(1966) 03 CAL CK 0020

Calcutta High Court

Case No: Civil Revision Case No. 891 (W) of 1963

Baleswar Singh		APPELLANT
	Vs	
Commissioners for the Port of Calcutta and Others		RESPONDENT

Date of Decision: March 9, 1966

Acts Referred:

- Constitution of India, 1950 - Article 19(2), 226, 311(2)
- Dock Workers (regulation Of Employment) Act, 1948 - Section 4(1)
- Penal Code, 1860 (IPC) - Section 136, 147, 30, 30(1), 30(2)

Citation: 70 CWN 786

Hon'ble Judges: D. Basu, J

Bench: Single Bench

Advocate: Arun Prokash Chatterjee and Arun Prokash Sarkar, for the Appellant;P.P. Ginwalla, T.K. Basu and R.K. Mitra, for the Respondent

Final Decision: Allowed

Judgement

D. Basu, J.

Though the facts in this case under Art. 226 of the Constitution are short, serious questions of law have been raised. The Petitioner, a Sub-Gunner under the employ of Respondent 1, the Commissioners for the Port of Calcutta, was, on the 5th January, 1961, convicted of an offence under sections 147 & 323, I. P. C., instituted on private complaint and sentenced to a fine and, in default, to imprisonment. Two years later, on the 28th March, 1963, he was suspended and on the 4th April, 1963, he served with the order of Respondent No. 2, the Traffic Manager of the Commissioners, removing the Petitioner from service. It would be useful to reproduce that order (Ann. A to the Petition) at once:-

Whereas Sri Baleswar Singh, Sub-Gunner was convicted on a criminal charge under Sections 147 and 323, I. P. C. and sentenced to pay a fine or in default to undergo

rigorous imprisenment on 5.1.61 which was confirmed by the Appellate Court.

And whereas it is considered that the conduct of the said Sri Baleswar Singh which led to his conviction is such as to render his further retention in service undesirable.

Now, therefore, the Dy. Chairman directs that the said Sri Baleswar Singh, Sub-Gunner should be removed from service.

2. The Petitioner states that two other employees who were convicted in the same case along with the Petitioner have not been removed by the Respondents. On the 30th April, 1963, the Union to which the Petitioner belongs wrote the letter at Ann. B to the Dy. Chairman of the Commissioners, requesting that the impugned order be reconsidered on the ground that the offence of which the Petitioner had been convicted did not involve moral turpitude nor did it relate to his work or working place and that, accordingly, he should not be removed on the ground of such conviction, in view of the ''prevailing practice'' in the Commissioners'' service, that only conviction on charges involving moral turpitude caused removal of their employees from service.

3. In his reply at Annx. C dated the 26th August, 1963, the Secretary to the Commissioners stated that the procedure followed in such matters was the procedure adopted by the Government and that an order of removal was made whenever "the offence is considered such as to render the further retention of the employee in service prima facie undesirable." It was added that the offences of rioting and veluntarily causing hurt of which the Petitioner had been convicted, did involve ''moral turpitude''. The Commissioners, accordingly, refused to reconsider their order and that has brought the Petitioner to Court.

4. The first point urged by Mr. Chatterjee on behalf of the Petitioner, is that the impugned order is ultra vires inasmuch as no rule having been framed in exercise of the power conferred by section 31(1) (i) of the Calcutta Port Act, 1890 (hereinafter referred to as ''the Act''), the Respondents could not punish him by ordering removal on the ground of conviction on a criminal charge. A reference to the provisions of section 31 (1) (i) and section 32 (1) of the Act is necessary for determining this point.

Section 31 (1) (i) of the Act says : --

The Commissioners in meeting shall, from time to time frame rules --

(i) for regulating the recruitment, promotion, conduct, discipline, punishment and any other matter relating to the terms and conditions of service applicable to the employees of the Commissioners, or allotment of premises to them or their rights and their privileges, not covered by any of the foregoing clauses.

Section 32(1) next says: --

Subject to the provisions of the Schedule, for the time being in force, sanctioned by the Commissioners u/s 30 and of the rules framed u/s 31 and also to the provisions

of section 34, the power of appointing, promoting, granting leave to, suspending, fining, reducing or dismissing, or of disposing of any other question relating to the services of the employees of the Commissioners including the power of dispensing with the services of any such employee otherwise than by reason of the misconduct of such employee shall be exercised, in the case of employees whose maximum monthly salary exclusive of allowances is is less than one thousand rupees, by the Chairman or the Deputy Chairman, and in every other case, by the Commissioners in meeting.

5. Respondent No. 1, the Commissioners for the Port of Calcutta, is a statutory body, incorporated by section 4 of the Act and, accordingly, they cannot exercise any powers not expressly or impliedly conferred by that Act, London County Council v. Attorney-General, 1902 A.C. 165. There is no dispute between the parties that the Petitioner is an ''employee'' of the Commissioners within the meaning of sections 30 and 32 of the Act. Now, the entire power as to appointment, dismissal and "any other question relating to the services of the employees of the Commissioners" is dealt with in section 32(1) and there is not the least doubt that the services of the employees cannot be dispensed with otherwise than in compliance with the provisions of section 32(1).

One of the conditions laid down in section 32(1) for the exercise of this power is that it must be exercised subject to--

(a) the provisions of the Schedule, for the time being in force, sanctioned by the Commissioners u/s 30 ;

(b) the rules framed u/s 31;

(c) the provisions of section 34.

6. Admittedly, no rules have been framed by the Commissioners u/s 31(1) (i). The Respondents say that they are following the circulars or administrative instructions of the Central Government relating to the matter before me. But that would not amount, in law, to the framing of rules, as required by section 31(1). It must be taken, therefore, that no rules, have been framed under sec. 31 (1) (i). If any such rules would have been framed, the power conferred generally by section 32(1) would have been pro tanto curtailed or limited by the provisions of such rules, because such rules, if framed, would have ''regulated'' the ''punishment and any other matter relating to the terms and conditions of service applicable to the employees'' and, accordingly, the power u/s 32(1) could not have been exercised except in accordance with the procedure laid down and subject to the limitations imposed, by such rules. If any authority is required for this proposition, reference may be made to the Supreme Court decision in S.R. Tewari Vs. District Board Agra and Another, , where the District Board had, in fact, framed rules regulating dismissal etc., of employees under the corresponding provision of sections 82, 84 and 172 of the Uttar Pradesh District Board Act, 1922. To quote the words of the

Supreme Court--

....the powers of a statutory body are always subject to the statute which has constituted it, and must be exercised consistently with the statute which has constituted it, and the Courts have, in appropriate cases, the power to declare an action of the body illegal or ultra vires, even if the action relates to determination of employment of a servant (Tewari v. District Board, (supra).

7. What is true of the statute from which the powers of the statutory body is derived is also true of the rules framed under the statute, even though they may have been framed by the statutory body itself K.N. Guruswamy Vs. The State of Mysore and Others, ; Ganga Ram Das Vs. Tezpur Kaibarta Co-operative Fishery Society Ltd., ; T. Cajee Vs. U. Jormanik Siem and Another, .

8. The question to be answered is whether the power conferred by section 32 (1) is dependent upon the act of framing rules u/s 31(1) (i), or, in other words, whether the exercise of the power u/s 31 (1) (i) is a condition precedent to the exercise of the power conferred by section 32(1). Upon an anxious consideration, I have come to the conclusion that the answer must be in the affirmative, and my reasons are --

(a) The Supreme Court decisions which have dealt with this question in India lead to the following conclusions :--

When an absolute administrative power is vested by statute in an authority, but the statute empowers that or some other authority to prescribe the manner of exercise of that power, failure to make such rules cannot defeat the exercise of that administrative power, even though as soon as such rules are made, the power can be exercised only in conformity with such rules. Thus, in T. Cajee Vs. U. Jormanik Siem and Another, , the question arose whether, until laws were made by the District Council itself under Paragraph 3(1) of the Sixth Schedule to the Constitution, its general power to appoint and dismiss derived from Paragraph 2(4) of that Schedule remained stultified.

Paragraph 2(4) of the Sixth Schedule provides--

Subject to the provisions of this Schedule, the administration of an autonomous district shall... .... be vested in the District Council.....

Paragraph 3(1) then says--

..... the District Council for an autonomous district..... shall have power to make laws with respect to--

(g) the appointment.....of Chiefs or Headmen.

The Supreme Court held that the District Council shall have the power to appoint or remove administrative personnel in exercise of the general power of administration vested in it by paragraph 2 (4) and that it could not be contended that there could

be no appointment or dismissal until laws were made by the Council under paragraph 3(1), to regulate the exercise of that administrative power. Of course, once such laws were made, the Council would be bound to follow them in the matter of such appointment or removal.

9. On the other hand is the decision in S.A.L. Narayan Row and Another Vs. Ishwarlal Bhagwandas and Another, , which arose out of section 18A(6) of the Income tax Act, 1922. That provision made it obligatory upon the income tax Officer to charge interest if the tax paid by an assessee on his own estimate in any year fell short of the regular assessment by 80 per cent. The Fifth Proviso to this sub-section, which was inserted by Act 25 of 1953, was as follows : --

Provided further that in such cases and under such circumstances as may be prescribed, the Income tax Officer may reduce or waive the interest payable by the assessee.

Though the Amendment Act came into force on 24.5.53, the Proviso was given retrospective effect from 1.4.52. It was not until Dec. 1953 that Rules were made by the Central Government prescribing the cases and circumstances in which the income tax officer could exercise his discretion to reduce or waive the interest. By an order of 1956, the income tax officer charged interest u/s 18A (6) for a period anterier to December, 1953, without exercising his discretion under the Fifth proviso at all. It was contended on behalf of the income tax Officer by the Attorney-General that no retrospective operation to the Rules could be given because they were made for the first time in December, 1953. The Court rejected this contention on the ground that the proviso itself was given retrospective operation, so that as soon as the Rules were in fact framed, they at once got retrospective operation from the date when the proviso had been given operation by the Legislature. Though the actual decision in these cases rested on the retrospective operation of the proviso, there are observations in the judgment which suggest that, but for the retrospective operation of the proviso, the Court would have held that the discretion under the proviso could not be exercised so long as the Rules were not framed. The Court distinguished the case of Cajee v. Siem, (ibid), on the ground that there the Constitution had conferred upon the District Council both administrative and legislative powers ; the administrative power was an absolute power and that, accordingly, it could be exercised independently of the laws contemplated by para. 3(1), though once the laws were made, the administrative power could not be exercised except in accordance with the Rules. As regards the 5th Proviso to section 18A(6), however, the Court observed that "there was no absolute power with which the Income tax Officer was invested to reduce or waive interest : his power could be exercised only in prescribed cases within the limits of the authority conferred upon him. He could not reduce or waive interest except in cases and in circumstances prescribed."

10. To my mind, the case before me comes within the ambit of the observations just quoted. The power to dismiss etc., conferred upon the Chairman or Deputy Chairman by section 32(1) of the Act, is not an absolute power which could be exercised apart from any limitations. As I have stated earlier, the limitations were not one but three in number. A reference to the other two limitations would at once make it clear whether the making of the Rules u/s 31(1) was intended as a condition precedent to the exercise of the power of dismissal etc., or not. (1) One of these limitations is the Schedule sanctioned by the Commissioners u/s 30, for the time being in force. That Schedule contains a list of the employees of the Commissioners, prepared and maintained for the purposes of the Act. It is clear that so long as no such Schedule is made, the power u/s 32(1) cannot be exercised at all, because the power of dismissal etc., u/s 32(1) can be exercised only against persons who are ''employees of the Commissioners''. (2) The second limitation is the provisions of sec. 34 of the Act itself, which require the previous sanction of the Central Government being obtained before making an order u/s 32(1) against employees of the class specified in section 34(1). There is not the least doubt that the latter power cannot, in any case, be exercised independently of the provisions of section 34.

11. Coming now to the third limitation, namely, "the rules framed u/s 31", it is to be noted that the power of dismissal is not an absolute power like the general power of administration vested on the District Council in the case of Cajee v. Siem, (ibid), but a power "subject to" three limitations, two of which are clearly conditions precedent. Section 31(1), again, contains a number of clauses. Take, for instance, sub-clause (e), which empowers the Commissioners to make rules determining the conditions under which pensions etc., are to be granted to retiring employees. Can it be said that the words "any other question relating to the services" in sec. 32(1) gives an absolute power to the Commissioners to grant pensions etc., from its statutory public funds in any case it likes, by ad hoc orders, without ever making any rules determining the cases etc., in which pension would be payable. If the answer to this question be in the negative, similar must be the answer as regards sub-clause (i) which empowers the Commissioners to make rules to regulate the punishment etc., of its employees.

(b) The Commissioners of the Port are a subordinate statutory authority. If they did not frame any rules u/s 31 (1) (i), their power to dismiss employees would be absolute; if they did frame such rules, such power was to be limited by the provisions contained in the rules. Can it, now, be said that the Legislature intended that it should remain at the pleasure of the subordinate authority to exercise absolute power by defaulting in the exercise of its statutory power to make rules. Such an intention on the part of the Legislature cannot be inferred upon a reading of all the relevant provisions of the statute, just discussed.

12. The Petitioner, must, therefore, succeed on the ground that the impugned order is invalid, not being founded on any statutory power inasmuch as the power u/s

32(1) to punish an employee could not be exercised until rules were framed u/s 31 (1) (i).

13. The other ground urged on behalf of the Petitioner is that the impugned order is vitiated by a contravention of the principles of natural justice, inasmuch as he was not offered an opportunity to be heard or to show cause before the impugned order was made.

14. Natural justice is out of place in the context of an administrative order unless a quasi-judicial obligation can be predicated. As stated at the outset, the power of removal of their employees is derived by the Commissioners from the provisions of section 32(1) of the Act, which is silent as regards any inquiry to be made or any opportunity to be heard being offered to the employee concerned before such order is made against him.

15. The question, therefore, which we have to answer is that age-old question -- whether a quasi-judicial obligation can be implied in the absence of an express statutory provision requiring a hearing or an inquiry or the like.

16. On this point, judicial opinion in England has wavered between two extremes and this uncertainty has reflected itself in India too, because in this branch of the law we have been following English common law.

17. In England, the modern authority on this point, which has been followed in almost every subsequent decision on this subject, is an observation of Atkin, L.J., in R. v. Electricity Commrs., 1923 All E.R. 150(161) which is as follows : --

Whenever any body of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially, act in excess of their logal authority, they are subject to the controlling jurisdiction of the King''s Bench Division, exercised in these writs.

18. The result of this observation is that the writs of prohibition and certiorari will issue against a body of persons for a breach of their quasi-judicial obligation if the following conditions are satisfied : --

(i) Such body must have legal authority ;

(ii) such authority must be an authority to determine questions affecting the rights of subjects ;

(iii) such body must have the duty to act judicially;

(iv) they must have acted in excess of their legal authority.

19. Of the above conditions, the controversy has centered round the words "duty to act judicially" because these words were highlighted in some of the subsequent decisions. Thus in R. v. Legislative Committee, 1927 All E.R. 696 (699), Lord Hewart, C.J., after quoting the above passage from Lord Atkin''s judgment, observed :--

In order that a body may satisfy the required test it is not enough that it should have legal authority to determine questions affecting the rights of subjects; there must be superadded to that characteristic the further characteristic that the body has the duty to act judicially. The duty to act judicially is an ingredient which, if the test is to be satisfied, must be present.

20. The need for the existence of all these elements was also emphasised by Slesser, L.J., in the next case of R. v. London County Council, (1931) 2 K.B. 215(233). The emphasis laid in these cases on the duty to act judicially led to the corollary that a quasi-judicial obligation could arise only if the duty to act judicially was imposed by the very statute, which conferred the legal authority on the body of persons to determine questions affecting the rights of subjects. An express statutory provisions was thus suggested as the source of a quasi-judicial obligation by Lord Thankerton in Fraklin, v. Minister of Town and Country Planning, (1947) 2 All. E.R. 289(296) H.L., when he said : --

I am of opinion that no judicial duty is laid on the respondent in discharge of these statutory duties.

21. This trend had its climax in the judgment of the Privy Council in Nakkuda Ali v. Jayratne, 1951 A.C. 66(78), where there were observations to the effect that there was no quasi-judicial obligation to afford to the person affected an opportunity to have his defence because the Controller was not required to act judicially by the Defence Regulation before cancelling a licence to act as a dealer.

22. A protest against this conclusion that there could not be any quasi-judicial obligation unless the relevant statute expressly laid down such duty was boldly raised by Parker, J., in the case of R. v. Manchester Legal Aid Committee, (1952) 1 All E.R. 480 -- a Queen''s Bench decision which has acquired celebrity because of this protest. There was, however, nothing new in this protest, inasmuch as, as pointed out by Parker, J. there was a respectable body of decisions from the earliest time, which suggested that an express statutory requirement was not the only source of a quasi judicial obligation and that such obligation could be implied, in proper circumstances, from the nature of the function itself or the nature of the rights to be affected by the administrative body in question. It was also pointed out that it was not possible to exhaustively enumerate the circumstances in which a quasi-judicial obligation would be implied by law though the converse could be attempted by referring to circumstances in which it should not arise. One of these exceptional circumstances, as pointed out by Parker, J. was a policy-determination--

If, on the other hand, an administrative body in arriving at its decision at no stage has before it any form of lis and throughout has to consider the question from the point of view of policy and expediency, it cannot be said that it is under a duty at any stage to act judicially (p. 490, ibid.).

On the other hand,

if in order to arrive at the decision the body concerned has to consider proposals and objections and consider evidence, then there is duty to act judicially in the course of that inquiry (p. 489, ibid.).

Here was drawn a distinction between a subjective and objective determination. While a subjective determination could not be quasi-judicial, an objective determination could be so if the other conditions were satisfied. Even the existence of a lis or a dispute between two parties has not been considered to be an essential condition in later decisions and in some cases, some authorities had to evolve a fiction of ''quasi-lis'' in cases where the statutory power to determine was conferred upon a party to the matter, namely, the administrative authority who was interested in making the order.

23. What was essential was a duty to hear the other side, as pointed out by Lord Goddard, C.J. in R. v. Statutory Visitors, (1953) 2 All E.R. 766(768):--

It means a body bound to hear evidence from one side and the other; there need not be anything called strictly a lis but the body would have to hear submission and evidence by each side and come to a judicial decision -- approximately in the way that a court must do.

24. Neither express provision nor the existence of a lis are thus an indispensable condition for the implication of a quasi-judicial obligation. As pointed in the (12) Legal Aid Case, (1952) 1 All E.R. 480, and affirmed by the House of Lords in (4) Ridge''s case, (1963) 2 All E.R. 66 (73), even prior to the observation of Atkin, L.J. (7) 1923 All E.R. 150(161), there had been numerous decisions where a quasi-judicial obligation had been implied from the nature of the function or the nature of the rights affected, even though the statute did not expressly lay down any such obligation. One of these earliest authorities was the ancient case of Cooper v. Wandsworth, (1863) 14 C.B. N.S. 180, the dictum in which has been chanted by Judges for generations like gospel and they are bound so to do so long as Anglo-Saxon jurisprudence is not rooted out from the civilised world. This dictum is that where property rights are sought to be affected by the action of a statutory authority, e.g., an order of demolition issued by a local authority, the person to be affected must be heard before the order can be issued. In the words of Byles, J., in such a case --
although there are no positive words in a statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature;

and according to Willes, J., it was a rule "of universal application and founded on the plainest principles of justice."

25. This rule was followed by the Judicial Committee in Smith v. R., (1878) 3 App. Cas. 624 in relation to a forfeiture of lease under statutory power. Similar view is to be found in the House of Lords decision in (17) Spackman v. Plumstead Board of Works,

(1885) 10 App. Cas. 229(240). The rule has became so firmly established that, without any fear of contradiction it may be stated that, barring exceptional circumstances such as an emergency or a situation calling for immediate action to protect the public of. R. v. Cornwall Quarter Sessions, (1956) 2 All E.R. 872(875); Franklin v. Minister of Town and Country Planning, (1948) A.C. 87; Harishankar Bagla and Another Vs. The State of Madhya Pradesh, ; Ridge v. Baldwin, (1963) 2 All. E.R. 66(79), a statutory order affecting a right of property would be invalid if no opportunity is offered to the person affected by the order to be heard or to object before it is made.

Stopping here for a moment, the principle laid down in Cooper''s case, (ibid.), can be straightway extended to a case of a statutory order for termination of the services of an employee if only the right to earn one''s livelihood can be said to constitute a right of property or likened to it.

Of the notable English decisions, in this context, I may refer to the observation of Denning, L.J. in the Court of Appeal in Abbott v. Sullivan, (1952) 1 All E.R. 226(234),--

The right of a man to work is just as important to him as, if not more important than, his rights of property.

Of course, this observation was made in connection with a claim for damages against a domestic tribunal. But there is no reason why the principle should prevail in other situations. With the displacement of agrarian society by an industrial and collective society, profession and employment have come to be the main source of livelihood in place of property and the same zeal which prompted Byles, J., to safeguard a right to properly a century ago, would have prompted him to plead in favour of the right to livelihood had he been alive today.

26. It would be superfluous to refer to decisions other than that of the House of Lords in (14) Ridge''s case, (ibid.), which will remain a landmark to posterity so long as they do care for justice in human dealings. In this case, while demolishing the assumption in (11) Nakkuda Ali''s case that cancellation of a trade licence stood apart from deprivation of property rights to which the maxim enunciated in (15) Cooper''s case (ibid), might be attracted, Lord Reid observed : --

..... though the withdrawal of a licence, which can be described as the removal of a privilege is in some respects different in character from the taking away of vested rights or proprietary interests, nevertheless the withdrawal of a licence from the person from whom it is withdrawn may in fact mean the destruction of his means of livelihood.

Proceeding, Lord Reid observed that in the case before the House, the dismissal of the Chief constable affected his pension, which was a means of his livelihood and that, in such a case, he should have had an opportunity of showing cause "unless the words of the statute deny it." Here, then, is evolved a doctrine of quasi-judicial

abligation arising from the absence of an express statutory prohibition instead of the contrary doctrine of its arising out of an express statutory provision, in a case where the individual''s right to livelihood was sought to be terminated by the application of a statutory power.

27. More pronounced were the observations of Lord Morris on this point, in (14) Ridge''s case, (supra). Relying on the authority of the House in the earlier case of Spackman v. Plumstead Board of Works, (1885) 10 App. Cas. 229(240), Lord Morris said--

If the principles, to which he (Lord Selborne) adverts, apply where property rights are in issue, surely they must apply with equal effect where the issue is whether there has been misconduct which merits dismissal from an office. * * * * A right to be heard before property rights were affected was upheld in the circumstances applying in Cooper v. Wandsworth Board of Works, (ibid), * * * * * Similarly, a right to be heard in regard to removal from an office was recognised in Osgood v. Nelson, (1872) L.R. 5 H.L. 635 ; Ex parte Ramshay, (1852) 18 Q.B. 173 ; and in R. v. Gaskin, (1799) 8 T.R. 209 * * * *

Being of the view that even if there had been no applicable regulations a decision to dismiss the appellant for neglect of duty ought only to have been taken in the exercise of a quasi-judicial function which demanded an observance of the rules of natural justice * *.

28. The importance of an employment as a means of livelihood has been emphasised by our Supreme Court in Calcutta Dock Labour Board Vs. Jaffar Imam and Others, . In that case, the services of certain employees of the Calcutta Dock Labour Board, -- another statutory body, -- were terminated, without giving them an opportunity to be heard, on the ground that they had previosly been detained under the Preventive Detention Act for acts prejudicial to the maintenance of public order. The Supreme Court, speaking through the Chief Justice, characterised employment as a means of the citizen to earn his ''livelihood'', and held that when a statutory authority was empowered to exercise the power to terminate the services of its employee on a charge of misconduct, it could not do it "on considerations of expediency," but only upon a proper inquiry in consonance with the principles of natural justice. I do not overlook the fact that in that case, the Scheme framed in exercise of the power u/s 4(1) of the Dock Workers (Regulation of Employment) Act, 1948, required that an opportunity to show cause must be offered to the employee before taking any disciplinary action against him. But the observations relating to natural justice at pp. 286-7, of the Report are not founded on the express provisions of clause 36(3) of the Scheme of 1951 or clause 45(6) of the Scheme of 1958, which laid down such requirement. The Court deduced the same conclusion from the rules of natural justice, which followed from the nature of the function, viz.,--

(i) that it was a power to terminate employment, which is a means of livelihood to a citizen ;

(ii) that the power was to be exercised by a statutory authority.

29. Where these two conditions were present, the rules of natural justice were attracted, apart from any provisions of the statute or any subordinate legislation thereunder. This was the reasoning of the Court as would be evident from the following words : --

Such an inquiry is precribed by the requirements of natural justice and an obligation to hold such an inquiry is also imposed on the appellant by clause 36(3) of the Scheme * * * *.

30. Again, in repelling the argument that it was impossible to make an inquiry against persons of a desperate character like the respondents who had been detained for prejudicial activity, the learned Chief Justice observed : --

Any attempt to short-circuit the procedure based on consideration of natural justice must * * be discouraged if the rule of law has to prevail, and in dealing with the question of the liberty and livelihood of a citizen, considerations of expediency which are not permitted by law can have no relevance whatever.

31. When our Supreme Court made its earliest pronouncement (in 1950) on quasi-judicial obligation in the case of Province of Bombay Vs. Kusaldas S. Advani and Others, , Nakkuda Ali, (1950) 54 C.W.N. 883 (P.C.), was very much in the horizon. Relying on this decision as well as the interpretation of Atkin, L.J.''s observation in R. v. Electricity Commissioners, (ibid.), an interpretation which has been discarded by the House of Lords in Ridge v. Baldwin, (ibid), two of the learned Judges in the majority in Khusaldas''s case (supra), came to the conclusion that no quasi-judicial obligation could arise unless the statute which conferred the power expressly required a quasi-judicial procedure to be followed. The third member of the majority, -- Das J., -- took a little modified view, which it is unnecessary to pursue for our present purposes. Nakkuda Ali, (ibid.), has been denounced in Ridge''s case, (supra), as bad law, if it is to support any such proposition. The foundation of the majority decision in Khusaldas''s case, (supra), with respect is thus taken away.

32. Fortunately, the ball was set in motion for the proposition that an express statutory requirement was not the only source of a quasi-judicial obligation by Subba Rao, J., in the minority in Radeshyam Khare and Another Vs. The State of Madhya Pradesh and Others, , in these words: --

the duty to act judicially may not be expressly conferred but may be inferred from the provisions of the statute. It may be gathered from the cumulative effect of the nature of the rights affected, the manner of the disposal provided, the objective criterion to be adopted, the phraseology used, the nature of the power conferred or the duty imposed on the authority and other indicia afforded by the statute. In

short, a duty to act judicially may arise in widely different circumstances and it is not possible or advisable to lay down a hard and fast rule or an inexorable rule of guidance.

33. The above statement has been accepted as the true law by several unanimous Benches since then Board of High School v. Ghanshyam, AIR (1962) S.C. 1110(1114-5); The Board of Revenue, U.P. and Others Vs. Vidyawati and Another, ; Shri Bhagwan and Another Vs. Ram Chand and Another, , and it is now firmly established that even where a statute is silent, a quasi-judicial obligation may be inferred from the nature of the rights affected by a statutory authority, and on this point, to-day, the law in England and in India are the same.

34. I am not unmindful of the fact that in a case relating to rules 30(1) (b) and 30A(6) of the Defence of India Rules Sadhu Singh Vs. Delhi Administration, , our Supreme Court had occasion to refer to the observations of Lord Reid in Ridge v. Baldwin, (ibid.), and opined that Lord Reid did not intend to lay down the wide proposition that whenever a statutory body is called upon to determine some question which affects the rights of an individual, the proceeding must be regarded as quasi-judicial. The Court held that the scheme of the statute or the nature of the power conferred may exclude judicial review, e.g., where the question is to be detemined on the subjective satisfaction of the statutory authority, as in the case of a detention under the Defence of India Rules. This decision in (26) Sadhu Singh''s case, (ibid,), however, has nothing to do with the converse case, namely, where the question, affecting the rights of an individual has necessarily to be detemined objectively. On the other hand, this very decision would suggest, when read with the observations in Ridge''s case, (supra), that where the question is not required by the statute to be determined subjectively, or the question is such that it can be detemined only objectively, a quasi-judicial obligation would, in the absence of anything to the contrary in the statute, be indicated.

35. That no quasi-judicial obligation would be implied in respect of subjective functions is not a new proposition but had been laid down both in England and in India in earlier cases, such as Franklin v. Minister of Town and Country Planning, 1948 A.C. 87 ; State of Madras Vs. C.P. Sarathy and Another, ; Radeshyam Khare and Another Vs. The State of Madhya Pradesh and Others, . There are some questions which can be determined only on considerations of policy and subjectively, such as deportation (28) Ex parte Venicoff, (1920) 3 K.B. 72 or the expediency of acquiring a land for the purposes of Town Planning (29A) Robinson v. Minister of Town and Country Planning, (1947) 1 All E.R. 851 ; Franklin''s case, (ibid). To this class belongs an order of preventive detention, as was dealt with in (26) Sadhu Singh''s case.

36. But the question involved in the case before me is a different one, namely, whether the services of an employee should be dispensed with on the ground of a misconduct. It has been hold in numerous decisions that except where the service is held at the pleasure of the employer, this is a question which has to be determined

objectively because the employee may have something to say in his defence. Reference to the observations in Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI), and Khem Chand Vs. The Union of India (UOI)and Others, will suffice; -- apart from the glowing dictum of Lord Reid in Ridge v. Baldwin, (1963) 2 All E.R. 66(73),--

* * * * The general principle that a man is not to be dismissed for misconduct without being heard.

37. Mr. Ginwala on behalf of the respondents urges that the case before me is one of emplyoment held at the pleasure of the employer. No doubt, in (14) Ridge''s case, (ibid,), Lord Reid observes that there are two exceptions to the principle of natural justice that a man must be heard before being dismissed for a misconduct, namely,-- (a) the case of a master and servant, at common law, & (b) the case of service held at the pleasure of the employer. According to Mr. Ginwala, the employees of the Port of Calcutta come under both these classes of exception. This contention cannot, however, be accepted for two reasons : --

(i) The common law relating to master and servant cannot be extended to a case where the employment is governed by statute. The argument of Mr. Ginwala that the Petitioner does not hold any ''office'' is not acceptable inasmuch as it was not disputed by him that the petitioner holds a post included in the Schedule prepared u/s 30(1) of the Act and that the proviso to section 30(2) is not applicable to him. The petitioner holds a ''statutory office'', and is even treated by the statute as a ''public servant'' for the purposes of section 136.

(ii) Even in the case of employment under the Crown, in England, the doctrine of ''tenure at pleasure'' is excluded as soon as an office is created or governed by statute Gould v. Sterart, 1896 A.C. 575 ; Riordan v. War Office, (1959) 3 All E.R. 552 (557), affirmed by (34) (1960) 3 All E.R. 774 (C.A.). Of course, even where an employment is governed by statute, and even though it does not relate to employment under the Crown, the statute may expressly lay down that the service must be held at pleasure. Such instances are to be found in England, in statutes relating to employment under local authorities, in particular, e.g., under sections 102, 105, 106 and 107 of the Local Government Act, 1933, which expressly lay down that appointment to the specified offices shall be "during the pleasure of the council". In such cases, the law to be applied will, of course, be as held in (35) Brown v. Degenham Urban Council, (1929) 1 K.B. 737. But the Legislature which enacted the Calcutta Port Act, 1890, did not, in its wisdom, think fit to incorporate any such express provision relating to employment under the Commissioners. On the other hand, it has, in section 31(1) (i), laid down that rules must be framed by the Commissioners in this behalf and that punishment etc., of employees must be made in accordance with the provisions of such rules.

38. Apart from that observations of our Supreme Court in the (21) Calcutta Dock Labour Board Vs. Jaffar Imam and Others, , establish the proposition that, in the absence of any such express provision rendering an employment under a statutory authority to be held at pleasure, the rules of natural justice would be attracted, simply because the employer is a statutory body, if the means of livelihood * * * * livelihood of an employee is sought to be taken away on the ground of misconduct :

In cases where a statutory body or authority is empowered to terminate the employment of its employees, the said authority or body cannot be heard to say that it will exercise its powers without due regard to the principles of natural justice.

39. Mr. Ginwala contended that in those English cases where the rules of natural justice have been imported in the matter of dismissal of the employees of a statutory authority, there was a statutory provision limiting the power of dismissal to be exercised only for a specified cause, e.g., misconduct, inefficiency, or the like. I cannot accept this argument for two reasons : --

Firstly, even if the view taken in any English decision, prior to Ridge v. Baldwin, (supra), and contrary to the observations of our Supreme Court just quoted were to be followed, the English view cannot be imported in the instant case inasmuch as the respondents have not purported to exercise any absolute power of dismissal, but have made the order on the ground of the misconduct specified in the impugned order itself. In short, the respondents have purported to exercise their power for a cause and a cause against which, as I shall presently show, it was possible for the petitioner to make his submissions to repel the proposed order.

40. Secondly, whatever might have been said in the earlier decisions, the entire body of English decisions preceding, Ridge v. Baldwin, (ibid) must now be read in the light of what has been said in the latter case. Thus, commenting on the decision in the case of Hogg v. Scott, (1947) 1 All E.R. 788(792), Lord Reid observed (p. 73, ibid.): --

* * * in deciding the latter case, Cassels, J, in deciding that a chief constable could dismiss without hearing him an officer who had been convicted of felony, appears to have proceeded on a construction of the regulations. Of course, if the regulations authorised him to do that and were intra vires in doing so there would no more to be said. I do not think it necessary to consider whether the learned Judge rightly construed the regulations, for he did not expressly or * * * by implication question the general principle that a man is not to be dismissed for misconduct without being heard.

41. These words, thus, warrant the proposition that, unless the statute or the rules made therein authorise the dismissal for a misconduct without giving an opportunity to the employee concerned, the rules of natural justice would require that where the dismissal is purported to be made on a ground of misconduct, such opportunity must given before making the order.

42. If any doubt is left, I would refer to the observations of Lord Morris in Ridge''s case, (p. 107, ibid.) : --

I cannot think that the dismissal of the appellant should be regarded as an executive or administrative act if based on a suggestion of neglect of duty : before it could be decided that there had been neglect of duty it would be a pre-requisite that the question should be considered in a judicial spirit.

43. That in the case of a statutory body, the two exceptions referred to by Lord Reid would not apply is pointed out by Lord Morris, (108), by these words : --

The relationship between the watch committee (a statutory authority) and the appellant was not that of master and servant. Nor was the appellant one who held an office at pleasure with the consequence that he could be required at pleasure to relinquish it.

The conclusion of Lord Morris is (p. 109): --

* * * even if there had been no applicable regulations a decision to dismiss the appellant for neglect of duty ought only to have been taken in the exercise of a quasi-judicial decision function which demanded an observance of the rules of natural justice * * *.

44. The reason is (p. 108, ibid), that even if the statute law was silent about the procedure in such cases, "the justice of the common law will supply the omission of the legislature," because (p. 109, ibid.),--

If the principles * * * apply where property rights are in issue, surely they must apply with equal effect where the issue is whether there has been misconduct which merits dismissal from an office.

45. In my opinion, it may be safely concluded, without more, that the law both in England and in India to-day is that, except in the extreme cases where the statute itself bars the incursion of natural justice by an express provision to that effect or by laying down that the office must be held at pleasure, an opportunity must be given to the employee in question before the order of dismissal, if such order is purported to be made on such cause such as misconduct, against which it is possible for the employee to show cause. Of course, where there is a formal contract of employment, unaffected by any statutory provision, it is the terms of such contract which shall govern the incidents of employment even under a statutory authority ; but such is not the case here.

46. It remains to be seen where the impugned order (Annx. A) seeks to remove the petitioner from service on the ground of ''misconduct''. It requires little consideration to answer in the affirmative in view of the following words in the order : --

And whereas it is considered that the conduct of the said Baleswar Singh which led to his conviction is such as to render his further retention in service undesirable.

47. The petitioner has been removed not merely for the fact that he has been convicted but also for the fact that the "conduct" which led to such conviction is such that "his further retention in service is undesirable". Here is a clear case of termination of service on the charge of misconduct. In a case, the rule of natural justice is immediately attracted, according to the dictum of the Judicial Committee in Lapointe v. l''Association, (1906) A.C. 535 (540): --

* * * no man should be condemned to consequences resulting from alleged misconduct unheard, and without having the opportunity of making his defence * * *.

48. It has been urged by Mr. Ginwala that since the Proviso to Article 311 (2) of the Constitution dispenses with an inquiry or opportunity to be heard where a Government servant had been dismissed "on the ground of conduct which has led to his conviction on a criminal charge," the rules of natural justice do not require an opportunity to be given in such cases outside Government employment. This is putting the cart before the horse. It is to be noted that there are three clauses in the Proviso to Article 311(2) of the Constitution where no opportunity need be given to dismiss a Government servant. These clauses save been engrafted not because, natural justice would not otherwise have been available to the employee, but because, for some paramount reasons, the Constitution-makers, in their wisdom, thought that the State cannot afford to comply with the requirements of natural justice without detriment to the public interest. Take, for instance, clause (c); where the security of the State itself was at stake, it would have been suicidal for the State to give a hearing to a saboteur, with all the incidents of a protracted departmental, and, may be, legal, proceedings arising out of such right. In the case of conviction on a criminal charge, too, the Constitution-makers came to the conclusion that a public servant should be a man without a blot. The interests of the nation were considered more important, than the security of to tenure of one individual. This is the same principle as that which justifies a denial of the fundamental right of freedom of speech and expression (under Article (19)(2)) to a person who spreads conflagration against the State itself. The ambit of natural justice is, thus, not limited by Article 311(2), but rather demonstrated by the exceptions which had to be engrafted in order to exclude it on paramount considerations of collective security. But paramount consideration does not exist in the case of any employment outside the Constitution. There is, therefore, no outrage to one''s commonsense to think that the position of a non-government employee might be better on this particular point, than that of a Government employee. The relevant statute before me might have, of course engrafted such an exception but it has not done so.

49. The next contention of Mr. Gunwala that an opportunity to be heard or to show cause against the impugned order would have been useless is not acceptable, for

two reasons : --

50. Firstly, the petitioner might show that the conduct out of which the criminal proceeding arose had no connection with the petitioner''s employment and therefore could not justify any penalty in service at all.

51. That a man has been convicted by a criminal court may not always be a ''misconduct'' entailing a summary termination of his employment. Though the situation was different in the case of General Medical Council v. Spackmen, (1943) A.C. 627, the observations of the House of Lords in case go to show that where the question is whether a medical man should forfeit his profession licence by reason of a conviction on a charge of adultery, the judgment of the criminal court is not conclusive evidence but only prima facie evidence and the statutory committee could not shut out the medical man in question from adducing any evidence in his defence as he thought necessary to rebut the charge. Of course, one might say that the words ''due inquiry'' in the relevant statute influenced the House of Lords, but there are wide observations in the judgment to show that any conviction is not necessarily sufficient to disqualify a professional man, in the absence of an express statutory provision to that effect.

52. Of course, the case before me relates to termination of employment. But, even if the common law of master and servant were applicable it is well-established that conviction for an offence outside the course of employment does not ipso facto constitute a ''misconduct,'' so as to justify a summary punishment. A conviction or other misconduct unconnected with the emplomen may justify summary dismissal only in cases like the following : --

(a) Where the alleged act reveals the character of the servant, such as dishonesty or gross immorality Federal supply v. Angehorn, (1910) 103 L. T. 150 ; Pearce v. Foster, (1886) 17 Q.B.D. 556 (539-40);

(b) Where the servant is guilty of such a crime outside his employment as to make it unsafe for a master to keep him in his employ Pearce v. Foster, ibid.);

(c) Where, though it takes place outside the place of work and does not relate to the contract of service, yet affects the employment indirectly, e.g., assaulting a fellow-workman or disrespectful conduct towards a superior officer at canteen meeting, Temlinson v. L. M. S. Ry., (1944) 1 All E.R. 537 (540) C.A.). The reason is that offences are of different classes and nature. Supposing it is a statutory offence for breach of a traffic regulation. That may have nothing to do with the efficiency of the servant or the interests of the master in the ordinary run of cases. When, therefore, a servant is convicted of an offence outside his employment, it becomes a question for objective determination whether the offence is of such a nature as may affect the relationship of master and servant and, therefore disqualifies the servant for the job for which he had been employed. The nature of the office and its duties, again, enter into this consideration. What may be required of a confidential or security

officer is not required of a clerk or a menial. As soon as we come to the conclusion that a servant may have something to say in his defence inspite of his conviction, the case for a hearing is opened. Of course, in the case of a common law relationship of master and servant, the servant has no other remedy than to sue for damages for breach of contract, if that can be established. But the background changes if the employment is statutory, as I have already explained.

53. In the instant case, the Court is not concerned with what should be the verdict of the respondents on the foregoing points. It is sufficient to show that it was possible for the petitioner to take the defence that the conduct alleged, which admittedly, took place outside the employment in any sense, was not such as to constitute a ''misconduct'' justifying summary dismissal.

54. Secondly, had he been given an opportunity to show cause, the petitioner might have urged that the conduct was not such as to merit a removal from the employment and that any milder punishment would have served the interests of the employer and, in that context, the petitioner might have relied upon his service career, past conduct as well as his verdict during the two years that intervened the conviction and the order of removal and the like. On this point, the observations of Lord Evershed, in the minority in (14) Ridge''s case, (supra), are worth reproducing : --

It is undoubtedly a striking fact that the appellant had at the date when he had been suspended from his office of chief constable served some 33\u2022 years * * * * During this long period of service it does not appear that there had been any criticism of his work * * * * In these circumstances I cannot conceal from myself that (unless the words of the statute deny it) there is shown an obvious case for giving to the appellant an opportunity to put forward his argument for the first of the two alternatives, namely, that he should be required to resign and not be summarily dismissed.

A decision contrary to natural justice is void, (Ridge''s case, pp. 81, 110 and 116).

55. My conclusions, to sum up, are : --

(a) The rules of natural justice are attracted to the instant case;

(b) The impugned order at Annx. A having been made by respondent No. 2, without giving the petitioner an opportunity to show cause against the order proposed, violates natural justice and is, accordingly, void.

The petition must, therefore, succeed on both the grounds of ultra virse and contravention of natural justice. The Rule is, accordingly, made absolute, with costs, hearing fee being assessed at five gold mohurs. Let the impugned order at Annx. A, be quashed and the respondents be directed not to give effect to it. They will, however, be at liberty to proceed afresh, in accordance with the law and in the light of the observations made herein.

Let the operation of the order be stayed for one month from this date.