Supreme Court of India
The Keshav Mills Company Ltd. & Anr vs Union Of India And Ors on 8 December, 1972
Equivalent citations: 1973 AIR 389, 1973 SCR (3) 22
Author: B Mukherjea
Bench: Mukherjea, B.K.

PETITIONER:
THE KESHAV MILLS COMPANY LTD. & ANR

Vs.

RESPONDENT:
UNION OF INDIA AND ORS.

DATE OF JUDGMENT08/12/1972

BENCH:
MUKHERJEA, B.K.
BENCH:
MUKHERJEA, B.K.
GROVER, A.N.
MATHEW, KUTTYIL KURIEN

CITATION:
1973 AIR 389 1973 SCR (3) 22
1973 SCC (1) 380
CITATOR INFO :
E&F 1981 SC 818 (17,19,67,68,69,71,72,73)
F 1986 SC2030 (9)
R 1990 SC1402 (23)

ACT:
Industries (Development and Regulation) Act 1951-S.18A-whether it is necessary to observe the rules of natural justice once during the investigation and again when action is taken under S. 18A.

HEADNOTE:
The Keshav Mills Co. Ltd. and another challenged the validity of an order passed by the Government of India, under S. 18-A of the Industries (Development and Regulation) Act, 1951 by which the Gujarat State Textile Corporation Ltd. has been appointed and authorised controller of the Company for a period of five years. The Company is the owner of a cotton textile mill and it was established in 1934. Till 1965, the Company made flourishing business. After the year 1964-65, the Company fell on evil days and the textile mill of the company was one of the 12 sick textile mills in Gujarat, which had to be closed down during 1966 and 1968. On 31st May 1969, Government of India passed

an order appointing a Committee for investigation into the affairs of the Company under the provisions of S. 15 of the Act. In due course, the Investigating Committee completed its inquiry and submitted its report to the Government. On 24th November, 1970, the Government of India passed an Order under S. 18-A of the Act authorising the Gujarat State Textile Corporation to take over the management of the Company for a period of five years from the date of publication of that order in the Official Gazette.

The Company filed a writ petition before the High Court of Delhi praying for appropriate relief. The High Court dismissed the petition. The main contention of the appellants before the Delhi High Court was that Government of India was not competent to proceed under S. 18-A against the company without supplying before hand, a copy of the report of the Investigating Committee to the Company. Acocrding to the appelants, the Government should not only have supplied a copy of the report to the Company, but should also have given a hearing to the Company before finally deciding upon.taking over the company's undertaking under S.. 18-A of the Act. This contention was pressed on behalf of the appellants in spite of the fact that an opportunity had been given by the Investigating Committee to the management and the employees of the Company for adducing evidence and for making representation before the completion of the investigation.

The only question that this Court had to decide was whether after the undertaking had already been given an opportunity of being heard at the time of investigation, the Company is entitled to have a copy of the report and to make, if necessary, further representation about that report before a final decision is made by the Government under S. 18-A of the Act. The answer depended on the following questions; (1) Is it necessary to observe the rules of n-atural justice before enforcing a decision under S. 18-A of the Act. (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 under S. 15 and then again, after the it)vestigation is completed and action on the report of the Investigating Com

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mittee taken under S. 18-A (b) Was it necessary to furnish a copy of the Investigating Committee's Report before passing an order of take over ?

Dismissing the appeal,

HELD : (i) Although the order of the Government of India taking over the management of the Company was a purely executive order, embodying an administrative decision, even so, the question of natural justice does arise in this case. It is too late now to contend that the principles of natural justice do not apply to administrative orders or proceed-ings. [29G]

Regina v. Gaming Board, exparte Benaim [1970] 2 W.L.R. 1009,

referred to.
(ii) The concept of natural justice cannot be put into a straight jacket. It is futile to look for definitions or standards of natural justice. The only essential point that has to be kept in mind in all cases is that the person concerned should have a reasonable opportunity of presenting his case and administrative authority concerned should act fairly, impartially and reasonably. It only means that such measure of natural justice should be applied as was described by Lord Reid in Ridge v. Baldwin, as "insusceptible of exact definition, but what a reasonable man would regard as a fair procedure in particular circumstarces." However, every thing will depend on the actual facts and circumstances of the case. [30B]
(iii)The Act was passed to provide for development and regulation of important industries, the activities of which affect the country as a whole and the development of which must be governed by economic factors of all India import. For achieving this purpose, the Act confers cerpowers on Government to secure the planning of future development on sound and balanced line by the licensing of all new under takings and also by making rules for the registration of existing undertakings for regulation and production and development of the industries and also in certain cases, by taking over the control and management of certain industrial concerns. Since the appellants have received a fair treatment and also all reasonable opportunities to make out their own case before Government, they cannot be allowed to make any grievance of the fact that they were not given a formal notice calling upon them to show cause why their undertaking should not be taken over, or that they had not been furnished with a copy of the report. [30H, 35H]
(iv) In the present case non-disclosure of the report of the Investigating Committee has not caused any prejudice whatsoever to the appellants. Under the circumstances, the High Court's Order is confirmed. [38F]
Local Government Board v. Arlidge, [1915] A.C. 120, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1183 of 1972.

Appeal by special leave from the judgment and order dated March 3, 1972 of the Delhi High Court in Civil Writ No. 1366 of 1970.

I. N. Shroff for the appellants.

F. S. Nariman Additional Solicitor General of India, P. P. Rao and B. D. Sharma for respondent No. 1.

J. L. Hathi, K. L. Hathi and P. C. Kapur for respondent Nos. 2 and 3.

The Judgment of the Court was delivered by Mukherjea, J. This appeal by special leave from a judgment and order of the Delhi High Court arises out of a petition under Articles 226 and 227 of the Constitution of India made by Keshav Mills Company limited (hereinafter referred to as the Company) and Navin Chandra Chandulal Parekh who is a shareholder and a Director of the Company challenging the validity of an order dated 24 November 1970 passed by the Government of India under Sec. 18A of the Industries (Development and Regulation) Act, 1951 (65 of 1951) (hereinafter referred to as the Act) by which the Gujarat State Textile Corporation Ltd. has been appointed the authorised controller of the Company for a period of five years. The Delhi High Court dismissed the writ petition after hearing the parties and hence this appeal. The facts and circumstances leading to the filing of the petition are briefly stated as follows.

The Company is the owner of a cotton textile mill at Petlad known as Keshav Mills. The Company was established in 1934 and, as far as one can judge from the facts and figures cited in the petition, the Company made flourishing business between the years 1935 and 1965. Indeed, if the appellants' figures are to be believed,-and there is no reason to disbelieve them, each holder of the 250 ordinary shares of the Company seems to have received Rs. 33,685 in course of a period of 30 years between 1935 and 1964-65 as profit on an initial investment of Rs. 1,000 only. On top of this the Company's capital block was increased from Rs. 10.62 lakhs in 1935 to Rs. 78,38,900 at the end of the year 1964-65. All these profits, however, went to a close group of people, since 80 per cent of the share capital belongs to petitioner Parekh, his family members, relations and friends and only 20 per cent share-capital is in the hands of the members of the public. The Company, however, fell on evil days after the year 1964-65 and the textile mill of the Company was one of. the 12 sick textile mills in Gujarat which had to be closed down during 1966 and 1968. We are not here directly concerned with the various causes which were responsible for this sudden reversal of the fortunes of this Company. Suffice it to say that on 31 May 1969 the Government of India passed an order appointing a committee for investigating into the affairs of the Company under the provisions of Sec. 15 of the Act. We shall hereafter refer to this Committee as the Investigating Committee. The material portion of the order dated 31 May 1969 is reproduced as hereunder :-

"S.O./15IDRA/69:-Whereas the Central Government is of the opinion that there has been, or is likely to be substantial fall in the volume of production in respect of cotton textiles manufactured in the industrial undertaking known as the Petlad Keshav Mills Co. Ltd., Petlad (Gujarat) for which, having regard to the economic conditions prevailing there is no justification.

Now, therefore, in exercise of the powers conferred by Section 15 of the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Central Government hereby appoints, for the purpose of making full and complete investigation into the circumstances of the case, a body of persons consisting of :-

Chairman (1) Shri 1. C. Shah, (General Manager, Ambica Group of Mills, Ahmedabad).

Members (2) Shri M. C. Mirchandani, Director (Technical), National Textile Corporation.

(3) Shri J. P. Singh, Director (.Finance), National Textile Corporation.

(4) Shri M. Sivagnanam, Industries Commissioner, Government of Gujarat, Ahmedabad. (5) Shri V. A. Mahajan, Senior Accounts Officer, Office of the Regional Director, Company Law Board, Bombay. (6) Shri Y. L. N. Achar, Inspecting Officer, Office of the Textile Commissioner, Bombay. In this connection it may be relevant to set out some extracts from the communication that was sent out on 11 June 1969 by the Government of India to the various members of the aforesaid committee. The communication which was in the nature of a supplemental order by the Government of India detailing the point of reference to the Investigating Committee was to the following effect "Subject:-Appointment of Investigation Committee for Petlad Keshav Mills Co. Ltd. Petlad (Gujarat) under the Industries (Development and Regulation) Act, 1951.

Sir, I am directed to enclose a copy of order dated 31st May, 1969, issued under Section 15 of the Industries (Development and Regulation) Act, 1951, setting up' a committee to enquire into the affairs of Petlad Keshav Mills Co. Ltd., Petlad, Gujarat for your information and necessary action. The investigation should also be directed to the following specific points :-

(a) Reasons for the present state of affairs.

(b) Deficiencies, if any, in the existing machinery.

(c) Immediate requirements, under separate heads of accounts, of working capital if any.

(d) Requirement of long-term capital for modernisation /rehabilitation.
(e) financial result of :-

(i) Immediate working without further investment on capital account.

(ii) Working after further investment on capital account.

(f) Suggestion regarding source of funds required under (e) and (d) and security available for their repayment. I am further to request that 15 copies of the report may kindly be submitted to this Ministry at a very early date." In due course, the Investigating Committee completed its inquiry and submitted its report to the Government some time about January, 1970. On or about 24 November 1970 the Government of India passed an order under Sec. 18A of the Act authorising the Gujarat State Textile Corporation (hereinafter to be referred to as the Authorised Controller to take over the management of the whole of the undertaking of the Company for a period of five years from the date of publication of that order in the Official Gazette. The relevant order is in following terms:-

"S.O.-/18A/IDRA/70 Whereas the Central Government is of the opinion that the Keshav Mills Co. Ltd., Petlad, an industrial undertaking in respect of which an investigation has been made under Section 15 of the Industrial (Development and Regulation) Act, 1951 (65 of 1951), is being managed in a manner highly detrimental to public interest.

Now, therefore, in exercise of the powers conferred by section 18A of the said Act, the Central Government authorises the Gujarat State Textile Corporation (hereinafter. referred to as Authorised Controller) to take over the management of the whole of the said undertaking namely, the Kesbav Mills Co. Ltd., Petlad, subject to the following terms and conditions, namely :

(i) The Authorised Controller shall comply with all directions issued from time to time by the Central Government;

(ii) The Authorised Controller shall hold office for five years from the date of publication in the official gaztte of this notified order;

(iii) The Central Government may terminate the appointment of the Authorised Controller earlier if it considers necessary to do so.

"This order will have effect for a period of five years commencing from the date of its publication in the official gazette."

On 5 December 1970 one R. C. Bhatt, Assistant Secretary, to the Authorised Controller went to the Company's office at Petlad and presented a letter from his principals authorising him' to take over possession of the mill of the Company and requested' the Company to hand over the keys of the office buildings, godowns and other departments as well as the office records, account books etc. to Bhatt. The Company handed over the keys of the Company's premises to R. C. Bhatt under protest. On 15 December 1970 the Company filed a writ petition before the High, Court of Delhi under Articles 226 and 227 of the Constitution, of India praying for "appropriate reliefs".

Though several grounds were taken in the writ petition, the- main contention of the appellants before the Delhi High Court was that it was not competent for the Government of India to proceed under Sec. 18A against the Company without supplying-

beforehand a _copy of the report of the Investigating Committee to the Company. The appellants complained that though the Investigating Committee had submitted a report to the Government of India in January, 1970 the Government did not furnish the management of the Company with the contents of the report. According to the appellants the Government should not only have supplied a copy of the report to the Company but should also have given a hearing to the Company before finally deciding upon taking over the Company's undertaking under Sec.. 18A of the Act. This contention was pressed on behalf of the appellants in spite of the fact that an opportunity had been given by the Investigating Committee to the management and the employees ,of the Company for adducing evidence and making representations before three completion of the investigation. Reliance was placed on behalf of the appellants on a Bench decision of the Delhi High Court in

Bharat Kumar Chinubhai v. Union of India and others(1). The correctness of that decision was, however, .seriously questioned on behalf of the respondents and the single .Judge before whom the instant petition came up for hearing referred the matter to adjudication before a Full Bench of that 'High Court. The question of law that was referred for the decision of the Full Bench was framed by the learned Judge in the 'following manner :- "Whether in view of Rule 5 of the Investigation of Industrial Undertakings (Procedure) Rules of 1967 providing for an opportunity of hearing before the Investigator and the absence of any specific provision either in the Act or in the Rules for supplying a copy of the Investigator's report to the management, the taking over of the industrial undertaking, without supplying a copy of the Investigator's report is vitiated ?"

The Full Bench of the Delhi High Court after hearing the parties answered the above question of law in the negative and since this was the only 'question argued before them, dismissed the petition.

The whole dispute between the parties is in substance a question regarding the exact requirement of the rules of natural justice in the facts and situation of the case. There can be no question that whenever an order is-made under Sec. 18A against a company it has far-reaching consequences on the rights of that company, its shareholders, its employees and all persons who have contractual dealings and transactions with that company. It is also not seriously questioned that before passing an order of "take,over" under Sec. 18A it is incumbent on the Government to give at some stage a reasonable opportunity to the undertaking con-

(1) Civil Writ No. 560 of 1969: Judgment delivered on 10 February 1970.

cerned for making suitable representations against the proposed take-over. In fact, under the rule-making power conferred by Sec. 30 of the Act the Government of India has already made a rule viz. Rule 5 which provides for such an opportunity. Rule 5 runs as follows :-

"5. Opportunity for hearing. The Investigator shall, before completion of his investigation, give the Management and the employees of the undertaking or undertakings in respect of which the investigation is ordered, reasonable opportunity of being heard including opportunity to adduce any evidence."

The only question that we have to decide now is whether after the undertaking has already been given such an opportunity at the time of investigation it is entitled to have a copy of the report and to make, if necessary, further representation about that report before a final decision is made by the Government about taking action under Sec. 18A of the Act. Our decision on this question will depend on our answers to the following questions :-

(i) Is it necessary at all to observe the rules of natural justice before enforcing a decision under Sec. 18A of the Act ?

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

(iii) (a) In the facts and circumstances of the present case have the rules to be observed once during the investigation under Sec. 15 and then again after the investigation is complete and action on the report of the Investigating Committee taken under Sec. 18A ?

(b) Was it necessary to furnish a copy of the Investigating Committee's Report before passing the order of take-over ? The first of these questions does not present any difficulty. It is true that the order of the Government of India that has been challenged by the appellants was a purely executive order embodying on administration decision. Even so the question of natural _justice does arise in this case. It is too late now to contend that the principles of natural justice need not apply to administrative orders or proceedings; in the language of Lord Denning M.R. in Regina v. Gaming Board ex-parte Benalm(1) "that heresy was scotched in Ridge v. Baldwin" (2) .

(1) [1970] 2 W.Z.R. 1009. (2) [1964] A.C.

40. The second question, however, as to what are the principles of natural justice that should regulate an administrative act ,order is a much more difficult one to answer. We do not this it either feasible or even desirable to lay down any fixed rigorous yard-stick in this manner. The concept of natural justice cannot be put into a straight-jacket. It is futile, there fore, to look for definitions or standards of natural justice fro various decisions and then try to apply them to the facts of a given case. The only essential point that has to be kept in mind in all cases is that the person concerned should have a reasonable opportunity of presenting his case and that the administrative authority concerned should act fairly, impartially an reasonably. Where administrative officers are concerned, the duty is not so much to act judicially as to act fairly. See, for instance, the observations of Lord Parker in In re H. K. (a infant) (1). It only means that such measure of natural justice should be applied as was described by Lord Reid in Ridge Baldwin(2) as "in susceptible of exact definition but what reasonable man would regard as a fair procedure in particular circumstances". However, even the application of the concept of fair play requires real flexibility. Every thing will depend the actual facts and circumstances of a case. As Tucker L. ,observed in Russell v. Duke of Norfolk(3).

"The requirements of natural justice must depend on the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with and so forth."

We now turn to the third and the last question which is in two parts. For answering that question we shall keep in mind the observations of Tucker L. J. set out just now and examine the nature and scope of the inquiry that had been carried out by the Investigating Committee set up by the Government, the scope and purpose of the Act and rules under which the Investigating Committee was supposed to act, the matter that was being investigated by the Committee and finally the opportunity that was afforded to the appellants for presenting their case before the Investigating Committee.

The Act was passed to provide for development and regulation of important industries the activities of which, according to the Statement of Objects and Reasons of the Bill which resulted in the Act "affect the country as a whole and the development of which must be governed by economic factors

of all-India import". For achieving this Purpose the Act confers certain (1) [1967]2 Q.B. 617. (2) [1964] A.C. 40.

(3) [1949] 1 All. ER. 109 powers on Government to secure the planning of future development on sound and balanced lines by the licensing of all new undertakings and also by making rules for the registration of existing undertakings, for regulating the production and development of the industries and also, in certain cases, by taking over the control and management of certain industrial concerns. The various powers conferred on Government as aforesaid are to be exercised after carrying out suitable investigations. Sec. 2 of the Act states categorically that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule. No attempt was made before us to question the expediency of control by the Central Government over any industry mentioned in the Schedule or any undertaking pertaining to such an industry. The industry engaged in the manufacture and production of 'textiles' is item 23 of the First Schedule to the Act. Therefore, we start from the premise that the Central Government as a matter of public policy is interested in the well-being and efficient administration of any undertaking relating to the textile industry and is also entitled to exercise some degree of control over it. Sec. 15 empowers the Government to cause. investigation to be made into any scheduled industry or industrial undertaking under certain circumstances, namely (i) if there has been or is likely to be a substantial fall in production of articles relatable to that industry or produced by the undertaking concerned for which, in the 'light of the economic conditions prevailing, there is no justification; or (ii) if there has been or is a marked deterioration in the quality of the' articles relatable to that industry or produced by the undertaking; or (iii) if there is an unjustifiable rise in the price of such articles; or (iV) Government considers it necessary for the purpose of conserving any resources of national importance which are utilised in that particular industry or undertaking. Central Government may cause such an investigation also if an industrial undertaking is being managed in a manner which is detrimental to the scheduled industry or to public interest. Sec. 16 of the Act empowers the Government to issue, appropriate directions to the industrial undertaking or undertakings concerned after the investigation under Sec. 15 has been completed. Such directions may be given for the purpose of regulating the production or fixing the standards of production of any article or articles or for taking steps to stimulate the development of the industry or for preventing any act or practice which might reduce the production capacity or economic value of the industrial undertaking and, finally, for controlling the price or regulating the distribution of any article or class of articles which have been the subject matter of the investigation. In certain cases, however, such indirect control may not be enough and Government may interfere and take up the direct management or control of industrial undertakings. Sec. 18A details the circumstances when the Government may impose such control by authorising a person or body of persons to take over the management of the whole or any part of the undertaking. Before, the Government assumes such management or control, the Government must be of the opinion that the undertaking concerned has failed to comply with the directions issued under Sec. 16 of the Act or that the industrial undertaking regarding which there has been an investigation under Sec. 15 "is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest". In the instant case, the Government of India came to hold the opinion that there was a substantial fall in the volume of production in respect of the Company's production of cotton textiles for which Government apparently found no justification having regard to the prevailing economic conditions. The

Government was perfectly within its rights to appoint, under the terms of Sec. 15, an investigating body for the purpose of making full and complete investigation into the circumstances of the case. This is what the Government did and the appellants do not, as indeed they cannot, find fault with this action of the Government. It is the admitted case that for three years prior to 1969 the Company had been running into continual difficulties as a result of which the Company suffered losses which amounted upto Rs. 56.76 lakhs. In fact the mill had to be closed by the end of 1968. It was only on 31 May 1969 that Government of India appointed the Investigating Committee to investigate- into the affairs of the Company's mill. The appellants do not make any grievance against the Investigating Committee regarding the manner in which they carried out the investigation. It is admitted that the Committee gave to the Company a full opportunity of being heard and also an opportunity of adducing evidence. There can therefore, be no complaint that upto this stage there was any failure to observe the rules of natural justice. In January 1970 the report of the Investigating Committee was submitted to Government and, on the appellants' own showing, they knew that there was a liklihood of Government appointing a Controller under Sec. 18A to take over the appellants undertaking. There can be no question that the appellants were fully aware of the scope and amplitude of the investigation initiated by Government. A copy of the letter dated 1 June 1969 which had been addressed to the members of the Investigating Committee was sent also to the Company at the time of setting up of the Committee. We have already set out this letter in extenso. The Government clearly indicated in that letter the scope of the investigation ordered under Sec. 15. It is not possible to suggest that the appellants were not aware of the Company's distressing economic position about the middle of 1969. The terms of reference of the Committee would make it clear even to, one not aware of the economic condition of the Company that the Government was genuinely concerned about its financial position. Even though the enquiry itself was ordered under the provisions of Sec. 15(a), the Committee and the Government had authority to treat the report as if it was also made under Sec. 15 (b) of the Act. In the case of Shri Ambalal M. Shah and Anr. v. Hathisingh Manufacturing Co., Ltd.(1) the Central Government made an order under Sec. 15 of the Act by which a committee of three persons was appointed for the purpose of making a full and complete investigation into the circumstances of the case. Before appointing this committee the Government came to hold the opinion that there had been a substantial fall in the volume of production in respect of cotton textiles manufactured by Hathisingh Manufacturing Co., Ltd. for which, having regard to the economic conditions prevailing at that time there was according to Government no justification. After the com- mittee had submitted its report the Central Government held the opinion that the company was being managed in a manner highly detrimental to public interest and made an order under Sec. 18A of the Act authorising Ambalal M. Shah to take over the management of the whole of the undertaking of that company. The legality of the order was challenged on the ground that the order under Sec. 18A could have been made only after the Central Government had initiated an investigation on the basis of the opinion mentioned in Sec. 15(b) that is to say on the strength of the opinion that the company was being managed in a manner highly detrimental to public interest. It was argued that in so far as the investigation ordered by the Central Government was initiated on the formation of an opinion as mentioned in clause (a) (i) of Sec. 15, the order was illegal. This Court held, however, the order to be perfectly valid, because the words used by the legislature in Sec. 18A (1)

(b) viz. "in respect of which an investigation has been made under Sec. 15" could not be cut down by the restricting phrase "based on an opinion that the industrial undertaking is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest". Once an investigation has been validly made under Sec. 15 it was held sufficient to empower the Central Government to authorise a person to take over the management of an industrial undertaking irrespective of the nature or content of the opinion on which the investigation was initiated. In view of this decision it is not possible for the appellants to contend that they were not aware that as a result of the report of the Investigating Committee the Government could pass an order under Sec. 18A(1)-

(1) [1962] 3 S. C. R. 171.

L63ISup.C.I./73 taking. In fact, it appears from a letter addressed by appellant No. 2 Navinchandra Chandulal Parikh on behalf of the Company to Shri H. K. Bansal, Deputy Secretary, Ministry of Foreign trade and Supply on 12 September 1970 that the appellants had come to know that the Government of India was in fact considering the question of appointing an authorised controller under Sec. 18A of the Act in respect of the appellants' undertaking. In that letter a detailed account of the facts and circumstances under which that mill had to be closed down was given. There is also an account of the efforts made by the Company's Directors to restore the mill. There is no attempt to minimise the financial difficulties of the Company in that letter. Parikh only seeks to make out that the Company was facing a serious financial crisis in common with other textile mills in the country which also had to face closure. He speaks of the various approaches made- by the company to the Government of Gujarat for getting financial assistance. The letter specifically mentions the company's application to the Gujarat State Textile Cooperation Ltd. for financial help. It appears clearly from this letter that though according to Parikh some progress had been made in the matter of securing assistance from the Gujarat State Textile Corporation Ltd. the Corporation ultimately failed to come to the succor of the company. Parikh requested Government not to appoint an authorised controller and further prayed that the Government of India should ask the State Government and the Gujarat State Textile Corporation Ltd. to give a financial guarantee to the Company. Two things appear quite clearly from that letter; first, that the appellants required a minimum sum of Rs. 20 lakh is as immediate aid and, secondly, that the Company in spite of various approaches had not succeeded in securing the same. Only a few days before this letter had been addressed, Parikh, it appears, had an interview with the Minister of Foreign Trade on 26 August 1970 when the Minister gave him, as a special case, four weeks' time with effect from 26 August 1970 to obtain the necessary financial guarantee from the State or the Gujarat State Textile Corporation without which the Company had expressed its inability to reopen and run the mill. In a letter of 22 September 1970 Bansal informed Parikh in clear language that if the Company failed to obtain the necessary guarantee by 26 September 1970 Government was proceeding to take action under the Act. It is obvious, therefore, that the appellants were aware all Ionia that as a result of the report of the Investigating Committee the Company's undertaking was going to be up by Government. Parikh had not only made written representations but, had also seen the Minister of Foreign Trade and Supply. He had requested the Minister not to take over the undertaking and, on the contrary, to lend his good offices so that the Company could get financial support from the Gujarat State Textile Corporation or from the Gujarat State Government.

All these circumstances leave us in no manner of doubt that the Company had full opportunities to make all possible re- presentations before the Government against the proposed takeover of its mill under Sec. 18A. In this connection it is significant that even after the writ petition had been filed before the Delhi High Court the Government of India had given the appellants at their own request one month's time to obtain the necessary funds to commence the working of the mill. Even then, they failed to do so. There are at least five, features of the case which make it impossible for us to give any weight to the appellants' complaint that the rules of natural _justice have not been observed. First, on their own showing they were perfectly aware of the grounds on which Government had passed the order under Sec. 18A of the Act. Secondly, they are not in a position to deny (a) that the Company had sustained such heavy losses that its mill had to be closed down indefinitely, and (b) that there was not only loss of production of textiles but at least 1200 persons had been thrown out of employment. Thirdly, it is transparently clear from the affidavits that the Company was not in a position to raise the resources to recommence the working of the mill. Fourthly, the appellants were given a full hearing at the time of the investigation held by the Investigating Committee and were also given opportunities to adduce evidence. Finally, even after the Investigating Committee had submitted its report, the appellants were in constant communion with the Government and were in fact negotiating with Government for such help as might enable them to reopen the mill and to avoid a take-over of their undertaking by the Government. Having regard to these features it is impossible for us to accept the contention that the appellants did not get any reasonable opportunity to make out a case against the take-over of their undertaking or that the Government has not treated the appellants fairly. There is not the slightest justification in this case for the complaint that there has been any denial of natural justice-.

We must, however, deal with the specific point raised by the appellants that they should have been given further hearing by the Government before they took the final decision of taking over their undertaking under Sec. 18A of the Act and that, in any event, they should have been supplied with a copy of the report of the Investigating Committee. In our opinion, since the appellants have received a fair treatment and also all reasonable opportunities to make out their own case before Government they cannot be allowed to make any grievance of the fact that they were not given a formal notice calling upon them to show cause why their undertaking should not be taken over or that they had not been furnished with a copy of the report. They had made all the representations that they could possibly have made against the- proposed takeover. By no stretch of imagination,, can it be said that the order for take-over took them by surprise. In fact Government gave them ample opportunity to reopen and run the mill on their own if they wanted to avoid the take-over. The blunt fact is that the appellants just did not have the necessary resources to do so. Insistence on formal hearing in such circumstances is nothing but insistence on empty formality.

The question still remains whether the appellants were entitled to get a copy of the report. It is the same question which arose in the celebrated case of Local Government Board v. Arlidge(1). That was a case in which a local authority made a closing order in respect of a dwelling house in their district on the ground that the house was unfit for human habitation. The owner of the dwelling house who had a right to appeal to the Local Government Board against the closing order made such an appeal. Sec. 39 of the Housing, Town Planning, & c., Act, 1909 provided that the procedure to be followed in such an appeal was to be such as the Local Government Board might determine by rules. The

section, however, required the rules to provide that the Board was not to dismiss any appeal without having first made a public local enquiry. The Local Government Board had made such rules and in conformity with these rules held an enquiry in the appeal preferred against the closing order. The house-owner attended ;the enquiry with his solicitor and also adduced evidence. After considering the facts and the evidence given at the enquiry as well as the report of the inspector who inspected the house the Local Government Board refused to interfere with the decision, of the Borough Council not to determine the closing order. The house-owner thereupon obtained an order nisi for a writ of certiorari for the purpose of quashing of the closing order. One of the principal grounds urged by the house-owner was that he was entitled to see the report of the appellant's inspector but the report had not been shown to him. A Divisional Court discharged the, order nisi but the Court of Appeal reversed the decision and ordered the writ of certiorari to issue. The matter then went up to the House of Lords who allowed the appeal and upheld the closing order. Viscount Haldane L.C., in his judgment held that though the decision of the Board must be come to in the spirit and with the sense of responsibility of a tribunal whose duty it is to mete out justice it does not follow that the procedure of every such tribunal must be the same. In the absence of a declaration to the contrary, the 1 [1091] A. C. 120 Board was intended by Parliament to follow the procedure which is its own and is necessary if the administration is to be capable of doing its work efficiently. AR that was necessary for the Board was to act in good faith and to listen fairly to both sides. (Emphasis is ours). As to the contention that the report of the inspector should have been disclosed, his Lordship observed :-

.lm15 " It might or might not have been useful to disclose this report, but I do not think that the Board was bound to do so, any more than it would have been bound to disclose all the minutes made on the papers in the office before a decision was come to".

Lord Moulton in his judgment observed that since the appeal provided by the legislature is an appeal to an administr- ative department of a State and not to a be judicial body it was enough if the Local Government Board preserved a judicial temper and performed its duties consciously with a proper feeling of responsibility. On the question whether it was necessary 'to disclose the report, his Lordship observed :-

"Like every administrative body, the Local Government Board must derive its knowledge from its agents, and I am unable to see any reason why the reports which they make to the department should be made public. It would, in my opinion, cripple the usefulness of these enquires..... I dissociate myself from the remarks which have been made in this case in favour of a department making reports of this kind public. Such a practice would, in my opinion, be decidedly mischevious."

In a later case namely Danby & Sons Ltd. v. Minister of Health(1) the law stated in Local Government Board v. Arlidge (2) was reaffirmed. Indeed, the law in England still stands unchanged.

The law relating to observation of the rules of natural justice has, however, made considerable strides since the case of Local Government Board v. Arlidge(2) . In particular, since the decision in Ridge v. Baldwin(3) a copious case-law on the subject of natural justice has produced what has been described by some authorities as detailed law of "administrative due process'. in India also the

decisions of this Court have extended the horizons of the rules of natural justice and their application. I See, for instance the judgement of this Court in Kraipak and (1) [1936] 1 K.B. 337.

(2) [1915] A.C. 120.

(3) [1964] A.C. 40.

Others v. Union of India(1). The problem has also received considerable attention from various tribunals and committees set up in England to investigate the working of administrative tribunals and, in particular, the working of such administrative procedures as the holding of an enquiry by or on behalf of a Minister. In fact, a parliamentary committee known as the Franks Committee was set up in 1955 to examine this question. This Committee specifically dealt with the question of what is described as "Inspectors' Reports". The Committee mentions that the evidence that the Committee received, other than the evidence from Government departments was overwhelmingly in favour of "some degree of publication" of such reports. After summarising various arguments given in favour of as well as against the publication of the reports, the Committee recommended that "the right course is to publish the inspectors' reports". The Committee also recommended that the parties concerned should have an opportunity if they so desired to propose corrections of facts stated in the reports. It may be mentioned, however that these recommendations of the Committee were not accepted by the British Government. In our opinion it is not possible to lay down any general principle on the question as to whether the report of an investigating body or of an inspector appointed by an administrative authority should be made available to the persons concerned in any given case before the authority takes a decision upon that report. The answer to this question also must always depend on the facts and circumstances of the case. It is not at all unlikely that there may be certain cases where unless the report is given the party concerned cannot make any effective representation about the action that Government takes or proposes to take on the basis of that report. Whether the report should be furnished or not must therefore depend in every individual case on the merits of that case. We have no doubt that in the instant case non-disclosure of the report of the Investigating Committee has not can used any prejudice whatsoever to the appellants.

In this view of the matter We confirm the order of the Delhi High Court and dismiss this appeal. In the facts and circumstances of the case we direct that the parties will bear their respective costs.

S.C.

Appeal dismissed.

(1) [1970] 1 S.C.R. 457.