STATE OF ASSAM & ANR.

v.

GAUHATI MUNICIPAL BOARD

February 24, 1967.

[K. N. WANCHOO, R. S. BACHAWAT AND V. BHARGAVA, JJ.]

Assam Municipal Act (15 *of* 1957) *s.* 298—*State Government issuing notification superseding Municipal Board for incompetence etc.—Notification after considering explanation to show cause notice—Whether opportunity for oral hearing also to be given—Whether principles of natural justice violated—Indication of tentative conclusion to supersede Board given in show cause notice—Whether amounted to pre-judging before considering explanation.*

The appellant issued a notice to the respondent Municipal Board on June 9, 1964, under s. 298 of the Assam Municipal Act (XV of 1957) which stated, *inter alia* that the State Government was of opinion that the Board was incompetent to perform its duties and it had come to the tentative conclusion that the Board should be superseded. The charges which were the basis of the tenatative conclusion were set out in the notice and the Board was asked to give an explanation in reply to these. After considering the explanation given by the Board, the State Government issued a notification on December 9, 1964, superseding the Board for one year with effect from December 14, 1964 for reasons which were stated in the notification.

The Board thereupon filed a writ petition challenging the notification on the grounds, *inter alia*, (i) that in passing the order of supersession the State Government had violated the principles of natural justice inasmuch as the proceedings resulting in supersession being quasi-judicial proceedings, the Board had been denied the opportunity of being personally heard and of producing evidence; (ii) that the charges which were found proved in the notification of December 9, 1964 were not the same which were the subject matter of the notice of June 9, 1964; and (iii) that the State Government had already come to the conclusion that the Board should be superseded when it gave notice on June 9, 1964 and had thus pre-judged the issue even before the explanation of the Board had been received. The High Court accepted all these contentions and allowed the petition.

On appeal to this Court,

HELD : allowing the appeal :

(i) Even assuming that the proceedings in question were quasi-judicial proceedings, there was no violation of the principles of natural justice in this case. What the section provides is that a notice should be given to the Board by the State Government and its explanation taken before an order under s. 298 is passed. When the provisions of s. 298 are fully complied with, as in this case, and the Board does not ask for an opportunity for a personal hearing, principles of natural justice do not require that the State Government should ask the Board to appear for a personal hearing and to produce materials in support of the explanation. [735 D-E; 736 C]

(ii) A careful examination of the notice and the notification showed that the charges found proved were substantially the same as the charges levelled. [736 F]

A (iii) The High Court had wrongly used the analogy of Art. 311 for the purpose of s. 298 in holding that the appellant should not have indicated its tentative conclusion in the notice because s. 298 provides for two courses *i.e.*, supersession or dissolution, and the appellant could not decide between the two alternatives even tentatively before taking into consideration the explanation of the Board. There was no reason why, when giving notice, the State Government should not indicate to the Board tentatively which of the two alternatives it intends to pursue. Such B tentative conclusion communicated to the Board does not mean that the State Government is not open to conviction at all and whatever the explanation it would pass an order in accordance with its tentative conclusion. [737 E-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1268 of 1966.

C Appeal by special leave from the judgment and order dated May 21, 1965 of the Assam and Nagaland High Court in Civil Rule No. 306 of 1964.

S. V. Gupte, Solicitor-General and *Naunit Lal*, for the appellants.

D *K. R. Chaudhuri* and *B. P. Singh*, for the respondent.

The Judgment of the Court was delivered by

Wanchoo, J. This is an appeal by special leave against the judgment of the Assam High Court. The appellant is the State of E Assam and the respondent is the Gauhati Municipal Board, (hereinafter referred to as the Board). After the municipal election, new members of the Board began to function from July 7, 1962. The term of the members is four years and would in the normal course have expired on July 6, 1966. On June 9, 1964, the appellant issued notice to the Board under s. 298 of the Assam Municipal Act, No. XV of 1957 (hereinafter referred to as the Act). F That section gives power to the State Government, if it is of the opinion that a Board is incompetent to perform or persistently makes default in the performance of the duties imposed on it by or under the Act or otherwise by law, or exceeds or abuses its powers, either to dissolve the Board or to supersede it for a period not exceeding one year at a time, and where dissolution is ordered to order a G fresh election as soon as possible. The section further provides that this power can be exercised by the State Government after giving the Board an opportunity for submitting its explanation in regard to the matter in question. On receipt of such explanation the State Government has to consider it and thereafter by notification stating reasons for so doing it may declare that the Board is incompetent to perform or persistently makes default in the per- H formance of its duties or has exceeded or abused its powers. The State Government may by such notification either dissolve the Board or supersede it as already indicated.

The State Government issued notice to the Board on June 9, 1964. In this notice the State Government said that it was of the opinion that the Board was incompetent to perform or had persistently made default in the performance of the duties imposed on it by or under the Act or otherwise by law and that the Board had abused its powers. The notice went on to say that the State Government had come to the tentative conclusion that the Board should be superseded under s. 298 of the Act and asked the Board to show cause why this should not be done. The notice also stated eight charges which were the basis of the tentative conclusion of the State Government and asked the Board to give an explanation in full with respect to these charges. The Board gave the explanation on August 10, 1964. That explanation was apparently considered by the State Government and on December 9, 1964, the State Government issued the notification superseding the Board for one year with effect from December 14, 1964 for reasons which were stated in the notification. Thereupon the Board filed a writ petition in the High Court on December 24, 1964 on various grounds. It is however unnecessary for present purposes to mention all the grounds raised in the writ petition. It is sufficient to say that three of the grounds raised therein were—(i) that in passing the order of supersession the State Government had violated the principles of natural justice inasmuch as the Board had been denied the opportunity of being personally heard and of producing evidence, as the proceedings resulting in supersession were quasi-judicial proceedings, (ii) that the charges which were found proved in the notification of December 9, 1964 were not the same which were the subject matter of the notice of June 9, 1964, and (iii) that the State Government had already come to the conclusion that the Board should be superseded when it gave notice of June 9, 1964 and had thus pre-judged the issue even before the explanation of the Board had been received.

The application was opposed by the appellant, and its case was that proceedings resulting in an order under s. 298 of the Act were administrative proceedings and not quasi-judicial proceedings. In any case even if they were quasi-judicial proceedings, the appellant contended that it had given a hearing to the Board as required by s. 298 and there was no violation of the principles of natural justice. The appellant further contended that the charges found proved were the same as the charges levelled against the Board. Finally it was contended that though the action to be taken was tentatively indicated in the notice, the State Government had not pre-judged the issue and was open to conviction after the receipt of the explanation from the Board.

The High Court held that the proceedings culminating in an order under s. 298 of the Act were quasi-judicial and that there was

A violation of the principles of natural justice in this case. The High Court also held that the charges found proved in the notification of December 9, 1964 were different from the charges levelled in the notice June 9, 1964. Tre High Court finally held that the State Government had already made up its mind to supersede the Board when it issued notice and therefore presumably all the B proceedings subsequent to the issue of the notice were a farce. For these reasons the High Court allowed the writ petition and quashed the order of December 9, 1964. It is this order of the High Court which is being challenged before us in the present appeal.

We are of opinion that the appeal must succeed. We shall take up three grounds on the basis of which the High Court has allowed C the writ petition in the order indicated above.

Re. (i).

It is not necessary in the present appeal to decide whether the proceedings resulting in an order under s. 298 of the Act are quasi-judicial proceedings or merely administrative proceedings. D Assuming that the High Court is right that the proceedings are quasi-judicial proceedings, the question is whether there was any violation of the principles of natural justice in this case. What the section provides is that a notice should be given to the Board by the State Government and its explanation taken before an order under s. 298 is passed. It is not disputed that the appellant E had given notice to the Board and had indicated the charges on the basis of which it had formed its tentative conclusion and also had asked for an explanation from the Board. The explanation was received in August 1964 and considered by the appellant and thereafter the appellant by its order dated December 9, 1964 decided to supersede the Board. Now it is clear from these facts that the appellant acted in full compliance with the procedure F provided in s. 298. Ordinarily therefore there is no reason why it should be held, when the procedure provided in s. 298 was complied with, that the principles of natural justice were violated. But the High Court was of the view that the appellant should have given an oral hearing to the Board which should also have been given an opportunity to produce materials before the appellant G in support of the explanation. According to the High Court, the right of hearing includes the right to produce evidence in support of an explanation and this opportunity was not given to the Board. Here again it is unnecessary to deside whether s. 298 which merely says that the State Government should give opportunity to the Board for submitting an explanation in regard to the matter en- H visages production of evidence—oral or documentary—at some later stage by the Board in support of its explanation. The High Court has conceded that a personal hearing of the nature indicated above is not always a concommitant of the principles of natural

justice. But it was of the view that in the present case principles of natural justice required that the Board should have been given a personal hearing and an opportunity to produce materials in support of the explanation. We should have thought that when the Board is given a notice as required by s. 298 it would naturally submit its explanation supported by facts and figures and all relevant material in support thereof. However, we are definitely of opinion that the provisions of s. 298 being fully complied with it cannot be said that there was violation of principles of natural justice in this case when the Board never demanded what is called a personal hearing and never intimated to the Government that it would like to produce materials in support of its explanation at some later stage. Therefore where a provision like s. 298 is fully complied with as in this case and the Board does not ask for an opportunity for personal hearing or for production of materials in support of its explanation, principles of natural justice do not require that the State Government should ask the Board to appear for a personal hearing and to produce materials in support of the explanation. In the absence of any demand by the Board of the nature indicated above, we cannot agree with the High Court that merely because the State Government did not call upon the Board to appear for a personal hearing and to produce material in support of its explanation it violated the principles of natural justice. This ground in support of the order of the High Court therefore fails.

Re. (ii)

Then we come to the finding of the High Court that the charges found proved in the notification were different from the charges levelled in the notice. We regret to say that the High Court did not carefully look into the matter If it had done so, it would have found that there was no difference in substance between what was charged and what was found proved. Eight charges were indicated in the notice of June 9, 1964. Six of them related to acts of omission and commission by the Board; the seventh and eighth charges were mere matters of inference from the first six charges and were not strictly speaking charges of which any explanation was necessary. In the notification superseding the Board the appellant found six charges proved. We have compared the notification of December 9, 1964 with the notice of June 9, 1964 and find that the first charge found proved in the notification is the third charge in the notice; the second charge found proved in the notification is the fifth charge in the notice; the third charge found proved in the notification is the fourth charge in the notice; the fourth charge found proved in the notification is the second charge in the notice; the fifth charge found proved in the notification is the sixth charge in the notice and the sixth charge found proved in the notification is the first charge in the notice. It will thus be

A seen that though there was a change in the order in which charges were enumerated, the charges found proved were substantially the same as the charges levelled. We have already indicated that the seventh and eighth charges in the notice were really not charges and were mere inferences and that is why we find no mention of them in the notification. The view of the High Court that the B charges proved were different from the charges levelled therefore also fails.

Re. (iii)

Finally the High Court found that in the notice the State Government indicated its tentative conclusion to the effect that the C Board should be superseded and thus it had made up its mind already even before considering the explanation of the Board that it should be superseded, and that the rest of the proceedings were a farce. The High Court thought that the appellant should not have indicated its tentative conclusion because s. 298 provides for two courses, *i.e.* supersession or dissolution, and the appellant D could not decide between the two alternatives even tentatively before taking into consideration the explanation of the Board. In this connection the High Court relied on decisions under Art. 311 of the Constitution relating to removal, dismissal and reduction in rank of public servants and was apparently of the view that the State Government should first have considered the explanation and then made up its mind as to which one of the two alternatives E provided in s. 298 should be used and then presumably given a second notice to the Board to show cause why one of the alternatives tentatively decided upon should not be pursued. We are of opinion that it is not correct to use the analogy of Art. 311 for the purpose of s. 298 of the Act. The issue of two notices under Art. 311 is a very special procedure depending upon the language of F that Article. We find no comparable words in s. 298. We also see no reason why when giving notice the State Government should not indicate to the Board tentatively which of the two alternatives it intends to pursue. Such tentative conclusion communicated to the Board does not mean that the State Government is not open to conviction at all and whatever the explanation it would pass an G order in accordance with its tentative conclusion. There is therefore no reason to think that all proceedings subsequent to the issue of notice dated June 9, 1964 were in this case a farce. The third ground on which the High Court decided in favour of the respondent must fail.

H It appears that the respondent had secured a stay order and practically continued to function for the full period of four years under the cover of the stay order. Before us, though the respondent has appeared, it did not seriously contest the appeal, for, the

period of all members who took office on July 7, 1962 came to an end on July 6, 1966. A

We therefore allow the appeal, set aside the order of the High Court and dismiss the writ petition. In the circumstances we pass no orders as to costs. B

R.K.P.S. *Appeal allowed.*