



(ii) M/s. Swadeshi Cotton Mills, Pondicherry,

(iii) M/s. Swadeshi Cotton Mills, Naini,

(iv) M/s. Swadeshi Cotton Mills, Maunath Bhanjan,

(v) M/s. Udaipur Cotton Mills, Udaipur, and

(vi) Rae Bareilly Textile Mills, Rae Bareilly of M/s. Swadeshi Cotton Mills Company Ltd.

Now, therefore, in exercise of power conferred by Clause (a) of Sub-section (1) of Section

(i) The authorised person shall comply with all the directions issued from time to time

(ii) the authorised person shall hold office for a period of five years from the date of

(iii) the Central Government may terminate the appointment of the authorised person early

This order shall have effect for a period of five years commencing from the date of its

Sd/-

(R. Ramakrishna)

Joint Secretary to the Govt. of India.

(Seal).

10. On April 19, 1978, three petitioners, namely, the Company through its Joint Secretary

11. The Union of India and the National Textile Corporation Ltd., who has been authorised

Whether in construing Section 18AA of the Industries Development and Regulation Act, 195

- (a) whether such hearing is to be given to the parties who would be affected by the order;
- (b) whether such hearing is to be given after the passing of the order; and
- (c) if prior hearing is to be normally given and the order passed under the said section.

12. The Bench, by a majority (consisting of Deshpande, C.J., R. Sachar and M.L. Jain, JJ.

- (1) Section 18AA(1)(a)(b) excludes the giving of prior hearing to the party who would be
- (2) Section 18-F expressly provides for a post-decisional hearing to the owner of the in
- (3) As the taking over of management under Section 18AA is not vitiated by the failure t

H.L. Anand and N.N. Goswamy, JJ. however dissented. In the opinion of the minority, in c

13. After the decision of the reference, the case was reheard on merits by a Bench of th  
In the result, the writ petition succeeds in part, the challenge to the validity of the

14. On the application of the Company, the Delhi High Court certified under Article 133

14-A. The primary, two-fold proposition posed and propounded by Shri F.S. Nariman, learn

- (a) Whether it is necessary to observe the rules of natural justice before issuing a not
- (b) Whether the provisions of Section 18AA and/or Section 18F impliedly exclude rules o

15. There were other contentions also which were canvassed by the learned Counsel for th

16. Thus, the first point for consideration is, whether, as a matter of law, it is neces

17. Shri Nariman contends that there is nothing in the language, scheme or object of the

- (i) The word "immediate" in Clause (a) has been used in contradistinction to 'investigat

(ii) The word 'immediate' occurs only in Clause (a) and not in Clause (b) of Section 18A

(iii) Section 18F does not exclude a pre-decisional hearing. This section was there, where

Section 18-F incorporates only a facet, albeit qualified, of Section 21 of the General Clauses Act.

As held by a Bench (consisting of Bhagwati and Vakil, JJ.) of the Gujarat High Court, in *Union of India v. Swadeshi Cotton Mills*.

(iv) 'Immediacy' does not exclude a duty to act fairly, because, even an emergent situation may require it.

(v) Where the civil consequences of the administrative action-as in the instant case-are not serious.

18. Applying the proposition propounded by him to the facts of the instant case, Shri Narasimhaiah said:

19. Reference in this connection has been made to Keshav Mill's case (ibid) ; Mohinder Singh Gill's case (ibid).

20. As against this, Shri Soli Sorabji, learned Solicitor-General appearing on behalf of the Union of India, submitted that:

21. Shri Sorabji further submits that since Section 18-F does not specify any period of time, it is not limited.

22. Shri Sorabji has in connection with his arguments cited these authorities: Mohinder Singh Gill's case (ibid) ; Keshav Mill's case (ibid).

23. Before dealing with the contentions advanced on both sides, it will be useful to have a look at the concept of natural justice.

24. Well then, what is "natural justice"? The phrase is not capable of a static and precise definition.

25. But two fundamental maxims of natural justice have now become deeply and indelibly imprinted on the minds of the people.

26. During the last two decades, the concept of natural justice has made great strides in the field of administrative law. If the purpose of these rules of natural justice is to prevent miscarriage of justice or to ensure that the rights of the citizens are not infringed.

27. In *A. K. Kraipak's* case, the Court also quoted with approval the observations of Lord Macmillan in *Shirley v. Esso*.

28. In the language of V.R. Krishna Iyer, J. (vide *Mohinder Singh Gill's* case ibid) :  
Subject to certain necessary limitations natural justice is now a brooding omnipresence in the English law.

29. The rules of natural justice can operate only in areas not covered by any law validly

30. The maxim audi alteram partem has many facets. Two of them are: (a) notice of the case

31. The next general aspect to be considered is: Are there any exceptions to the application

32. Be that as it may, the fact remains that there is no consensus of judicial opinion on

33. These observations of Lord Upjohn in *Durayappah's* case were quoted with approval by

34. In *Mohinder Singh Gill's* case appellant and the third respondent were candidates for election.  
Once we understand the soul of the rule as fair play in action-and it is so-we must hold

35. After referring to several decisions, including the observations of Lord Upjohn in *D*

It is untenable heresy, in our view, to lock-jaw the victim or act behind his back by treating  
as an easy escape from a benignant, albeit inconvenient obligation. The procedural precept

We may not be taken to say that situational modifications to notice and hearing are altogether

36. The Court further emphasised the necessity of striking pragmatic balance between the

Should the cardinal principle of 'hearing' as condition for decision-making be martyred

In *Wiseman v. Borneman* 1971 AC 297 there was a hint of the competitive claims of hurry and  
(emphasis added).

We agree that the elaborate and sophisticated methodology of a formalised hearing may be

The Court further pointed out that the competing claims of hurry and hearing can be reconciled

Lord Denning M.R., in *Howard v. Borneman* (1974) 3 WLR 660 summarised the observations of

(emphasis added)

37. In *Maneka Gandhi* it was laid down that where in an emergent situation, requiring im

38. The High Court of Australia in *Commissioner of Police v. Tanos* (1958) 98 CLR 383 ibi

39. As pointed out in *Mohinder Singh Gill v. Chief Election Commr.* and in *Maneka Gandhi*

40. "The necessity for speed", writes Paul Jackson, "may justify immediate action, it wi

41. Prof. de Smith, the renowned author of 'Judicial Review' (3rd Edn.) has at p. 170, e  
Can the absence of a hearing before a decision is made be adequately compensated for by

42. In short, the general principle-as distinguished from an absolute rule of uniform ap

43. Keeping the general principles stated above, let us now examine the scheme, content,

44. The I.D.R. Act (Act 65 of 1951) came into force on May 8, 1952. The Statement of Obj

45. Section 15 gives power to the Central Government to cause investigation to be made i

Where the Central Government is of the opinion that-

(a) in respect of any scheduled industry or industrial undertaking or undertakings-

(i) there has been, or is likely to be a substantial fall in the volume of production in

(ii) there has been, or is likely to be, a marked deterioration in the quality of any a

(iii) there has been or is likely to be a rise in the price of any article or class of

(iv) it is necessary to take any such action as is provided in this Chapter for the purp

(b) any industrial undertaking is being managed in a manner highly detrimental to the sc

the Central Government may make or cause to be made a full and complete investigation in

46. Section 16 empowers the Central Government to issue appropriate directions to the in

(a) regulating the production of any article or class of articles by the industrial unde

(b) requiring the industrial undertaking or undertakings to take such steps as the Centr

(c) prohibiting the industrial undertaking or undertakings from resorting to any act or

(d) controlling the prices, or regulating the distribution, of any article or class of a

Sub-section (2) enables the Central Government to issue such directions to the industria

47. In the course of the working of I.D.R. Act, certain practical difficulties came to l

(1) If the Central Government is of opinion that

(a) an industrial undertaking to which directions have been issued in pursuance of Sect

(b) an industrial undertaking in respect of which an investigation has been made under S

is being managed in a manner highly detrimental to the scheduled industry concerned or t

the Central Government may, by notified order, authorise any person or body of persons t

(2) Any notified order issued under Sub-section (1) shall have effect for such period no

Section 18-B specifies the effect of notified order under Section 18-A. Sub-section (1)

On the issue of a notified order under Section 18-A authorising the taking over of the m

(a) all persons in charge of the management including persons holding office as managers

(b) any contract of management between the industrial undertaking and any managing agent

(c) the managing agent, if any, appointed under Section 18-A shall be deemed to have bee

(d) the person or body of persons authorised under Section 18-A to take over the managem

(e) the persons, if any, authorised under Section 18-A to take over the management of an

Section 18-D provides that a person whose office is lost under Clause (a) or whose contr

If at any time it appears to the Central Government on the application of the owner of

48. By the Constitution Fourth Amendment Act 1955, Chap. IIIA of the I.D.R. Act was incl

49. Before we may come to Section 18AA, we may notice here the legislative policy with r

The cotton textile industry provides one of the basic necessities of life and affords g

Textile Industry is also among the industries, included in the First Schedule to the I.D

50. The Amendment Act 72 of 1971 inserted Section 18AA in the original I.D.R Act. The ma

The industries included in the First Schedule...not only substantially contribute to the

(emphasis added.)

51. With the aforesaid objects in view, Section 18AA was inserted by the Amendment Act M

Without prejudice to any other provision of this Act, if, from the documentary or other



- (a) the persons incharge of such industrial undertaking have, by reckless investments or
- (b) it has been closed for a period of not less than three months (whether by reason of
- (2) The provisions of Sub-section (2) of Section 18-A shall, as far as may be, apply to
- (3) Nothing contained in Sub-section (1) and Sub-section (2) shall apply to an industrial
- (4) Where any notified order has been made under Sub-section (1), the person or body of
- (5) The provisions of Sections 18-B to 18-E (both inclusive) shall, as far as may be, ap
- 52. A comparison of the provisions of Section 18A(1)(b) and Section 18-AA(1)(a) would br
- 53. From an analysis of Section 18-AA(1)(a), it will be clear that as a necessary prelim
- (i) that the persons in charge of the industrial undertaking have by committing any of t
- (ii) that immediate action is necessary to prevent such a situation.
- 54. Speaking for the High Court (majority), the learned Chief Justice (Deshpande, C.J.)
- 55. Shri Sorabji has in his arguments, forcefully supported this opinion of the High Cou  
The general principle of law is that an order affecting his liberty or property cannot
- According to the learned Solicitor-General, the power conferred on the Central Governmen
- 56. On the other hand, Shri Nariman submits that the High Court was clearly in error in
- 57. We find merit in this contention. It cannot be laid down as a general proposition th
- 58. Section 18-AA(1)(a), in terms, requires that the satisfaction of the Government in r
- 59. While spelling out by a construction of Section 18-AA(1)(a) the proposition that the

60. In *Narayan Govind Gavate v. State of Maharashtra* , this Court held that while exerci

61. Again, in *Dora Phalauli v. State of Punjab* , this Court held that where the purporte

62. Recently, in *State of Punjab v. Gurdial Singh* , V.R. Krishna Iyer, J., speaking for  
...It is fundamental that compulsory taking of a man's property is a serious matter an

63. From these decisions, it is abundantly clear that even under Section 17 of the Land

64. For the reasons already stated, it is not possible to subscribe to the proposition p

65. From a plain reading of Section 18AA, it is clear that it does not expressly in unmi

66. Firstly, as rightly pointed out by Shri Nariman, the expression "immediate action" i

67. At this stage, it is necessary to examine two decisions of this Court, viz., *Ambalal*  
The only prior hearing consisted of the investigation under Section 15 read with Rule 5

68. Shri Nariman maintains that the High Court has not correctly construed these decisio

69. We will first notice the case of *Keshav Mills* because that is a later decision in wh

(1) Is it necessary to observe the rules of natural justice before enforcing a decision

(2) What are the rules of natural justice in such a case?

(3)(a) In the present case, have the rules to be observed once during the investigation

(b) Was it necessary to furnish a copy of the Investigating Committee's Report before pa

70. Mukherjea, J. speaking for the Court, answered these questions, thus:

(1) The first of these questions does not present any difficulty. It is true that the or

(2) The second question, however, as to what are the principles of natural justice that

(3)(a) For answering that question we shall keep in mind... and examine the nature and s

(After noticing the object, purpose and content of the relevant provisions, the judgment

In fact, it appears from a letter addressed by appellant No. 2 Navinchandra Chandulal Pa

Only a few days before this letter had been addressed, Parikh, it appears, had an interv

(emphasis added)

All these circumstances leave in no manner of doubt that the Company had full opportuni

There are at least five features of the case which make it impossible for us to give any justification in this case for the complaint that there has been any denial of natural j

In our opinion, since the appellants have received a fair treatment and also all reasona

(emphasis added)

(3)(b) "In our opinion it is not possible to lay down any general principle on the quest

(emphasis added)

71. It will be seen from what has been extracted above that in Keshav Mills case AIR 197

72. Shri Sorabji submitted that the observations made by this Court in Keshav Mills case

73. In our opinion, the observations of this Court in Keshav Mills in regard to the app

74. On appeal by special leave, this Court reversed the decision of the High Court, and

75. The second reason-which is more or less a facet of the first-for holding that the me

76. The audi alteram partem rule, as already pointed out, is a very flexible, malleable
77. In the instant case, so far as Kanpur Unit is concerned, it was lying closed for mor
78. The third reason for our forbearance to imply the exclusion of the audi alteram part
79. The High Court seems to be of the view that Section 18-F gives a right of full post-
80. Shri Nariman on the other hand contends-and we think rightly-that the called right o
81. By virtue of Sub-section (2) of Section 18AA, the reference to Section 18-A in Secti
82. Before we conclude the discussion on this point, we may notice one more argument tha
83. The contention does not appear to be well-founded. Firstly, this documentary evidenc
84. In me renowned case, Ridge v. Baldwin (ibid), it was contended before the House of L
85. A similar argument was advanced in S.L. Kapoor v. Jagmohan, Civil Appeal No. 1516 of  
As everybody who' has anything to do with the law well knows, the path of the law is st
86. In General Medical Council v. Spackman (1955) 1 KB 24, Lord Wright condemned the oft
87. In Maxwell v. Department of Trade and Industry (1974) QB 523, Lawton L. J. expressed
88. Observance of this fundamental principle is necessary if the courts and the tribunal
89. In concluding the discussion in regard to this aspect of the matter, we can do no be  
In our view the principles of natural justice know of no exclusionary rule dependent on
90. We, therefore, overrule this last contention.
91. In sum, for all the reasons aforesaid, we are of the view that it is not reasonably
92. The further question to be considered is: What is the effect of the non-observance o

93. In view of this commitment/or concession fairly made by the learned Solicitor- General

94. In view of the above decision, no separate order is necessary in Civil Appeals 1857

95. All the three appeals are disposed of accordingly with no order as to costs. Since t

0. Chinnappa Reddy, J.

96. I have the misfortune to be unable to agree with the erudite opinion of my learned brother Sarkaria on the question of the applicability of the principles of natural justice. I do so with diffidence and regret.

97. The first of the submissions of Shri F.S. Nariman, learned Counsel for the appellant company was that there was a violation of the principles of natural justice. He submitted that the provisions of the Industries (Development and Regulation) Act did not rule out natural justice and that there were several occasions in the march of events that led to the passing of the order under Section 18AA when an opportunity could have been given to the Company and the principles of natural justice observed but the Government of India refrained from doing so. He urged that the immediate action contemplated by Section 18-AA(1)(a) was not to be construed as negating natural justice but as intended merely to distinguish it from action under Section 18-A which was to be taken only after investigation under Section 15. He drew inspiration for this argument from the marginal note to Section 18AA which is "power to take over industrial undertakings without investigation under certain circumstances". He also urged that Section 18-F contemplated a post-decisional situation necessitating cancellation of the order of take-over but did not contemplate cancellation of the order of take-over on the ground that such order ought never to have been made. He urged that the scope of Section 18-F was very narrow and did not entitle the party affected to a fair hearing. In any case he argued that the remedy such as it was provided by Section 18-F was not an answer to the claim to pre-decisional natural justice. His submission was that natural justice was not to be excluded except by the clear and unmistakable language of the statute, though the "quantum" of natural justice to be afforded in an individual case might vary from case to case.

98. Shri Soli Sorabji, learned Solicitor General, while conceding that statutory silence on the question of natural justice should ordinarily lead to an implication by presumption that natural justice was to be observed, urged that the presumption might be displaced by necessary implication, as for instance where compliance with natural justice might be inconsistent with the demands of promptitude, and delayed action might lead to disaster. The presumption of implication of natural justice was very weak where action was of a remedial or preventive nature or where such action concerned property rights only. In appropriate situations post-decisional hearing might displace pre-decisional natural justice. The statute itself might well provide for a post-decisional hearing as a substitute for pre-decisional natural justice in situations requiring immediate action. Section 18-F of the Industries (Development and Regulation) Act expressly provided for such a post-decisional

hearing and the urgency of the situation contemplated by Section 18AA necessarily excluded pre-decisional natural justice. There was no reason to belittle the scope of Section 18-F, so, to exclude a fair post-decisional hearing at the instance of the party affected and, consequently, to imply pre-decisional natural justice.

99. Both the learned Counsel invited our attention to considerable case law. I do not propose to discuss the case law as my brother Sarkaria has referred to all the cases in great detail. Before I consider the submissions of the learned Counsel as to the applicability of the principles of natural justice, a few prefatory remarks, however, require to be made.

100. Natural justice, like ultra vires and Public Policy, is a branch of the Public Law and is a formidable weapon which can be wielded to secure justice to the citizen. It is productive of great good as well as much mischief. While it may be used to protect certain fundamental liberties, civil and political rights, it may be used, as indeed it is used more often than not, to protect vested interests and to obstruct the path of progressive change. In the context of modern Welfare legislation, the time has perhaps come to make an appropriate distinction between natural justice in its application to fundamental liberties, civil and political rights and natural justice in its application to vested interests. Our Constitution, as befits the Constitution of a Socialist Secular Democratic Republic, recognises the paramountcy of the public weal over the private interest. Natural justice, ultra vires, Public Policy, or any other rule of interpretation must therefore, conform, grow and be tailored to serve the public interest and respond to the demands of an evolving society.

101. In *R. v. Baldwin* 1964 AC 40 it was thought by Lord Reid that natural justice had no easy application where questions of public interest and policy were more important than the rights of individual citizens. He observed:

If a Minister is considering whether to make a scheme for, say, an important new-road, his primary concern will not be with the damage which its construction will do to the rights of individual owners of land. He will have to consider all manner of questions of public interest and, it may be, a number of alternate schemes. He cannot be prevented from attaching more importance to the fulfilment of his policy than to the fate of individual objectors, and it would be quite wrong for the Courts to say that the Minister should or could act in the same kind of way as a board of works deciding whether a house should be pulled down.

And, as pointed out by a contributor in 1972 *A Cambridge Law Journal* at page 14:

... the safeguarding of existing rights can after all in some circumstances amount to little more than the fighting of a rear-guard action by the reactionary element in society seeking only to preserve its own vested position.

102. The United States Supreme Court has recognised the distinction between cases where only property rights are involved and cases where other civil and political rights are involved. In cases where only property rights are involved postponement of enquiry has been held not to be a denial of

due process, vide: *Annie G. Phillips v. Commr. of Internal Revenue* (1931) 75 L ed 1289; *John H. Fathey v. Paul Mallonee* (1947) 91 L ed 2030; *Margarita Fuentes v. Robert L. Shevin* (1972) 32 L ed 556 and *Lawrence Mitchell v. W. T. Grant Co.* (1974) 40 L ed 2d 406.

103. In the first case ((1931) 75 L Ed 1289), Brandeis J. observed:

Where only property rights are involved, mere postponement of the judicial inquiry is not a denial of due process, if the opportunity given for the ultimate judicial determination of the liability is adequate. Delay in the judicial determination of property rights is not uncommon where it is essential that Governmental needs be immediately satisfied. For the protection of public health, a state may order the summary destruction of property by administrative authorities without antecedent notice or hearing. Because of the public necessity the property of citizens may be summarily seized in war time. And at any time, the United States may acquire property by eminent domain, without paying, or determining the amount of the compensation before the taking.

104. The principles of natural justice have taken deep root in the judicial conscience of our people, nurtured by Binapani, Kraipak, Mohinder Singh Gill, Maneka Gandhi etc. etc. They are now considered so fundamental as to be "implicit in the concept of ordered liberty" and, therefore, implicit in every decision making function, call it judicial, quasi judicial or administrative. Where an authority functions under a statute and the statute provides for the observance of the principles of natural justice in a particular manner, natural justice will have to be observed in that manner and in no other. No wider right than that provided by statute can be claimed nor can the right be narrowed. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice. 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 cases 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. Where natural justice is implied, the extent of the implication and the nature of the hearing must vary with the statute, the subject and the situation. Seeming judicial ambivalence on the question of the applicability of the principles of natural justice is generally traceable to the readiness of judges to apply the principles of natural justice where no question of the public interest is involved, particularly where rights and interests other than property rights and vested interests are involved and the reluctance of judges to apply the principles of natural justice where there is suspicion of public mischief and only property rights and vested interests are involved.

105. In the light of these prefatory remarks, I will proceed to consider the relevant statutory provisions. The Industries (Development and Regulation) Act, 1951, was enacted pursuant to the power given to Parliament by Entry 52 of List I of the Seventh Schedule to the Constitution. As

required by that Entry Section 2 of the Act declares that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule to the Act. Item 23 of the First Schedule to the Act relates to Textiles of various categories. Section 3(d) defines "Industrial undertaking" to mean "any undertaking pertaining to a scheduled industry carried on in one or more factories by any person or authority including Government". The expression undertaking is not, however, defined. Section 3(f) defines "Owner", "in relation to an industrial undertaking" as "the person who, or the authority which, has the ultimate control over the affairs of the undertaking, and, where the said affairs are entrusted to a manager, managing director or managing agents, such manager, managing director or managing agent shall be deemed to be the owner of the undertaking". Section 3(j) provides that words and expressions not defined in the Act but defined in the Companies Act shall have the meaning assigned to them in that Act. Section 10 obliges the owner of an industrial undertaking to register the undertaking in the prescribed manner. Section 10-A authorises the revocation of registration after giving an opportunity to the owner of the undertaking in certain circumstances. Section 11 provides for the licensing of the new industrial undertaking and Section 11-A provides for the licensing of the production and manufacture of the new articles. Section 13 provides, among other things, that, except under, and in accordance with a licence issued in that behalf by the Central Government, no owner of an industrial undertaking shall effect any substantial expansion or change the location of the whole or any part of an industrial undertaking. Section 14 provides for a full and complete investigation in respect of applications for the grant of licence or permission under Sections 11, 11-A, 13 or 29-B. Section 15 authorises the Central Government to make or cause to be made a full and complete investigation into the circumstances of the case if the Central Government is of the opinion that

(a) in respect of any scheduled industry or industrial undertaking or undertakings (i) there has been, or is likely to be, a substantial fall in the volume of production...for which, having regard to the economic conditions prevailing, there is no justification; or (ii) there has been, or is likely to be, a marked deterioration in the quality of any article... which could have been or can be avoided; or (iii) there has been or is likely to be a rise in the price of any article ... for which there is no justification; or (iv) it is necessary to take any such action for the purpose of conserving any resources of national importance; or

(b) any industrial undertaking is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest.

After the investigation is made under Section 15, Section 16(1) provides, if the Central Government is satisfied that such action is desirable, it may issue appropriate directions for

(a) regulating the production of any article...and fixing the standards of production;

(b) requiring the industrial undertaking to take such steps as the Central Government may consider necessary, to stimulate the development of the industry;

(c) prohibiting resort to any act or practice which might reduce the undertaking's production capacity or economic value;



(d) controlling the prices, or regulating the distribution of any article.

Section 16(2) also provides for the issue of interim directions by the Central Government pending investigation under Section 15. Such directions are to have effect until validly revoked by the Central Government.

106. Chapter III-A consisting of Sections 18-A, 18AA, 18-B, 18-C, 18-D, 18-E and 18-F deals with "direct management or control of Industrial Undertakings by Central Government in certain cases". Section 18-A which is entitled "Power of Central Government to assume management or control of an industrial undertaking in certain cases" provides that the Central Government may, by notified order, authorise any person or body of persons to take over the management of the whole or any part of an industrial undertaking or to exercise in respect of the whole or any part of the undertaking such functions or control as may be specified in the order, if the Central Government is of opinion that:

(a) an industrial undertaking to which directions have been issued in pursuance of Section 16 has failed to comply with such directions, or

(b) an industrial undertaking in respect of which an investigation has been made under Section 15 is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest.

Section 18AA refers to "Power to take over industrial undertakings without investigation under certain circumstances". It enables the Central Government by a notified order to authorise any person or body of persons to take over the management of the whole or any part of an industrial undertaking or to exercise in respect of whole or any part of the undertaking such functions or control as may be specified in the order, if, without prejudice to any other provision of the Act, from the documentary or other evidence in its possession, the Central Government is satisfied in relation to the industrial undertaking, that

(a) the persons incharge of such industrial undertaking have, by reckless investments or creation of encumbrances on the assets of the industrial undertaking, or by diversion of funds, brought about a situation which is likely to affect the production of articles manufactured or produced in the industrial undertaking, and that immediate action is necessary to prevent such a situation; or

(b) it has been closed for a period of not less than three months (whether by reason of the voluntary winding up of the company owning the industrial undertaking or for any other reason) and such closure is prejudicial to the concerned scheduled industry and that the financial condition of the company owning the industrial undertaking and the condition of the plant and machinery of such undertaking are such that it is possible to re-start the undertaking and such re-starting is necessary in the interests of the general public.

Section 18AA(5) stipulates that the provisions of Sections 18-B to 18-E shall be applicable to the industrial undertaking in respect of which an order has been made under Section 18AA even as they

apply to an industrial undertaking taken over under Section 18-A. Section 18-B specifies the effect of a notified order under Section 18-A. Section 18-C empowers the Court to cancel or vary contracts made in bad faith etc. by the management of an undertaking before such management was taken over by the Central Government. Section 18-D provides that there shall be no right to compensation for termination of office or contract as a result of the 'take over'. Section 18-E deprives the shareholders and the Company of certain rights under the Indian Companies Act, if the industrial undertaking whose management is taken over is a Company. Section 18-F empowers the Central Government on the application of the owner of the industrial undertaking or otherwise to cancel the order made under Section 18-A if it appears to the Central Government that the purpose of the order has been fulfilled or that for any other reason it is not necessary that the order should remain in force. Section 18-FD(3) enables the Central Government to exercise the powers under Section 18-F in relation to an undertaking taken over under Section 18AA.

107. The question for consideration is whether Section 18AA excludes natural justice by necessary implication. The development and regulation of certain key industries was apparently considered so basic and vital to the economy of our country that Parliament, in its wisdom, thought fit to enact the Industries Development and Regulation Act, after making the declaration required by Entry 52 of List I of the Seventh Schedule to the Constitution that it was expedient, in the public interest, that the Union should take under its control the industries specified in the schedule to the Act, as earlier mentioned by us. Apart from making provision for the establishment of a Central Advisory Council and other Development Councils, and the licensing of scheduled industries, the Act empowers the Central Government to cause a full and complete investigation to be made where there is a substantial fall in the volume of production for which there is no justification having regard to the prevailing economic conditions or there is marked deterioration in the quality of the goods produced or the price of the goods produced is rising unjustifiably or where conservation of resources of national importance is necessary- or the industrial undertaking is being managed in a manner highly detrimental to the scheduled industry or to public interest (Section 15) and thereafter to issue necessary and appropriate directions to the industrial undertaking to mend matters suitably (Section 16). Where the instructions issued under Section 16 are not complied with or where the investigation reveals that the industrial undertaking is being managed in a manner highly detrimental to the scheduled industry or to the public interest the Central Government may take over the industry under Section 18-A. Whether there is an investigation or not, the Central Government may also 'take over' the management of the industry under Section 18AA, if consequent on certain wilful acts of commission on the part of the management the production is likely to be affected but immediate action may prevent such a situation, or the industrial undertaking has been closed for a period of not less than three months and the closure is prejudicial to the scheduled industry. Action under Section 18AA is thus preventive and remedial. Where there is an apprehension that production is likely to be affected as a result of the wilful acts of the management or where the production has already come to a stand-still because of the closure of the undertaking for a period of not less than three months the Central Government is authorised to inter vene to restore production. The object clearly is to take immediate action to prevent a situation likely to affect production or to restore production. There was some argument at the Bar that the expression 'immediate action' was not to be found in Section 18-AA(1)(b). I do not think that the absence of the expression 'immediate action' in Section 18-AA(1)(b) makes any difference. Section 18-AA(1)(a)

refers to a situation where immediate preventive action may avert a disaster, whereas Section 18AA contemplates a situation where the disaster has occurred and action is necessary to restore normalcy. Restoration of production where production has stopped in a key industry or industrial undertaking is as important and urgent, in the public interest, as prevention of a situation where production may be affected. Immediate action is, therefore, as necessary in the situation contemplated by Section 18-AA(1)(b) as in the situation contemplated by Section 18-AA(1)(a).

108. It is true that the marginal note refers to the power to take over without investigation but there is no sufficient reason to suppose that the word 'immediate' is used only to contra-distinguish it from the investigation contemplated by Section 15 of the Act, though, of course a consequence of immediate action under Section 18AA may be to dispense with the enquiry under Section 15. In fact, facts which come to light during the course of an investigation under Section 15 may form the basis of action under Section 18-AA(1)(a). Where in the course of an investigation under Section 15 it is discovered that the management have; by reckless investments or creation of encumbrances on the assets of the industrial undertaking or by diversion of funds brought about a situation which is likely to affect the production of the articles manufactured or produced in the industrial undertaking, or if the Government is satisfied that immediate action is necessary to prevent such a situation, there is no reason why the Central Government may not straightway take action under Section 18-AA(1)(a) without waiting for completion of investigation under Section 15. Parliament apparently contemplated a situation where immediate action was necessary, and having contemplated such a situation, there is no reason to assume that Parliament did not contemplate situations which brooked not a moment's delay. If Parliament also contemplated situations which did not brook a moment's delay, it would be difficult to read natural justice into Section 18-AA. The submission of Shri Nariman was that the immediacy of the situation would be relevant and relatable to the quantum of natural justice and not to a total denial of natural justice. According to him the scope and extent of the opportunity to be given to the party against whom action is taken may depend upon the situation but nothing would justify a negation of a natural justice. He pointed out that in a situation of great urgency which brooked no delay, an order under Section 18AA might be made, the situation could be so frozen that the persons incharge of the industrial undertaking might do no more mischief and the Government could then, without giving further effect to the order under Section 18AA, give a notice to the person incharge to show cause why the order under Section 18AA should not be given effect. In another given case, according to Shri Nariman, notice of, say two weeks, might be given before making an order, if the making of an order was not so very urgent. He suggested that the opportunity to be given might vary from situation to situation but opportunity there must be either before the decision was arrived at or so shortly after the decision was arrived at and before any great mischief might result from the order. The argument of Shri Nariman would vest in the Government a power to decide from case to case the extent of opportunity to be given in each individual case and, as a corollary, a corresponding right in the aggrieved party to claim that the opportunity provided was not enough. Such a procedure may be possible, practicable and desirable in situations where there is no statutory provision enabling the decision making authority to review or reconsider its decision. Where, there is a provision in the statute itself for revocation of the order by the very authority making the decision, it appears to us to be unnecessary to insist upon a pre-decisional observance of natural justice. The question must be considered by regard to the terms of the statute and by an examination, on the terms of the statute, whether it is possible,

practicable and desirable to observe pre-decisional natural justice and whether a post decisional review or reconsideration as provided by the statute itself is not a sufficient substitute.

108A. The likelihood of production being jeopardized or the stoppage of production in a key industrial undertaking is a matter of grave concern affecting the public interest Parliament has taken so serious a view of the matter that it has authorised the Central Government to take over the management of the industrial undertaking if immediate action may prevent jeopardy to production or restore production where it has already stopped. The necessity for immediate action by the Central Government, contemplated by Parliament, is definitely indicative of the exclusion of natural justice. It is not as if the owner of the industrial undertaking is left with no remedy. He may move the Central Government under Section 18-F to cancel the order made under Section 18AA. True some mischief affecting the management and top executives may have already been done. On the other hand, greater mischief affecting the public economy and the lives of many a thousand workers may have been averted. While on the one hand mere property rights are involved, on the other vital public interest is affected. This again, in the light of the need for immediate action contemplated by Parliament, is a clear pointer to the exclusion of natural justice. It was submitted by the learned Counsel that Section 18-F did not provide any remedy but merely provided for cancellation of an order of take over on the fulfilment of the purpose of the order of take over or for any other reason which rendered further continuance in force of the order unnecessary because of the happening of subsequent events. According to the learned Counsel the basic assumption of Section 18-F was the validity of the order under Section 18-A, or Section 18AA. All that Section 18-F did was to prescribe conditions for the exercise of the general power which every authority had under Section 21 of the General Clauses Act to cancel its own earlier order. It was said that if Section 18-F could be said to impliedly exclude natural justice there is then no reason not to hold that Section 21 of the General Clauses Act similarly excluded natural justice in every case. I am unable to agree with these submissions of the learned Counsel. Neither Section 18-F of the Industries (Development and Regulation) Act nor Section 21 of the General Clauses Act, by itself, excludes natural justice. The exclusion of natural justice, where such exclusion is not express, has to be implied by reference to the subject, the statute and the statutory situation. 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 decisional hearing may then clinch the issue where pre-decisional natural justice appears to be excluded on the other terms at the statute. That a post decisional hearing may also be had by the terms of Section 21 of the General Clauses Act may not necessarily help in the interpretation of the provisions of the statute concerned. On the other hand even the general provision contained in Section 21 of the General Clauses Act may be sufficient to so interpret the terms of a given statute as to exclude natural justice. As I said it depends on the subject, statute and the statutory situation.

109. I am, therefore, satisfied that the principles of natural justice are not attracted to the situations contemplated by Section 18AA of the Industries (Development and Regulation) Act. In view of the order proposed by my learned brothers Sarkaria and Desai, JJ. I do not propose to consider the other questions.

ORDER

110. As per majority decision, the appeals are allowed.