DR. RASH LAL YADAV A

v.

STATE OF BIHAR AND ORS.

JUNE 23, 1994

[A.M. AHMADI AND M.M. PUNCHHI, JJ.] B

Bihar Non-Government Secondary Schools (Taking over of Management and Control) Act, 1981 : Sections 10(6) and 7.

Bihar School Service Board—Chairman—Appointment for a tenure of three years—Functioning of Chairman—Detrimental to the interest of Board—Removal—Held : State Government's power of removal is not unguided and absolute—Opportunity to show cause before removal held excluded—Removal can be done within the tenure period—Doctrine of pleasure—Applicability of. C D

Constitution of India, 1950 : Article 14. Statute—Unguided and absolute power—Section 10(7) of the Bihar Non-Government Secondary School (Taking over of Management and Control) Act, 1981—Held not violative of Article 14.

Service Law—Tenure post—Removal before expiry of tenure—Permissibility of. E

Administrative law—Natural justice—Where the Statute expressly or by implication excludes natural justice—Statute cannot be invalidated for this omission on the ground of arbitrariness. F

The appellant was appointed as chairman of the Bihar School Service Board for a term of there years. Subsequent to his appointment Government received complaints against him regarding mismanagement, conducting farce interviews, improper behaviour with other Board Members, and inviting applications for appointment of teachers in defiance of the Government's direction. On the basis of the complaints received the Government concluded that the manner in which the appellant was functioning was not conducive to the proper working of the Board nor was it in public interest. Accordingly, the Government by its order dated April 4, 1991, passed in exercise of its power under sub- section (7) of Section G H

A 10 of the Bihar Non-Government Secondary Schools (Taking over of Management and Control) Act, 1981, removed him from service.

The appellant questioned the validity of the order before the High Court which examined the material on which the State Government's decision for removal was founded and came to the conclusion that (i) there
B was justification for the exercise of the power and therefore, the State Government was justified in ordering his removal; and (ii) the material placed before it did not prove the allegation of malice or lack of *bona fide*.

The High Court rejected the contentions of the appellant that (1)
C Section 10(7) was *ultra vires* Article 14 because it conferred unguided and absolute power of removal on the Government; (ii) the doctrine of pleasure applies only to Government servants and cannot be extended to statutory offices; (iii) since the appellant was appointed on a tenure post he was entitled to continue on the post till the expiry of the period; (iv) the order was passed in violation of natural justice because no opportunity to show
D cause was given to him; and (v) even in the absence of a specific provision the requirement of natural justice must be read into the said provision.

In coming to its conclusion the High Court took note of changes brought about in the Act which was preceded by the Ordinance viz., (i) in
E sub-section 6 of section 10 of the Act while duration of the appointment of Chairman for 3 years as provided in Ordinance was retained, the words 'or during the pleasure of the State Government' were added i.e. for the first time Pleasure Doctrine was incorporated in the Act; (ii) in sub-section (7) of section 10 of the Act two changes were introduced : (a) the Chairman could be removed by giving one month's notice or one month's salary in
F lieu of notice and (b) the proviso incorporating the rule of natural justice, namely of giving reasonable opportunity of showing cause, was deleted.

In appeal to this Court it was contended on behalf of the appellant that the requirement of giving an opportunity to show cause, though not
G specifically provided for, must be read into the Act otherwise the Act may be rendered *ultra vires* as conferring absolute and unfettered power on the State Government.

On behalf of the State it was contended that (i) the requirement of giving the delinquent Chairman an opportunity to show cause before
H exercise of power of removal should not be read into Section 10(7) because

the Legislature has consciously done away with the requirement for the reason that having regard to the sensitive functions assigned to the Board immediate action may become necessary in case the functioning of the Chairman was detrimental to the interest of the Board and (ii) the power conferred on State under Section 10(7) is not without guidelines because the power can be exercised only if the condition precedent for the exercise of that power exists, namely, conduct of Chairman which is detrimental to the interest of the Board. A B

Dismissing the appeal, this Court

HELD : 1. The decision of the High Court is based on the assessment of facts and ordinarily this Court is loathe to re- evaluate the same unless it is shown that the High Court's appreciation of facts has resulted in miscarriage of justice. No such case is made out by the appellant. [251-B-C] C

2. Unless the law expressly or by necessary implication excludes the applications of the rule of nature justice, Courts will read the said requirement in enactments that are silent and insist on its application even in cases of administrative action having civil consequences. [249-D] D

3. By omitting the proviso to sub-section (7) of Section 10 of the Ordinance and incorporating the provision regarding giving of one month's notice or notice pay, the Legislature gave a clear indication that if the Chairman/Member was incapable of working or refused to work or worked in a manner detrimental to the interest of the Board, the State Government shall have the power to remove him without the need to comply with the requirement of giving an opportunity to show cause. The legislative history leaves nothing to doubt that the legislature did not expect the State Government to seek the incumbent's explanation before exercising the power of removal under the said provision. The High Court's view is right in this behalf. [245-D-E; 249-E-F] E F

4. If the statute, expressly or by necessary implication omits the application of the rule of natural justice, the Statute will not be invalidated for this omission on the ground of arbitrariness. [246-G] G

A.K. Kraipak v. *Union of India*, A.I.R. (1970) SC 150 = [1970] S.C.R. 457 and *State of Orissa* v. *Dr. (Miss) Binapani Dei*, [1967] 2 S.C.R. 625, referred to. H

A 5. The concept of natural justice is not a static one but is an ever expanding concept. In the initial stages it was thought that it had only two elements, namely, (i) no one shall be a judge in his own cause and (ii) no one shall be condemned unheard. With the passage of time a third element was introduced, namely, of procedural reasonableness because the main objective of the requirement or rule of natural justice is to promote justice and prevent its miscarriage. Therefore, when the legislature confers power in the State Government to be exercised in certain circumstances or eventualities it would be right to presume that the legislature intends that the said power be exercised in the manner envisaged by the statute. If the statute confers drastic powers it goes without saying that much powers must be exercised in a proper and fair manner. Drastic substantive laws can be suffered only if they are fairly and reasonably applied. In order to ensure fair and reasonable application of such laws court have, over a period of time, devised rules of fair procedure to avoid arbitrary exercise of such powers. [245-F-G-H; 246-A-B]

D 6. True it is, the rule of natural justice operate as checks on the freedom of adminitrative action and often prove time-consuming but that is the price one has to pay to ensure fairness in administrative action. And this fairness can be ensured by adherence to the expanded notion of rule of natural justice. Therefore, where a statute confers wide power on an administrative authority coupled with discretion, the possibility of its arbitrary use can be controlled or checked by insisting on their being exercised in a manner which can be said to be procedurally fair. [246-B-C]

7. Where the statute is silent and a contrary intention cannot be implied, the requirement of the applicability of the rule of natural justice is read into it to ensure fairness and to protect the action from the charge of arbitrariness. Courts presume this requirement in all its width as impled unless the enactment supplies indications to the contrary as in the present case. [246-C-D]

G *Union of India* v. *J.N. Sinha & Ors.*, [1971] 1 S.C.R. 791; *Swadeshi Cotton Mills & Ors.* v. *Union of India & Ors.*, [1981] 1 S.C.C. 664 and *Mohinder Singh Gill* v. *Election Commissioner of India*, [1978] 1 S.C.C. 405, referred to.

H 8. It is obvious from the plain language of sub-section (7) of Section

10 that the matter is left to the subjective satisfaction of the State Government which subjective satisfaction must be reached on relevant material on record and not the whim and sweetwill of the Government. The power cannot be exercised unless relevant material is placed before the State Government on the basis of which the State Government as a reasonable person is able to conclude that one or more of the conditions mentioned in the sub-section exists and therefore, it is necessary to exercise power of removal to safeguard the Board from harm. The power is clearly coupled with the twin duty, firstly to ensure that circumstances do exist for the exercise of the power of removal of the Chairman or Member, as the case may be and secondly to safeguard the institution from harm that may be caused by the continuance of such Chairman or Member on the Board. In the ultimate analysis the power has to be exercised in public interest and for public good because the State Government is duty bound to protect the image and credibility of the Board so that people's faith in the Board is not shaken. Of course, if the exercise of such power is challenged in Court, the State Government will have to satisfy the Court that it exercised the power *bona fide* and on material relevant to establish to existence of the factual situation necessary for exercise of the said power. That can at best be the extent of judicial scrutiny. [250-E-F-G-H; 251-A]

9. By the changes introduced in sub-sections (6) and (7) of Section 10 of the Act the Legislature made it clear that the appointment of the Chairman/Member could be terminated at any time during the pleasure of the State Government by one month's notice or on payment of one month's salary in lieu of notice, notwithstanding the tenure contemplated thereunder. [245-C]

10. On a plain reading of sub-section (6) it becomes immediately clearly that the initial tenure will not exceed three years but this shall be during the pleasure of the State Government which means that the State Government shall have the right to curtail the tenure to less than three years also. Therefore, neither the Chairman nor the members have any right to continue for three years. A contrary interpretation would clearly violate the letter and spirit of the law. True it is that the said sub-section could have been better worded but the language does convey the legislative purpose quite clearly. [259-H; 250-A, B-C]

R.P. Raja v. *State of Bihar*, (1967) PKJR 275, referred to.

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4771 of 1992.

From the Judgment of and Order dated 24.3.92 of the High Court of Patna in C.W.J.C. No. 2634 of 1991.

B B.B. Sinha, S.K. Bhattacharjee and S.C. Patel for the Appellant.

D.P. Gupta, Solicitor General, B.B. Singh and Kumar Rajesh Singh for Res. Nos. 1 and 2.

Gopal Subramaniam and L.R. Singh for Res. Nos. 4 & 6.

C

A. Sharan for Res. No. 5.

Ranjit Kumar for Res. Nos. 7 & 8.

The Judgment of the Court was delivered by

D

AHMADI, J. Three writ petitioners were filed by (i) Dr. Radha Krishna Poddar (ii) Shri Ambika Prasad and (iii) Dr. Rash Lal Yadav challenging their removal from the Chairmanship of the Bihar School Service Board constituted under the provisions of the Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, E 1981, hereinafter called 'the Act'. These three petitions which were heard by a Division Bench of the Patna High Court came to be dismissed by a common judgment rendered on March 24, 1992. The petitioners of the first two petitions have not preferred any appeal against the said judgment but the petitioner of the third petition Dr. Rash Lal Yadav has preferred the present appeal under Article 136 of the Constitution. It is, therefore, not F necessary for us to refer to the facts of the petitioners of the first two writ petitions. We will, therefore, confine ourselves to the factual position relevant to the appeal filed by Dr. Rash Lal Yadav, hereinafter called 'the appellant'. The appellant was the Head of the Department in Maithili in Kunwar Singh College, Lakhisarai, before his selection and appointment G as Chairman of the Bihar School Service Board, hereinafter called 'the Board', for a term of three years from the date he assumed charge of his office, vide Notification dated November 18, 1990. Prior to his appointment this Office was occupied by the other two petitioners Dr. Radha Krishna Poddar and Shri Ambika Prasad Pandey. Both of them had been removed from the Chairmanship of the Board on account of several charges of H mismanagement which were the subject matter of vigilance inquiries. How-

ever, after the appellant took over as the Chairman of the Board, he too took certain actions the propriety whereof came to be questioned. Notwithstanding the difficult financial condition of the Board, he, it was alleged, decided to shift the Board's office to another premises on a monthly rent of Rs. 16,000 as against Rs. 8,000 paid for the premises where the Board's office was earlier situate. It was also alleged that he withdrew Rs. 1 lakh and paid the same by way of advance for furnishing the new office. Complaints were also received by the Government from a large number of candidates that the interviews conducted by the appellant were a farce, inasmuch as almost 150 candidates were interviewed on each day rendering the entire process and empty formality. It was alleged that some of the experts who participated in the interviews complained to the Government that they were not permitted by the Chairman to question the candidates. Only formal question were put to the candidates and they were hurriedly despatched. They made several complaints regarding the abrasive manner in which the Chairman behaved with the other Board members as well as the candidates. They complained that apart from the fact that his behaviour was not proper he was more interested in finding out the caste or community to which the candidate belonged rather than assessing the merit for appointment. Smt. Saroj Bala Sinha one of the members even complained that the appellant did not have any discussion with the members of the Board regarding the procedure to be followed at the interviews no did he consult the members in the matter of selection of candidates. Even the signatures of the members of the Board were not obtained on the final list prepared by the Board. Another member of the Board Dr. P. Lakha by his letter dated March 23, 1991 reported to the Government that 'the appellant wanted him to sign certain papers relating to the decisions taken by the Board prior to his joining. This, according to him, caused him avoidable embarrassment. Since 30 marks out of 100 were reserved for personal interview, the marks assigned at the interview were of considerable significance as they could make or mar the future of a candidate. The Government having received these complaints and having known the manner in which the interviews were conducted and the behaviour of the appellant vis-a-vis other members of the Board, concluded that the manner in which the appellant functioned was not conducive to the proper working of the Board nor was it in public interest. It was also alleged that the appellant had invited applications for appointment of teachers of various schools in which 'plus 2' course was being taught. The appellant was informed by letter dated February 18, 1991 that in such schools posts of lecturers had been created only in four subjects, namely, Physics,

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A Chemistry, Maithili and Ancient History. Despite this clear instruction the appellant called the candidates for interview for selection in the subject of Geography. This was clearly in defiance of the Government's direction contained in the letter of February 18, 1991. Appellant also enhanced application fee and interview fee to Rs. 25 and Rs. 100 respectively and invited applications for subjects for which no clearance was obtained from B the Government, thus collecting a sum of approximately Rs. 40 lakhs, four times the sum he would have collected under the old rates which would have been sufficient to meet the expenses of the Board. Even though earlier a grant of Rs. 6 lakhs was withheld because the then Chairmen were facing prosecutions a grant of Rs. 5 lakhs was released on the appellant taking C over as Chairman to defray the expenses relating to the salary and allowances of the staff and other expenditures. In view of the above, the Government felt that there was no option but to remove the appellant forthwith before he caused any further embarrassment to the Government and harassment to the other members of the Board. The appellant was, therefore, removed as Chairman of the Board by Notification No. 75 dated April D 4, 1991 issued under sub-section (7) of section 10 of the Act. Simultaneously, a new Chairman was appointed in his place vide Notification No. 76 and he claims to have taken charge on the same days i.e., April 4, 1991.

The appellant denied these allegations in his writ petition and tried E to justify the decision to shift the office of the Board to the new premises on a higher rent. He also denied the allegation made against him in regard to the conduct of interviews, his behaviour vis-a-vis the other members of the Board and the enhancing of the application and interview fees. He questioned the validity of the order by which he came to be removed on diverse grounds including the ground that the same was in blatant violation F of the principle of natural justice. His counsel at the hearing of the petition raised four submissions in the main, namely, (i) Sub-section (7) of section 10 of the Act if interpreted to confer an absolute power of removal upon the State Government, the same would be wholly arbitrary and unreasonable and in total violation of the principle of natural justice, (ii) the G doctrine of pleasure applied only to the cases of Government servants/public servants employed under the State and not to persons who were statutory authorities, such as the Chairman of the Board, (iii) even if it is assumed that the doctrine of pleasure applied there being no guidelines prescribed for the exercise of such power, the power could only be exerH cised consistently with the rule of natural justice, and (iv) in any case the

order was tainted with malice both in law and fact. So far as the ground of malice is concerned, the appellant alleged that the Cabinet Minister in Charge of Secondary education was responsible for his removal as the appellant did not succumb to his pressures to select for appointment his favourites. Annoyed by the appellant's unbending and upright attitude and finding no other alternative to have his way, the said Minister exercised *mala fide* the power conferred by sub-section (7) of selection 10 of the Act to remove him and appoint his man as the Chairman of the Board. In support of his say he has produced certain chits and letters written by the said Minister and his Cabinet colleagues recommending certain persons including the son-in-law of the former for selection to various posts. Lastly it was contended by the appellant that since he was appointed on a tenure post he was entitled as of right to continue on the post till the expiry of the period for which he was appointed and could not be removed in an arbitrary and summary manner. He also denied the allegation made by Smt. Saroj Bala, Dr. Lakha and other members of the Board about his abrasive or rude behaviour. In short the appellant denied all the allegations made against him in the State's counter which were not specifically admitted.

On the first question regarding the application of the pleasure doctrine, the High Court, departing from the view expressed in the case of *R.P. Raja* v. *The State of Bihar*, (1967) PLJR 275, held that it was difficult to subscribe to the view that the application of the doctrine is limited only to members of public service and cannot be extended to other officers such as the Chairman of the Board. In the view of the High Court there was nothing in the doctrine to inhibit the State Legislature to treat it as a pure service concept limited in its application to public service under the State. It was, therefore, open to the Legislature to extend it to the office in question. On the question of application of the principles of natural justice the High Court noticed that while that requirement was specifically found in section 10(7) of the Ordinance that preceded the Act, it was deliberately dropped while enacting the Act thereby manifesting the Legislative intendment not to apply the same. The High Court, therefore, rejected the submission that the said requirement must be read into the said provisions to save it from the vice of being *ultra vires* Article 14 of the Constitution. According to the High Court before power is exercised under section 10(7) of the Act the State Government must satisfy itself on the basis of material on record that the continuance of the person as Chairman of the Board

A would prove detrimental to the Board's interest. If the State's action is challenged it would be necessary for the State to satisfy the court by production of the material, that it had acted *bonafide* and not arbitrarily. Before exercise of power under section 10(7) the Government must satisfy itself that there existed relevant material on record establishing the factual
B requirements necessary to reach the conclusion that his further continuance in office would be detrimental to the interest of the Board. Once that is shown no further enquiry is permissible and the order can only be questioned on the ground of malice. Next, on a proper reading of the provisions of the Act, the High Court ruled that the Act did not confer unguided and absolute power of removal but the power was coupled with
C a duty to act only if the material on record went to show that his continuance in office would be detrimental to the Board's interest. Therefore, the contention that section 10(7) was *ultra vires* Article 14 cannot be countenanced. Nor can to be questioned on the ground that it violates the principles of natural justice. The High Court points out that the Board
D performs a public function and if the Chairman of the Board is found acting in a manner prejudicial or detrimental to the interest of the Board, a duty is cast on the government to protect public interest by removing such a Chairman. Albeit before such action is taken the Government must satisfy itself from the material placed before it that it must exercise the extraordinary power vested in it by the Act to protect public interest. The
E High Court also found as a fact that such material did exist to justify the Government's action. The High Court also found as a fact that the material placed before it did not prove the allegation of malice or lack of *bona fides*. In this view of the matter the High Court dismissed the writ petition. Hence this appeal by special leave.

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The Act was preceded by an Ordinance called the Bihar Non-Government Secondary Schools (Taking-over of Management and Control) Ordinance, 1974. Prior to the enactment of the said Ordinance No. 113 of 1974 which was made effective from May 21, 1974 all High Schools in the State of Bihar, save and except those established by the State
G Government, were managed and controlled by the Managing Committees appointed for that purpose by the school Managements which also acted as the appointing and disciplinary authority for the teaching and non teaching staff of such schools. Once the ordinance was promulgated an autonomous Board came to be created which was conferred certain power
H in regard to the management and control of non-Government High

Schools. This Ordinance was converted into an Act known as the Bihar Secondary Board Act, 1976 whereunder the State Government was invested with the power to frame rules. Instead of framing rules as envisaged by the said statute instructions were issued from time to time. Thereafter another Ordinance called the Bihar Non-Government Secondary Schools (Taking-over of Management and Control) Ordinance (Ordinance No. 146 of 1980) was promulgated on August 14, 1980. The relevant part of Section 10 of that Ordinance needs to be noticed at this stage :

"10. Establishment and function of School Service Board.

(1) The State Government shall by notification in the official Gazette establish a Board to be called the School Service Board (hereinafter referred to as the Board) from a date to be appointed by the State Government.

(2) The Board shall be a corporate body having perpetual succession and common seal and shall sue and be sued by that name.

(3) The Board shall have Chairman and four members who shall be appointed by the State Government.

(4) xxxxxxxxxx

(5) xxxxxxxxxx

(6) The term of the office of the Chairman and members of the Board shall be three years from the date they take charge of their office. On expiry of the said period the State Government may extend their term but the total period of such term of office shall not exceed six years.

(7) If the State Government is satisfied that the Chairman or any member of the Board is incapable of working or refuses to work or works in a manner which in the opinion of the State Government is detrimental to the interest of the Board the State Government may by Notification in the official gazette remove the Chairman or such member from his office at any time.

Provided that before issue of such notification the State Government shall give the Chairman or Member a reasonable opportunity to show cause why he should not be removed."

A The said Ordinance was replaced by the Act i.e., The Bihar Non-Government Secondary Schools (Taking over of Management and Control) Act, 1981 (Act No. 33 of 1982). While the provisions of the Ordinance were mostly reproduced in the Act certain changes were brought about in sub-sections (6) and (7) of section 10 which are significant and may be reproduced at this stage :

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> "(6) The term of office of the Chairman and members of the Board shall be three years from the day they take charge of their office or during the pleasure of the State Government. On expiry of the said period the State Government may extend the term of the
> C Chairman or any member of the Board, but the total period of such term of office shall not exceed six years.
>
> (7) If the State Government is satisfied that the Chairman or any member of the Board is incapable of working, or refuses to work,
> D or works in a manner which, in the opinion of the State Government, is detrimental to the interest of the Board, then the State Government by issuance of a notification in the Official Gazette at any time remove such Chairman or member by giving him one month's written notice or one month's pay in lieu of notice with effect from the date mentioned in the Notification."

E

The language of sub-section (6) shows that the pleasure doctrine was incorporated in the statute for the first time and sub-section (7) empowered the State Government, if satisfied that the Chairman or any member of the Board is incapable of working or refuses to work or works
F in a manner which is detrimental to the interest of the Board, to remove such Chairman or member, as the case may be, by giving him one month's written notice or one month's pay in lieu of notice with effect from the date to be specified in the notification. It is important to note that the proviso which existed after sub-section (7) in the Ordinance has been deliberately omitted in the Act. That provision found in the Ordinance incorporated
G the rule of natural justice. By deliberately omitting the said provision requiring the giving of reasonable opportunity to show cause to the Chairman or member of the Board against whom action is proposed, the legislature intended to do away with the requirement and instead provisions was made for giving one month's notice or one month's pay in
H lieu of notice. Under Section 10 of the Act the provisions in regard to

appointment and removal underwent changes. Sub-section (3) of section 10 of the Act makes provision for the appointment of the Chairman and members of the Board, sub-section (6) thereof indicates the tenure of the appointment to be three years or during the pleasure of the State Government and sub-section (7), as stated earlier, provides for the removal of the Chairman or the member in certain circumstances. There is no specific provision in the Act requiring the giving of an opportunity to show cause before an order of removal is passed. This, urged counsel, was a change consciously brought about, by the Legislature because earlier the Ordinance did provide for the giving of such an opportunity. The impact of this change will have to be considered at the appropriate stage. It may, however, be mentioned at this stage that according to the appellant such a requirement, though not specifically provided for, must be read into the Act, for otherwise the Act may be rendered *ultra vires* as conferring absolute and unfettered powers to the State Government to remove a Chairman or member of the Board at its whim, caprice of sweetwill. On the other hand the contention of the State Government is that it was perfectly open to the State Legislature to omit the requirement regarding the giving of a show cause notice before exercise of power under sub-section (7) of section 10 of the Act because the Board performs a public duty and if the conduct of the Chairman or the member is such as would erode the credibility of the Board it becomes the solemn duty of the State Government to take immediate action by removing the delinquent Chairman or member and thereby restore its credibility. It was further contended that the Legislature took a conscious decision to do away with the requirement of giving an opportunity to show cause before the exercise of the removal power for the reason that having regard to the sensitive functions assigned to the Board immediate action may become necessary to arrest the fall in the credibility of the Board. Situations may develop which cannot brook delay and prompt action alone would serve the interest of the Board. In such a situation if the need to issue a show cause notice before taking action is insisted upon, such a procedure may prove to be time-consuming and consequently injurious to the interest of the Board. Presumably for this reason and from experience the State Legislature took a conscious decision to do away with the requirement of prior show cause notice. However, contended counsel, it must be borne in mind that the power can be exercised only if the condition precedent for the exercise of that power exists, namely, conduct which is detrimental to the interest of the Board.

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A Unless there is material before the State Government to enable it to come to the conclusion that the conduct is detrimental to the interest of the Board no such action, as is permitted by sub-section (7) of section 10, can be taken. If that be so and if that is the correct construction of sub-section (7) it is difficult to conclude that the power conferred under that sub-section is absolute and without guidelines, the guideline being that there must be material in the possession of the State Government which, if accepted to be correct, would go to show that the conduct of the Chairman/Member of the Board would prove detrimental to the interest of the Board if allowed to continue. Counsel, therefore, submitted that there is no need to read into sub-section (7), the requirement of giving the delinquent Chairman/Member an opportunity to show cause before exercise of power of removal under the said sub-section. These were, broadly speaking, the contentions urged before us.

On a plain reading of section 10 of the Ordinance (1980) it seems clear to us that intention of the State Government was to establish a School Service Selection Board, a body corporate having perpetual succession and a common seal, comprising of a Chairman and four Members who would be paid remuneration of Rs. 2500 and Rs. 2250 per month, respectively; other terms and conditions being subject to determination by the State Government. The tenure of office was to be three years extendable for a further period not exceeding six years in all. Sub-section (7), however, empowers the State Government to remove the Chairman/Member from office 'at any time' if he or she is incapable of working or refuses to work or works in a manner detrimental to the interest of the Board notwithstanding the initial tenure of three years or the extended tenure. The words 'at any time' were intended to convey that the power was exercisable during the subsistence of the employment once the *sine-qua-non* for the exercise of power, namely, incapacity or refusal to work or that the manner in which he worked was detrimental to the Board's interest, was shown to exist. Ofcourse the proviso to sub-section (7) was a check on the exercise of this power of removal, in that, it required the Chairman/Member to be given a reasonable opportunity to show cause why he should not be removed. Therefore, before a notification removing the Chairman/Member could be issued, the principle of natural justice had to be satisfied by giving a show cause notice. On the Ordinance being replaced by the Act, sub-sections (6) and (7) of section 10 underwent changes, in that, in sub-section (6) while retaining the duration of initial appointment as three years the words

'or during the pleasure of the State Government' came to be added. Thus the sub-section provided that the term of the office of the Chairman/Member shall be three years or during the pleasure of the State Government extendable upto six years. In sub-section (7) two changes were introduced; firstly in the body of the sub-section it was provided that the Chairman/Member could be removed by giving one month's notice in writing or one month's pay in lieu of notice and secondly the proviso which incorporated the requirement of the rule of natural justice, namely, of giving the Chairman/Member a reasonable opportunity of showing cause, was totally deleted. By these two changes introduced in sub-sections (6) & (7) of section 10 of the Act the Legislature made it clear that the appointment of the Chairman/Member could be terminated at any time during the pleasure of the State Government by one month's notice or on payment of one month's salary in lieu of notice, notwithstanding the tenure contemplated thereunder. Secondly by omitting the proviso to sub-section (7) of section 10 of the Ordinance and incorporating the provision regarding giving of one month's notice or notice pay, the Legislature gave a clear indication that if the Chairman/Member was incapable of working or refused to work or worked in a manner detrimental to the interest of the Board, the State Government shall have the power to remove him without the need to comply with the requirement of giving an opportunity to show cause. This deliberate and conscious departure from the provisions in sub-section (7) of section 10 of the Ordinance by the omission of the proviso while enacting that very provision of the Act was, concluded the High Court, indicative of the Legislative intendment not to incorporate the said requirement of the rule of nature justice in the exercise of power of removal from the office of the Chairman/Member of the Board.

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The concept of natural justice is not a static one but is an ever expending concept. In the initial stages it was thought that it had only two elements, namely, (i) no one shall be a judge in his own cause and (ii) no one shall be condemned unheard. With the passage of time a third element was introduced, namely, of procedural reasonableness because the main objective of the requirement of rule of natural justice is to promote justice and prevent its miscarriage. Therefore, when the legislature confers power in the State Government to be exercised in certain circumstances or eventualities, it would be right to presume that the legislature intends that the said power be exercised in the manner envisaged by the statute. If the statute confers drastic power it goes without saying that such powers must

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A be exercised in a proper and fair manner. Drastic substantive laws can be suffered only if they are fairly and reasonably applied. In order to ensure fair and reasonable application of such laws courts have, over a period of time, devised rules of fair procedure to avoid arbitrary exercise of such powers. True it is, the rules of natural justice operate as checks on the freedom of administrative action and often prove time-consuming but that B is the price one has to pay to ensure fairness in administrative action. And this fairness can be ensured by adherence to the expended notice of rule of natural justice. Therefore, where a statute confers wide powers on an administrative authority coupled with wide discretion, the possibility of its arbitrary use can be controlled or checked by insisting on their being C exercised in a manner which can be said to be procedurally fair. Rules of natural justice are, therefore, devised for ensuring fairness and promoting satisfactory decision-making. Where the statute is silent and a contrary intention cannot be implied the requirement of the applicability of the rule of natural justice is read into it to ensure fairness and to protect the action from the charge of arbitrariness. Natural justice has thus secured a foothold D to supplement enacted law by operating as an implied mandatory requirement thereby protecting it from the vice of arbitrariness. Courts presume this requirement in all its width as implied unless the enactment supplies indications to the contrary as in the present case. This Court in *A.K. Kraipak* v. *Union of India*, AIR (1970) SC 150=[1970] SCR 456 after referring to the observations in *State of Orissa* v. *Dr. (Miss) Binapani Dei*, E [1967] 2 SCR 625 observed as under :

> "The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other F words they do not supplant the law of the land but supplement it".

These observations make it clear that if the statute, expressly or by necessary implication omits the application of the rule of natural justice, the statute will not be invalidated for this omission on the ground of arbitrariness. G

In *Union of India* v. *J.N. Sinha & Ors.*, [1971] 1 SCR 791 the question regarding the applicability of the rules of natural justice in the context of President's order under Rule 56 (j) of the Fundamental Rules to compulsorily retire the respondent from Government service was considered. H After pointing out that a Government servant serving under the Union of

India holds his office at the pleasure of the President, the Court proceeded to observe that rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. Quoting, with approval, the observations in *Kraipak*'s case extracted earlier, the Court proceeded to observe as under :

> "It is true that if a statutory provision can be read consistently with the principles of nature justice, the courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. *But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice.* Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose of which it is conferred and effect of the exercise of that power." (Emphasis supplied)

The Court held that Rule 56(j) did not in terms require that any opportunity should be given to the concerned Government servant to show before his compulsory retirement. Under that rule the appropriate authority had the absolute right to retire a Government servant if it was of the opinion that public interest so demanded. If the authority *bona fide* forms such an opinion, the correctness of that opinion can not be assailed before court, though it may be open to the Government servant to contend that no such requisite opinion was in fact formed or that decision was based on collateral considerations or was arbitrary in character. This Court did not read the requirement of the principles of natural justice in the rule permitting compulsory retirement as in the opinion of the court compulsory retirement did not entail loss of retrial benefits.

This concept was examined in greater detail in *Swadeshi Cotton Mills & Ors.* v. *Union of India & Ors.*, [1981] 1 SCC 664. Sarkaria, J. speaking for the majority reviewed the cases on the subject, approved the observation made in *Kraipak's* case and reiterated in the case of *J.N. Sinha*, extracted hereinbefore, and then proceeded to add as under :

A "We have already noticed that the statute conferring the power, can by express language exclude its application. Such cases do not present any difficulty. However, difficulties arise when the statute conferring the power does not expressly exclude this rule but its exclusion is sought by implication due to the presence of certain factors : such as, urgency, where the obligation to give notice and taking of prompt action of preventive or remedial nature."

Pointing out there was no consensus of judicial opinion 'whether mere urgency of a decision is a practical consideration which would uniformly justify non-observance of even an abridged form of this principle of natural justice, the learned Judge referred to the observations of Krishna Iyer, J. in *Mohinder Singh Gill* v. *Election Commissioner of India*, [1978] 1 SCC 405 at 439 that even in cases where immediate action was imperative it was not necessary to side step the rule of natural justice because "natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances". The learned Judge then concludes that plain reading of Section 18AA of the Industries (Development & Regulation) Act, 1951 makes it clear that it does not exclude the application of the rule of natural justice at the pre-decisional stage. It is here that Chinnappa Reddy, J. dissented. After referring to the ratio in *Kraipak & J.N. Sinha's* case, the learned Judge observed as under :

"The implication of natural justice being presumptive it may be excluded by express words of statute or by necessary intendment. Where the conflict is between the public interest and the private interest, the presumption must necessarily be weak and may, therefore, be readily displaced. The presumption is also weak where what are involved are mere property rights. In case of urgency, particularly where the public interest is involved, pre-emptive action may be a strategic necessity. There may then be no question of observing natural justice. Even in cases of pre-emptive action, if the statute so provides or if the courts so deem fit in appropriate cases, a postponed hearing may be substituted for natural justice."

Thereafter referring to the language of section 18AA, the learned Judge observed :

"Where an express provision in the statute itself provides for a post-decisional hearing the other provisions of the statute will have

to be read in the light of such provision and the provision for post-decision hearing may then clinch the issue where pre-decisional natural justice appears to be excluded on the other terms of the statute."

Therefore, the learned judge differed with the majority on the limited question whether under Section 18AA the requirement of natural justice could be met by a post-decisional hearing. There was no difference of opinion so far as the ratio laid down in the cases of *Kraipak & J.N. Sinha* was concerned. Even though the majority came to the conclusion the order was *null and void,* it refrained from striking it down on the assurance of the Learned Solicitor General that the Central Government will give full and effective hearing on all aspects touching the validity and/or correctness of the order and/or action of take-over within a reasonable time.

What emerges from the above discussion is that unless the law expressly or by necessary implication excludes the application of the rule of natural justice, courts will read the said requirement in enactments that are silent and insist on its application even in cases of administrative action having civil consequences. However, in this case, the High Court has, having regard to the legislative history, concluded that the deliberate omission of the proviso that existed in sub-section (7) of Section 10 of the Ordinance (1980) while re-enacting the said sub-section in the Act, unmistakably reveals the legislature's intendment to exclude the rule of giving an opportunity to be heard before the exercise of power of removal. The legislative history leaves nothing to doubt that the legislature did not expect the State Government to seek the incumbent's explanation before exercising the power of removal under the said provision. We are in complete agreement with the High Court's view in this behalf.

The Act contemplates the setting up of a Board with perpetual succession and a common seal comprising a Chairman and four Members possessing certain qualifications set out in sub-section (4) of Section 10. The remuneration to be paid to them has been indicated in sub-section (5) and sub-section (6) indicates the maximum terms or duration of appointment. According to that sub-section the term of office of the Chairman/Member shall be three years from the date of taking charge or during the pleasure of the State Government. On a plain reading of the said sub-section it becomes immediately clear that the initial tenure will not

A exceed three years but this shall be during the pleasure of the State Government means that the State Government shall have the right to curtail the tenure to less than three years also. If it does not do so and if the incumbent completes the full tenure of three years, the State Government may extend the term for such period as it deems appropriate so, B however, that the total period shall not exceed six years. Therefore, neither the Chairman nor the Members have any right to continue for three years. A contrary interpretation would clearly violate the letter and spirit of the law. True it is that the said sub-section could have been better worded but in our view the language does convey the legislative purpose quite clearly. Sub-section (7) then states that if the State Government is satisfied that the C Chairman/Member is incapable of working or refuses to work or works in a manner detrimental to the interest of the Board, it may by notification remove such Chairman/Member by giving him one month's written notice or one month's pay in lieu of notice with effect from the date of the notification. It is obvious from the plain language of this sub-section that D the underlying idea is that the power may be exercised in public interest, that is, to protect that statutory Board from harm that may be caused to it by Chairman/Member who is incapable of working or who refuses to work or conducts himself in a manner injurious to the Board's interest. The matter is left to the subjective satisfaction of the State Government which E subjective satisfaction must be reached on relevant material on record and not on the whim and sweetwill of the Government. The power cannot be exercised unless relevant material is placed before the State Government on the basis of which the State Government as a reasonable person is able to conclude that one or more of the conditions mentioned in the sub-section exists and therefore, it is necessary to exercise power of removal to F safeguard the Board from harm. The power is clearly coupled with the twin duty, firstly to ensure that circumstances do exist for the exercise of the power of removal of the Chairman or Member, as the case may be, and secondly to safeguard the institution from harm that may be caused by the continuance of such Chairman or Member on the Board. In the ultimate G analysis the power has to be exercised in public interest and for public good because the State Government is duty bound to protect the image and credibility of the Board so that people's faith in the Board is not taken. Of course, if the State Government exercises the power vested in it under the said sub- section and if the exercise of such power is challenged in Court, H the State Government will have to satisfy the Court that it exercised the

power *bona fide* and on material relevant to establishing the existence of the factual situation necessary for exercise of the said power. That can at best the extent of judicial scrutiny. The High Court did examine the material on which the State Government's decision for removal was founded, vide paragraph 51A of the judgment, and came to the conclusion that there was justification for the exercise of power and , therefore, the State Government was justified in ordering removal. Similarly, the High Court also examined the allegation of *mala fides* in paragraphs 52 and 53 of the judgment and spurned the said charge. These decisions of the High Court are based on the assessment of facts and ordinarily this Court is loathe to re-evalute the same unless it is shown that the High court's appreciation of facts has resulted in imscarriage of justice. No such case is made out. We, therefore, see no reason to interfere with the High Court's assessment on both these points. There being no serious infirmity in the High Court's evaluation of the factual data, we see no reason to dilate on the said points.

In view of the above, we see no merit in this appeal and dismiss the same with no order as to costs.

T.N.A. Appeal dismissed.