Shri Anurag Khanna, Advocate with

Shri Nipun Singh, Advocate for the caveator

**Hon'ble Dr Dhananjaya Yeshwant Chandrachud, Chief Justice**
**Hon'ble Dilip Gupta, J**
**Hon'ble Manoj Kumar Gupta, J**
**Hon'ble Suneet Kumar, J**
**Hon'ble Yashwant Varma, J**

(Per Dr D Y Chandrachud, CJ)

**The issue in controversy**

A Division Bench of this Court, finding itself "unable to accept the law" laid down in a decision of a Full Bench in **Hafiz Ataullah Ansari Vs State of U P**[1], referred the following questions for determination by a larger Bench:

> "(a) Whether the Full Bench judgment in the case of **Hafiz Ataullah Ansari Vs. State of U.P.** (supra) lays down the correct law;
>
> (b) Whether in view of the language of the proviso

1 [2011 (3) ADJ 502 (FB)]

to Section 48(2) of the U P Municipalities Act, there can be any proceedings for removal of the President without his financial and administrative powers ceasing, under the proviso;

(c) Whether cessation of financial and administrative powers of the President follows automatically with the issuance of a show cause notice under Section 48 (2) calling upon him to show cause as to why he may not be removed;

(d) Whether any separate order for cessation of financial and administrative powers of the President is required to be made while issuing a notice under the proviso to Section 48(2) or such cessation follows automatically; and

(e) Whether in view of the specific language of Section 48(2), the question of opportunity of hearing before cessation of the financial and administrative powers of the President stands excluded."

Since a decision rendered by a Bench of three Judges which constituted the Full Bench in **Hafiz Ataullah Ansari** has been doubted, the reference comes before this Bench of five Judges.

**Removal of the President of a Municipality**

The issue which falls for determination, turns upon the provisions of Section 48 of the Uttar Pradesh Municipalities Act, 1916[2]. Sub-section (2) of Section 48 deals with the removal of the President of a municipality and is in the following terms:

"**48. Removal of President.-** (1) ….. [omitted]

2 Municipalities Act

(2) Where the State Government has, at any time, reason to believe that -

(a) there has been a failure on the part of the President in performing his duties, or

(b) the President has-

(i) incurred any of the disqualifications mentioned in Sections 12-D and 43-AA; or

(ii) within the meaning of Section 82 knowingly acquired or continued to have, directly or indirectly or by a partner, any share or interest, whether pecuniary or of any other nature, in any contract or employment with, by or on behalf of the Municipality; or

(iii) knowingly acted as a President or as a member in a matter other than a matter referred to in Clauses (a) to (g) of sub-section (2) of Section 82, in which he has, directly or indirectly, or by a partner, any share or interest whether pecuniary or of any other nature, or in which he was professionally interested on behalf of a client, principal or other person; or

(iv) being a legal practitioner acted or appeared in any suit or other proceeding on behalf of any person against the Municipality or against the State Government in respect of nazul land entrusted to the management of the Municipality or acted or appeared for or on behalf of any person against whom a criminal proceeding has been instituted by or on behalf of the Municipality; or

(v) abandoned his ordinary place of residence in the municipal area concerned; or

(vi) been guilty of misconduct in the discharge of his duties; or

(vii) during the current or the last preceding term of the Municipality, acting as President or as Chairman of a Committee, or as member or in any other capacity whatsoever, whether before or after the commencement of the Uttar Pradesh Urban Local Self-Government Laws (Amendment) Act, 1976, so flagrantly abused his position, or so willfully contravened any of the provisions of this Act or any rule, regulation or bye-laws, or caused such loss or damage to the fund or property of the Municipality as to render him unfit to continue to be President; or

(viii) been guilty of any other misconduct whether committed before or after the commencement of the Uttar Pradesh Urban Local Self-Government Laws (Amendment) Act, 1976 whether as President or as member; or

(ix) caused loss or damage to any property of the Municipality; or

(x) misappropriated or misused Municipal fund; or

(xi) acted against the interest of the Municipality; or

(xii) contravened the provisions of this Act or the rules made thereunder; or

(xiii) created an obstacle in a meeting of the Municipality in such manner that it becomes impossible for the Municipality to

conduct its business in the meeting or instigated someone to do so; or

(xiv) willfully contravened any order or direction of the State Government given under this Act; or

(xv) misbehaved without any lawful justification with the officers or employees of the Municipality; or

(xvi) disposed of any property belonging to the Municipality at a price less than its market value; or

(xvii) encroached, or assisted or instigated any other person to encroach upon the land, building or any other immovable property of the Municipality;

it may call upon him to show cause within the time to be specified in the notice why he should not be removed from office.

Provided that where the State Government has reason to believe that the allegations do not appear to be groundless and the President is *prima facie* guilty on any of the grounds of this sub-section resulting in the issuance of the show-cause notice and proceedings under this sub-section he shall, from the date of issuance of the show-cause notice containing charges, cease to exercise, perform and discharge the financial and administrative powers, functions and duties of the President until he is exonerated of the charges mentioned in the show-cause notice issued to him under this sub-section and finalization of the proceedings under sub-section (2-A) and the said powers, functions and duties of the President during the period of such ceasing, shall be exercised,

> performed and discharged by the District Magistrate or an officer nominated by him not below the rank of Deputy Collector."

Sub-section (2) of Section 48 enables the State Government to issue a notice to show cause to the President of a municipality to explain why he should not be removed from office where the State Government has "reason to believe" that any of the provisions of clauses (a) or (b) are attracted. Broadly speaking, the reason to believe relates to any one of the breaches specified in clause (a) or in sub-clauses (i) to (xvii) of clause (b) of sub-section (2). Each of them has a bearing on the discharge or the failure to discharge duties on the part of the President of a municipality or conduct of a nature which is proscribed therein. In the event that the State Government has reason to believe that any of those stipulations is attracted, it is empowered to call upon the President to show cause why he should not be removed from office.

The proviso to Section 48 (2) entails that where its conditions are fulfilled, the President of a municipality shall cease to exercise, perform and discharge the financial and administrative powers, functions and duties of the President until he is exonerated of the charges mentioned in the notice to show cause and the finalization of the proceedings under sub-section (2-A). In order that the proviso be attracted, several stipulations have to be fulfilled. These stipulations are – **firstly**, that the State Government must have reason to believe that the allegations do not appear to be groundless; **secondly**, the State Government must have reason to believe that the

President is **prima facie guilty** of any of the grounds contained in the sub-section resulting in the issuance of the notice to show cause and proceedings thereunder; and **thirdly**, that the notice to show cause must contain the **charges** against the President of the municipality. Where these three conditions have been fulfilled, the consequence entailed by the proviso to sub-section (2) comes into being and the President shall cease to exercise, perform and discharge the financial and administrative powers, functions and duties of the President until exonerated of the charges mentioned in the notice to show cause and finalization of the proceedings under sub-section (2-A).

**The judgment of the Full Bench**

In **Hafiz Ataullah Ansari**, a Full Bench of this Court held that Section 48(2) may envisage two situations – the first, where the financial and administrative powers of a President do not cease and the other, where they cease. The Full Bench held that a ceasing of the financial and administrative powers of the President can take place only where the conditions specified in the proviso to Section 48 (2) apply. As the Full Bench held:

> "**54.** The intention of the legislature is clear from the language of the provision. It envisages two kinds of proceedings under section 48(2) of the Municipalities Act:
>
> One, simpliciter where financial and administrative powers of the President do not cease;
>
> The other, where his financial and administrative powers cease. This can happen only if the conditions

under proviso to section 48(2) are satisfied.

**55.** The proviso to Section 48(2) is meant to apply in the serious situation where it is expedient to cease the financial and administrative powers of the President. It is not to apply in every case. It is for this reason that extra precautions have been provided in the proviso to Section 48(2) of the Municipalities Act."

Dealing with the conditions which have been spelt out in the proviso to Section 48 (2), the Full Bench observed as follows:

"**73.** The proviso to Section 48(2) of the Municipalities Act prescribes conditions that have to be fulfilled before the right of a President to exercise financial and administrative powers can cease. It states that:

(i) The State Government should have reasons to believe that:

The allegations do not appear to be groundless; and

The President is prima facie guilty of any of the grounds mentioned in Section 48(2) of the Municipalities Act.

(ii) The State Government should also issue show cause notice for removal under Section 48(2) of the Municipalities Act and it must contain charges.

**74.** The phrase 'reasons to believe' is often used in statutes and has been repeatedly held by the Courts (for citation of the rulings see below)[3] to mean that reasons for

3 Joti Parshad v. State of Haryana, 1993 Supp (2) SCC 497: AIR 1993 SC 1167; Pratap Singh (Dr) v. Director of Enforcement, (1985) 3 SCC 72: 1985 SCC (Cri) 312: AIR 1985 SC 989; Jai Shanker v. State of HP, (1973) 3 SCC 83: AIR 1972 SC 2267; Sheo Nath Singh v. Appellate CIT, (1972) 3 SCC 234: AIR 1971 SC 2451; S Narayanappa v. CIT, AIR 1967 SC 523; ITO v. Lakhmani Mewal Das, (1976) 3 SCC 757: 1976 SCC (Tax) 402: AIR 1976 SC 1753; CST v. Bhagwan Industries (P) Ltd., (1973) 3 SCC 265: 1973 SCC

> the formation of the belief must have a rational connection or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material and formation of the belief."

On the applicability of the principles of natural justice before the financial and administrative powers of the President of a municipality cease, the Full Bench emphasised that such an order envisages civil consequences which cannot be cured merely by a post-decisional hearing:

> "In the case, where a head of a local body is deprived to exercise financial and administrative power, and ultimately the proceeding for removal are dropped then in such an event his loss can never be compensated. A post decisional hearing cannot cure the harm/damage done to him."

The Full Bench opined that it was necessary to furnish an opportunity of submitting an explanation to the head of the local body and this would eliminate an arbitrary exercise of power, besides bringing about fairness in procedure. In the view of the Full Bench:

> "...The principles of natural justice or the yardstick of fairness would be met if the explanation of the affected head of the local body or his point of view or version is considered before recording the satisfaction or finding of prima facie guilt before issuing notice and passing order for ceasing financial and administrative powers."

The Full Bench has explained that such an opportunity to submit an

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(Tax) 177: AIR 1973 SC 370.

explanation need not be as detailed as in a regular enquiry and all that is necessary is to enable the elected head of the municipality to have his point of view or version considered. The conclusions which were arrived at by the Full Bench were as follows:

> "**133.** Our conclusions are as follows:
>
> (a) There can be proceeding for removal of President under Section 48(2) of the Municipalities Act without ceasing his financial and administrative power under its proviso;
>
> (b)The following conditions must be satisfied before cessation of financial and administrative powers of a President of a Municipality can take place:
>
> (i) The explanation or point of view or the version of the affected President should be obtained regarding charges and should be considered before recording satisfaction and issuing notice/order under proviso to Section 48(2) of the Municipalities Act;
>
> (ii) The State Government should be objectively satisfied on the basis of relevant material that:
>
> The allegations do not appear to be groundless; and
>
> The President is prima facie guilty of any of the grounds under Section 48(2) of the Municipalities Act.
>
> (iii) The show-cause notice must contain the charges against the President;
>
> (iv) The show-cause notice should also indicate the material on which the objective satisfaction for reason to believe is based as well as

the evidence by which charges against the President are to be proved. Though in most of the cases they may be the same;

(c) It is not necessary to pass separate order under proviso to Section 48(2) of the Municipalities Act. It could be included in the notice satisfying the other conditions under proviso to Section 48(2). In fact it is not even necessary. It comes into operation by the Statute itself on issuance of a valid notice under proviso to Section 48(2) of the Municipalities Act.

(d) In case a notice/order ceasing financial and administrative powers is held to be invalid on any ground then this does not mean that the proceeding of removal are also invalid. They have to continue and taken to their logical end. The proceeding to remove can come to an end only if the charges on their face or even taken to be proved do not make out a case for removal under Section 48(2) of the Municipalities Act.

(e) It is not necessary to involve the President with the process of collecting material or give President the copies of the material before asking his explanation or point of view or version of the President to the charges."

**Legislative history**

The legislative history of Section 48 has a bearing on the issue in controversy.

By the Uttar Pradesh Municipalities (Amendment) Act, 1964[4], sub-sections (2-A) and (3) were introduced into Section 48. Sub-section (2-A) confers upon the State Government the power to remove the President of a

4 U P Act 26 of 1964

municipality from his office. The proviso to sub-section (2-A) enabled the State Government to issue a warning instead of removing the President in stipulated situations. Sub-section (3) empowered the State Government to suspend a President.

Sub-sections (2-A) and (3), as introduced by U P Act 26 of 1964 were in the following terms:

> "(2-A) After considering any explanation that may be offered by the President and making such enquiry as it may consider necessary, the State Government may for reasons to be recorded in writing, remove the President from his office:
>
> Provided that in a case where the State Government has issued notice in respect of any ground mentioned in clause (a) or sub-clause (ii), (iii), (iv), (vi), (vii) or (viii) of clause (b) of sub-section it may instead of removing him give him a warning.
>
> (3) The State Government may place under suspension a President who is called upon to show-cause in respect of any ground mentioned in clause (a) or sub-clause (vi), (vii) or (viii) of clause (b) of sub-section (2) or against whom a prosecution for an offence which in the opinion of the State Government involves moral turpitude is commenced until the conclusion of the enquiry or the prosecution, as the case may be, and where a President has been so suspended he shall not, for so long as the order of suspension continues, be entitled–
>
> (a) to exercise the powers or perform the duties of a President conferred or imposed upon him by or under this Act or any other enactment for the time being in force, or

(b) to take part in any proceedings of the board."

Upon the Seventy-third and Seventy-fourth Constitutional Amendments being brought into force, the Uttar Pradesh Urban Local Self-Government Laws (Amendment) Act, 1994[5] was enacted. The amending legislation omitted Section 48(3). As a result, the power to suspend the President of a municipality during the pendency of a proceeding for his removal was deleted.

Subsequently, by the Uttar Pradesh Municipalities (Amendment) Act, 2001[6], sub-section (2-A) of Section 48 was amended to delete the proviso that empowered the State Government to issue a warning instead of a removal.

In 2004, the Uttar Pradesh Municipalities (Amendment) Act, 2004[7] was enacted by the state legislature. By the Amending Act, a provision which was numbered as sub-section 2-A was introduced in Section 48 in the following terms:

> "(2-A) Where in an inquiry held by such person and in such manner as may be prescribed, if a President or a Vice-President is *prima facie* found to be guilty on any of the grounds referred to in sub-section (2), he shall cease to exercise, perform and discharge the financial and administrative powers, functions and duties of the President or the Vice-President, as the case may be, which shall, until he is exonerated of the charges mentioned in the show-cause notice issued to him under

5 U P Act 12 of 1994
6 U P Act 22 of 2001
7 U P Act 6 of 2004

> sub-section (2), be exercised and performed by the District Magistrate or by an officer nominated by him not below the rank of the Deputy Collector."

The reason which led to the introduction of sub-section (2-A) in the above terms was spelt out in the Statement of Objects and Reasons accompanying the introduction of the Bill in the state legislature. The State of Objects and Reasons provided as follows:

> "Section 48 of the Uttar Pradesh Municipalities Act, 1916 (U.P. Act No. 2 of 1916) provides for the removal of President of a municipality.
>
> In the said Section the State Government is empowered to issue show-cause notice to the guilty President on the grounds mentioned under Section 48, before removing him from his office. **Most of the Presidents used to delay the proceedings by not replying the show-cause notice in time and they continue to misuse their financial powers. It has, therefore, been decided to amend the said Act to cease the financial powers of such President or a Vice-Present during the pendency of the inquiry** and his financial powers and functions will be exercised and performed by the District Magistrate until he is exonerated of the charges.
>
> The Uttar Pradesh Municipalities (Amendment) Bill, 2004 is introduced accordingly." (emphasis supplied)

The numbering of the above provision as sub-section 2-A suffered from an obvious error on the part of the legislative draftsman. That was

because there was already in existence a provision, numbered as sub-section (2-A) which had been introduced by U P Act 26 of 1964 to entrust the State Government with the power of removal to be exercised after considering the explanation that may be offered and upon making an enquiry as considered necessary and for reasons to be recorded in writing. The existing sub-section (2-A) which provides for removal was not deleted. The new provision was erroneously numbered as sub-section (2-A). This mistake was rectified by the Uttar Pradesh Municipalities (Amendment) Act, 2005[8]. By the Amending Act, sub-section 2-A, as was inserted by U P Act 6 of 2004, was omitted and, in its place, a proviso was introduced in sub-section (2). The proviso which we have analysed earlier sets out the manner in which and the conditions upon which the financial and administrative powers of the President can cease.

**Part IX-A of the Constitution**

Part IX of the Constitution contains provisions in relation to the panchayats. Part IX-A provides for the municipalities. These provisions were introduced by the Seventy-third and Seventy-fourth amendments to the Constitution. Municipalities and panchayats as institutions of local self-government have a constitutional status. Their role and position are defined by the Constitution as are their powers, duties and responsibilities. They are not mere administrative agencies of the State but, as institutions of self-governance, have been conferred with a degree of autonomy to ensure that democracy finds expression at the grassroots of Indian society. The

8 U P Act 2 of 2005

Constitution seeks to attain a decentralisation of democratic governance through these institutions.

The extent of control which the agencies of the State exercise over these institutions of local self-government must necessarily conform to constitutional standards. State legislation of a regulatory nature must be interpreted in a manner that fosters the attainment of constitutional objectives. The Court, consistent with the high constitutional purpose underlying Parts IX and IXA of the Constitution, must give expression to the autonomy expected to be wielded by the constitutionally recognized levels of local self-government. Hence, while interpreting state legislation, the need to conform to constitutional parameters must be borne in mind. An interpretation of state legislation which will dilute the autonomy of institutions of local self-government must, to the extent possible, be avoided. Similarly, an interpretation which would result in reducing the panchayats and municipalities to a role of administrative subordination must be eschewed. Consequently, where an issue arises in regard to the removal of an elected head of a municipality, as in the present case, the procedure prescribed by the law must be followed. The law itself must be interpreted in a manner that would render it fair, just and reasonable in its operation and effect. Moreover, in areas where the law is silent, an effort must be made by the Court in the process of interpretation to ensure that the procedure for removal is just, fair and reasonable to be consistent with the mandate of Article 14.

In **Ravi Yashwant Bhoir Vs District Collector, Raigad**[9], the

9 (2012) 4 SCC 407

appellant who was the President of a Municipal Council was declared to be disqualified under the provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. Among the charges against him, was a failure to call for a general body meeting, the acceptance of fresh tenders at high rates in connection with the work of laying down a water supply pipeline and allowing unauthorized construction. A writ petition filed by the elected head was dismissed by the High Court. In appeal, the Supreme Court emphasized the importance ascribed by Parts IX and IXA of the Constitution to the role and position of the elected head of a local self-governing institution in the following observations:

> "Amendment in the Constitution by adding Parts IX and IX-A confers upon the local self-government a complete autonomy on the basic democratic unit unshackled from official control. Thus, exercise of any power having effect of destroying the Constitutional institution besides being outrageous is dangerous to the democratic set-up of this country. Therefore, an elected official cannot be permitted to be removed unceremoniously without following the procedure prescribed by law, in violation of the provisions of Article 21 of the Constitution, by the State by adopting a casual approach and resorting to manipulations to achieve ulterior purpose. The Court being the custodian of law cannot tolerate any attempt to thwart the institution."[10]

Dealing with the aspect of observing the principles of natural justice, the Supreme Court held that:

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10 At para 22 p 425

> "There can also be no quarrel with the settled legal proposition that removal of a duly elected member on the basis of proved misconduct is a quasi-judicial proceeding in nature. [Vide: Indian National Congress (I) v. Institute of Social Welfare[11]]. This view stands further fortified by the Constitution Bench judgments of this Court in Bachhitar Singh v. State of Punjab[12] and Union of India v. H. C. Goel[13]. Therefore, **the principles of natural justice are required to be given full play and strict compliance should be ensured, even in the absence of any provision providing for the same. Principles of natural justice require a fair opportunity of defence to such an elected office bearer**."[14] (emphasis supplied)

The Supreme Court observed that an elected official is accountable to the electorate and removal has serious repercussions since it takes away the right of the electorate to be represented by a candidate who is elected. Undoubtedly, the right to hold the post is statutory and in that sense is not absolute but removal can take place – it was held – only after strictly adhering to the provisions laid down by the legislature for removal. The requirement of observing the principles of natural justice was hence held to be mandated before an order of removal is passed:

> "...the law on the issue stands crystallized to the effect that an elected member can be removed in exceptional circumstances giving strict adherence to the statutory provisions and holding the enquiry, meeting the requirement of principles of natural justice and giving an

11 (2002) 5 SCC 685 : AIR 2002 SC 2158
12 AIR 1963 SC 395
13 AIR 1964 SC 364
14 At para 30 p 427

> incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office-bearer but his constituency/electoral college is also deprived of representation by the person of his choice."[15]

A Bench of three learned Judges of the Supreme Court in **Tarlochan Dev Sharma Vs State of Punjab**[16] dealt with the power of removal under Section 22 of the Punjab Municipal Act, 1911. The Supreme Court emphasized that :

> "In a democracy governed by rule of law, once elected to an office in a democratic institution, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set aside by a prescribed procedure known to law. That a returned candidate must hold and enjoy the office and discharge the duties related therewith during the term specified by the relevant enactment is a valuable statutory right not only of the returned candidate but also of the constituency or the electoral college which he represents. Removal from such an office is a serious matter. It curtails the statutory term of the holder of the office. A stigma is cast on the holder of the office in view of certain allegations having been held proved rendering him unworthy of holding the office which he held. Therefore, a case of availability of a ground squarely falling within Section 22 of the Act must be clearly made out. A President may be removed from office by the State Government, within the meaning of Section 22, on the ground of "abuse of his powers" (of

15 At para 36 p 428
16 (2001) 6 SCC 260

President), inter alia."[17]

Interpreting the expression "abuse of powers" as a ground for removal, it was held that this would not mean the mere use of power which may appear to be simply unreasonable or inappropriate but implies a willful abuse or an intentional wrong.

In **Sharda Kailash Mittal Vs State of Madhya Pradesh**[18], the Supreme Court construed the power vested in regard to the removal of the President of a Nagar Palika under the Madhya Pradesh Municipalities Act, 1961. The Supreme Court emphasized that the power has to be exercised for strong and weighty reasons and not merely on the basis of minor irregularities in the discharge of the duties by a holder of an elected office. In that context, the Supreme Court observed thus:

> "There are no sufficient guidelines in the provisions of Section 41-A as to the manner in which the power has to be exercised, except that it requires that reasonable opportunity of hearing has to be afforded to the office-bearer proceeded against. **Keeping in view the nature of the power and the consequences that flows on its exercise it has to be held that such power can be invoked by the State Government only for very strong and weighty reason. Such a power is not to be exercised for minor irregularities in discharge of duties by the holder of the elected post.** The provision has to be construed in strict manner because the holder of office occupies it by election and he/she is deprived of the office by an executive order in which the electorate has

17 At para 7 p 268-269
18 (2010) 2 SCC 319

no chance of participation."[19] (emphasis supplied)

These decisions emphasise the importance of the role and position of elected heads of government under Part IXA of the Constitution. They represent the electorate and their removal affects the right of the electorate to be governed by an elected head accountable to it. Hence the power of removal which the State exercises under legislative provisions has to be exercised strictly in accordance with the terms of authorizing legislation. Removal entails consequences of a serious and adverse nature. Hence an order of removal has to be preceded by compliance with the principles of natural justice, whether or not there is an express statutory provision.

**Natural justice as an incident of procedural fairness**

The next aspect of the matter which must be emphasized is the importance of the observance of natural justice as an integral element or facet of procedural fairness. The principles of natural justice in our jurisprudence are not only a foundational basis of administrative law as it has evolved but constitute an essential part of fair procedure guaranteed by Article 14 of the Constitution. Observance of natural justice has progressively been extended to areas of administrative decision making where the decision is liable to result in serious consequences for those who are affected or regulated. The line between what is judicial or quasi-judicial on one hand and what is administrative on the other, has progressively been effaced.

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19 At para 26 p 325-326

In **C B Gautam Vs Union of India**[20], the Supreme Court held that even where a statutory provision – in that case Section 269UD of the Income Tax Act 1961 – does not provide specifically for compliance of the principles of natural justice, adherence to those principles must be read into the interstices of the statute.

These principles have been reiterated in a recent judgment of the Supreme Court in **Dharampal Satyapal Limited Vs Deputy Commissioner of Central Excise, Gauhati**[21] where it was held that:

> "It, thus, cannot be denied that the principles of natural justice are grounded in procedural fairness which ensures taking of correct decisions and procedural fairness is fundamentally an instrumental good, in the sense that procedure should be designed to ensure accurate or appropriate outcomes. In fact, procedural fairness is valuable in both instrumental and non-instrumental terms."[22]

Again, the Supreme Court emphasized that the applicability of the principles of natural justice is not dependent upon an enabling statutory provision for, where a decision is liable to result in an adverse consequence, natural justice must be observed despite the absence of a statutory requirement to that effect. The principle which was formulated by the Supreme Court is thus:

> "...the courts have consistently insisted that such procedural fairness has to be adhered to before a decision is made and infraction thereof has led to the quashing of decisions taken. In many statutes, provisions are made

20 (1993) 1 SCC 78
21 (2015) 8 SCC 519
22 At para 27 p 534

> ensuring that a notice is given to a person against whom an order is likely to be passed before a decision is made, but there may be instances where though an authority is vested with the powers to pass such orders, which affect the liberty or property of an individual but the statute may not contain a provision for prior hearing. But what is important to be noted is that the applicability of principles of natural justice is not dependent upon any statutory provision. The principle has to be mandatorily applied irrespective of the fact as to whether there is any such statutory provision or not."

**Interpreting Section 48 (2)**

Now, it is in this background that it would be necessary to interpret the provisions of Section 48(2). The substantive part of sub-section (2) empowers the State Government to issue a notice to show cause to the President of a municipality as to why he should not be removed from office where it has reason to believe that the requirements of clause (a) or clause (b) have been fulfilled. The substantive violations which are adverted to in clauses (a) and (b) of sub-section (2) cover a broad spectrum. At one end of the spectrum is clause (a) which postulates that there has been a failure on the part of the President in performing his duties. On the other hand, clause (b) covers a broad range of violations including:

(i) incurring one of the stipulated disqualifications;

(ii) acquisition of a share or interest in a contract or employment with the municipality;

(iii) knowingly acting as a President or as a member in a matter in

which he/she has a direct or indirect share or interest, whether pecuniary or otherwise;

(iv) acting as a legal practitioner against the municipality or the State Government in respect of certain classes of proceedings or subjects;

(v) abandoning an ordinary place of residence in the area;

(vi) misconduct in the discharge of duties;

(vii) flagrant abuse of position, willful contravention of the Act or regulations or bye-laws or causing loss or damage to the property or fund of the municipality during the current or the last preceding term while acting as a President, Chairman of a Committee, member or in any other capacity;

(viii) misconduct, whether as a President or as a member;

(ix) loss or damage to the property of the municipality;

(x) misappropriation or misuse of municipal funds;

(xi) acting against the interest of the municipality;

(xii) contravention of the provisions of the Act or the rules;

(xiii) creating obstacles in the orderly conduct of a meeting of the municipality;

(xiv) willful contravention of an order or direction of the State Government;

(xv) misbehaviour without any lawful justification with officers or employees of the municipality;

(xvi) disposal of the property of the municipality at a price less than its market value; and

(xvii) encroachment over the land, building or property of the municipality or instigation of such acts.

The proviso to sub-section (2), it must be noted, does not stipulate that the mere issuance of a notice to show cause under the substantive part of sub-section (2) would result in the President ceasing to exercise the financial and administrative powers, functions and duties of the office. On the contrary, the proviso stipulates, firstly, that the State Government must have reason to believe that the allegations do not appear to be groundless; secondly, there must be a reason to believe on the part of the State Government that the President is prima facie guilty on any of the grounds set out in the sub-section resulting in the issuance of the show cause notice and proceedings there-under; and thirdly, the show cause notice must contain the charges which have been levelled against the President of the municipality. In other words, this threefold requirement has to be fulfilled before the cessation of financial and administrative powers, functions and duties takes effect.

**Reason to believe**

The proviso requires the State Government to have a reason to believe. Reason to believe postulates an objective satisfaction after an application of mind to material and relevant circumstances. The expression "reason to believe" when used in a statute is to be distinguished from an exercise of a purely subjective satisfaction.

In **Barium Chemicals Ltd Vs Company Law Board**[23], the Supreme

23 AIR 1967 SC 295

Court held that the words “reason to believe” or “in the opinion of” do not always lead to the construction that the process of entertaining a reason to believe or the opinion is altogether a subjective process, not lending itself even to a limited scrutiny by the Court that it was not formed on relevant facts or within statutory limits. Explaining the words “reason to believe” in Section 147 of the Income Tax Act 1961, the Supreme Court in **ITO Vs Lakhmani Mewal Das**[24] held that the reasons for the formation of belief must have a rational connection with or a relevant bearing on the formation of the belief. A rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income Tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment on a failure to disclose fully or truly all material facts. Every material, howsoever vague, indefinite or distant, would not warrant the formation of the belief. Moreover, the reason for the formation of the belief must not be a mere pretence and must be held in good faith.

In **Shiv Nath Singh Vs Appellate Assistant Commissioner of Income Tax, Calcutta**[25], the Supreme Court held that the expression reason to believe suggests that the belief must be that of an honest and reasonable person based on reasonable grounds and not merely on suspicion. These principles were reiterated in a judgment of the Supreme Court in **Bhikhubhai Vithlabhai Patel Vs State of Gujarat**[26].

The formation of a reason to believe within the meaning of the

24 AIR 1976 SC 1753
25 (1972) 3 SCC 234
26 (2008) 4 SCC 144

proviso must be on objective considerations which have a rational connection or link to the material before the State Government. Fairness requires that this be disclosed to the President of the municipality before the consequences in the proviso ensue. The President must have an opportunity to explain.

The State Government is also required by the proviso to be of the view that the President is prima facie guilty on any of the grounds contained in the sub-section which have resulted in the issuance of the notice to show cause. The formulation of a reason to believe that the allegations do not appear to be groundless and that the President is prima facie guilty on any of the grounds mentioned in the sub-section would postulate that before these statutory requirements are found to exist, a fair opportunity of being heard must be granted to the President of the municipality. A finding of prima facie guilt must, in our view, be consistent with a prior fulfillment of the norms of natural justice, consistent with the stage of enquiry. There is intrinsic evidence in the statutory provision which leads to the inference that the mere issuance of the notice to show cause does not *a fortiori* result in the cessation of the financial and administrative powers, functions and duties but it is only when the conditions which are spelt out in the proviso exist, that such a consequence will follow. If a mere issuance of a notice to show cause was intended to necessarily result in the consequence of the cessation of financial and administrative powers as envisaged in the proviso, the legislature would have made a provision to that effect. On the contrary, the legislature has carefully crafted a statutory provision, in the form of a

proviso which ensures that it is only upon the State Government having a reason to believe that the allegations do not appear to be groundless and that the President is prima facie guilty on any of the grounds contained in the sub-section, that the cessation of the financial and administrative powers would follow from the date of the issuance of the notice to show cause containing the charges.

The cessation of financial and administrative powers of an elected head of a municipality is a matter of significance and is replete with serious consequences. The effect of the financial and administrative powers, functions and duties being ceased, has a direct impact upon the authority of the elected head. It erodes authority and impacts upon the ability of the President to effectively discharge the functions of the office by preventing the discharge of financial and administrative authority. Bereft of financial and administrative powers, functions and duties, the office of the President of a municipality is reduced to a cipher. In fact, the proviso envisages that upon the powers being ceased, they shall be exercised by the District Magistrate or an officer nominated, not below the rank of a Deputy Collector. This consequence is serious enough to warrant the Court to read a compliance with the principles of natural justice into the provision so as to ensure a fair procedure and safeguard against an unfair recourse to its power by the State Government. The principles of natural justice, as we have noted above, are required to be observed as a matter of first principle when a decision – administrative, quas-judicial or judicial – adversely affects the rights of parties. The principle of reading into the statutory provision a

requirement of complying with the principles of natural justice is a mandate of Article 14 because it would be an anathema to a fair procedure for the State Government to issue dictats that abrogate the financial and administrative powers of an elected head of a local self-governing institution without complying with the principles of natural justice. The requirement of observing the principles of natural justice, as a matter of first principle, must be weighed in together with the additional factors present in the proviso to Section 48(2) that lead to the conclusion that a decision to cease financial and administrative powers must be preceded by adherence to a fair procedure. The first of the three indicia in the proviso is the existence of a reason to believe on the part of the State that the allegations do not appear to be groundless. The second indicia is the requirement of the formation of the reason to believe that the President of a municipality is prima facie guilty on any of the grounds mentioned in the sub-section, resulting in the notice to show cause. Arriving at a determination in regard to the prima facie guilt of a person, as the statute mandates, must be upon due observance of the principles of natural justice. The third indicia is that the notice to show cause has to contain the charges against the person. Hence, even though the proviso to sub-section (2) of Section 48 does not contain an explicit requirement of observing the principles of natural justice, nonetheless such a requirement must necessarily be read into the provision.

The rules of natural justice require that the person against whom action is proposed, must be made aware of the grounds of the proposed action and must have an opportunity to respond to the action proposed, by

setting forth an explanation. Undoubtedly, the formation of the reason to believe under the proviso to sub-section (2) is not final having due regard to the fact that the enquiry is still to be concluded and the cessation of financial and administrative powers is to enure during the period when the proceedings in pursuance of the notice to show cause are still to be concluded. A personal hearing is not a necessary ingredient of complying with the principles of natural justice at every stage. The minimum requirement of the principle is that the President of a municipality should be made aware of the grounds on which the action against him is proposed in the formulation of the charges which are issued to him, as mandated by the proviso. The person who is sought to be proceeded against must be informed of the basis on which the State Government proposes to entertain a reason to believe that the allegations do not appear to be groundless and that he or she is prima facie guilty on any of the grounds of sub-section (2) resulting in the issuance of the notice to show cause and the proceedings in the sub-section. The period which is allowed to the elected head to explain must be reasonable: what is a reasonable period being dependent upon the facts and circumstances of each case. In a case involving an element of urgency where there is a need for the State to take an expeditious decision, the period during which an explanation can be submitted, can be suitably tailored to meet the exigencies of the situation. No absolute rule can be laid down in the abstract on what constitutes a reasonable period to show cause. But the minimum requirements of fair procedure must be fulfilled. An opportunity has to be granted. Otherwise, the provision would be capable of grave

misuse to derogate from the authority of an elected head on arbitrary and whimsical grounds.

The learned Additional Advocate General submitted that (i) the judgment of the Full Bench in **Hafiz Ataullah Ansari** has read something which is not a part of the proviso to Section 48(2) into the statutory provision; and (ii) the requirement of complying with the principles of natural justice arises where “there is some space for it” whereas, in the present case, no space exists between the issuance of a notice to show cause and the ceasing of financial and administrative powers.

We are not inclined to accept the submission that the reading into the proviso of a requirement of complying with the principles of natural justice would amount to the imposition of an alien condition not contemplated by the legislature. For one thing, it is a well settled principle of our jurisprudence that even where a statute is silent, compliance with or adherence to natural justice must be read into the statute as an intrinsic element of a fair procedure consistent with the mandate of Article 14, where an administrative or quasi judicial decision has adverse consequences for a person who is proceeded against. Reading into a statute a requirement of complying with the principles of natural justice does not amount to rewriting the statute or engrafting a new legislative provision. Reading natural justice into the interstices of a statute is an exercise of an interpretation which is necessary to render the statutory provision consistent with the mandate of Article 14. Otherwise if a statutory provision were to be held to authorise the taking of adverse decisions without complying with procedural norms

which are fair and reasonable, the provision would itself become vulnerable to constitutional challenge. Hence, the principle that natural justice should be read as a matter of interpretation into a statutory provision where a decision which is taken has adverse consequences is connected with the mandate of Article 14 of the Constitution. For a Court to read a statutory provision in a manner which renders it fair, just and reasonable, is not to re-write the statute but to make it consistent with constitutional norms.

Secondly, we are not impressed with the submission that there is no space, as the Additional Advocate General calls it, between the issuance of a notice to show cause and the ceasing of financial and administrative powers of the President of the municipality. The legislature has clearly not intended that the mere issuance of a notice to show cause under sub-section (1) should result in the ceasing of financial and administrative powers as an inexorable consequence, as night follows day. If the legislature so intended, it would have provided that upon the issuance of a notice to show cause, the financial and administrative powers of an elected President of the municipality cease. The state legislature did not do so. Instead, it imposed a statutory condition that it was where the State Government has reason to believe that the allegations do not appear to be groundless and that the President is prima facie guilty on any of the grounds of sub-section (2) resulting in the issuance of the notice to show cause and proceedings, that he shall, from the date of the issuance of the notice containing the charges, cease to exercise, perform and discharge financial and administrative powers, functions and duties. It is only when these requirements of the

proviso are fulfilled that the ceasing of financial and administrative powers takes effect by operation of law. In other words, the ceasing of financial and administrative powers is not an automatic consequence envisaged upon the mere issuance of a notice to show cause under sub-section (1). For the consequence to ensue as a matter of law under the proviso to sub-section (2), the requirements of the proviso must be fulfilled.

The referring order of the Division Bench dated 10 February 2015 doubted the correctness of the view of the Full Bench by observing that under Section 48(2), the State Government is required to issue a show cause notice calling upon the President of a municipality to show cause as to why he should not be removed only when (i) the facts which disclose any or all of the grounds mentioned in clause (a) or clause (b) (i) to (xvii) are brought to the knowledge of the State Government and (ii) the State Government has reason to believe that the allegations are not baseless and the President is prima facie guilty. In the view of the Division Bench, once such a notice under Section 48(2) is issued, the financial and administrative powers of the President would stand ceased by operation of law. With respect, the error on the part of the Division Bench lies in not distinguishing between the requirements of the proviso and those of the substantive part of Section 48 (2). The substantive part of Section 48(2) envisages the State Government to issue a notice to show cause to the President of a municipality why he should not be removed from office where it has reason to believe that the grounds mentioned in clause (a) or any of the grounds in clause (b) are fulfilled. The proviso, however, requires the State Government to apply its

mind to certain specified aspects, including among them, whether there is reason to believe that the President is **prima facie guilty** on any of the grounds of the sub-section. The formation of a reason to believe that the allegations are not groundless; and that the President is prima facie guilty are pre-conditions to the consequence envisaged under the proviso, of the financial and administrative powers ceasing to vest in the President of the municipality. The ceasing of financial and administrative powers is not a consequence which ensues merely upon a notice to show cause under the substantive part of sub-section (2). The conclusion of the Division Bench that the cessation of powers takes place by operation of law merely with the issuance of a notice to show cause under Section 48(2) is, with respect, not consistent with the plain text and language of the provision since the legislature envisages that the consequence would ensue only upon the conditions contained in the proviso being fulfilled.

**Conclusion**

We accordingly proceed to answer the reference in the following terms:

**(I) Re Question (a)**: The decision of the Full Bench in **Hafiz Ataullah Ansari Vs State of U P** (supra) lays down the correct position in law.

**(II) Re Questions (b) & (c)**: The cessation of financial and administrative powers of the President does not necessarily follow merely upon the issuance of a notice to show cause under the substantive part of Section 48(2). The financial and administrative

powers of the President shall stand ceased if the State Government has reason to believe that (i) the allegations do not appear to be groundless; and (ii) the President is prima facie guilty on any of the grounds of sub-section (2) resulting in the issuance of the notice to show cause and proceedings thereunder. The President of the municipality will, in that event, cease to exercise, perform and discharge financial and administrative powers, functions and duties from the date of the issuance of the notice to show cause containing the charges. For a cessation of financial and administrative powers to take effect, the requirements of the proviso to Section 48(2) must be fulfilled. Hence, proceedings for removal of a President of a municipality under Section 48(2) may take place in a given situation though the financial and administrative powers have not ceased under the terms of the proviso.

**(III) Re Question (d)**: There is no requirement under the statute that a separate order has to be passed under the proviso to Section 48(2) when the financial and administrative powers of the President of a municipality cease. Such a consequence would come into being upon the requirements specified in the proviso to Section 48(2) being fulfilled.

**(IV) Re Question (e)**: An opportunity of being heard, consistent with the principles of natural justice, before there is a cessation of the financial and administrative powers of the President does not stand excluded by the provisions of Section 48(2). As a matter of textual

interpretation, the requirement of complying with the principles of natural justice is an integral element of the proviso to Section 48(2). The requirements of natural justice would warrant the grant of an opportunity to the elected head of a municipality to respond to the notice issued by the State indicating the basis for the formation of a reason to believe that the charges do not appear to be groundless and that the President is prima facie guilty on any of the grounds mentioned in sub-section (2) of Section 48. The period of notice can be suitably molded to deal with the exigencies of the situation.

The reference to the Full Bench shall accordingly stand answered. The writ petition shall now be placed before the regular Bench according to roster for disposal in light of the questions so answered.

December 18, 2015
AHA

(Dr D Y Chandrachud, CJ)

(Dilip Gupta, J)

(M K Gupta, J)

(Suneet Kumar, J)

(Yashwant Varma, J)