

Suraj Vs. State of Maharashtra and Others

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Court : Mumbai Aurangabad

Decided On : Sep-15-2016

Judge : R.M. Borde & A.I.S. Cheema

Appeal No. : Criminal Writ Petition No. 630 of 2015

Appellant : Suraj

Respondent : State of Maharashtra and Others

Judgement :

R.M. Borde, J.

1. The question that is referred for our consideration is, as to "whether the order passed by the State Government, in exercise of powers conferred under section 60 of the Maharashtra Police Act, 1951, confirming the order passed by the external authority under section 56 and 57 of the Maharashtra Police Act, 1951 can be construed as an 'order' within the contemplation of explanation to Rule 18 of chapter XVII of the Bombay High Court Appellate Side Rules, 1960".

2. In view of explanation to Rule 18 of The Bombay High Court Appellate Side Rules, the expression 'order', appearing in clauses 1 to 41 means an order passed by any judicial or quasi-judicial authority empowered to adjudicate under the above mentioned statute. Thus, it is essentially required to examine as to whether the order passed in an appeal by the State Government under section 60 of the

Maharashtra Police Act, 1951 is an order passed under quasi-judicial authority or whether it shall be construed as an administrative order.

3. An order directing externment out of Ahmednagar district is issued by the Sub-Divisional Magistrate, Ahmednagar, directing removal of petitioner from Ahmednagar district for a period of one year, in exercise of powers conferred under section 56(1)(A) (B) and subsection (2) of the Maharashtra Police Act, 1951 on 21.7.2014. An appeal preferred by the petitioner to the State Government under section 60 of the Act has been dismissed on 9.4.2015. The petitioner raised challenge to aforesaid adverse orders in the instant petition. When the petition was placed before learned Vacation Judge for consideration, the office raised an objection in respect of failure of the petitioner to file second set, since according to the Office, in view of the decision of the Division Bench in Criminal Writ Petition No.2265 of 2007 (reported in 2008 All M.R. Cr.2701) and also considering the observations made by the learned single Judge in Criminal Writ Petition No.560/2015, the criminal Writ petition is entertainable by the Division Bench. Learned Vacation Judge did not agree with the view expressed by the learned single Judge dealing with Cr. Writ Petition No.560/2015 and by order dated 6.5.2015 directed the Registry to place the matter before the Senior Most Judge at the bench, for issuance of proper directions.

According to the learned Vacation Judge, the challenge in the matter of Manjeet Singh V/s State of Maharashtra (reported in 2008 All M.R. pager 2701) raised before the division bench in Criminal Writ Petition No.2265/07 was in respect of an order passed by the externing authority, in exercise of powers conferred under section 57(1)(A) of the Maharashtra Police Act, 1951, directing externment of the petitioner therein. The petitioner, in the above referred matter, did not avail of the remedy of appeal to the State Government and the Writ petition was entertained by the Division Bench, in exercise of powers under articles 226 and 227 of the Constitution of India. According to the learned single Judge, in the instant matter, since the order under challenge is the one passed under section 60 of Maharashtra Police Act, 1951 by the Appellate Authority i.e. State Government, in view of sub-clause 22 of Rule 18(1) of Chapter XVII of the Bombay High Court Appellate Side Rules, the single Judge is empowered to finally dispose of the

application under articles 226 and 227 of the Constitution of India. Sub-clause 22 refers to order passed under the Maharashtra Police Act, 1951. Learned single Judge therefore is of the view that, the decision rendered by the State Government, in exercise of powers conferred under section 60 of the Maharashtra Police Act, 1951, being a quasi-judicial order, i.e. an 'order' within the meaning of explanation to rule 18(2) of Chapter XVII of the Bombay High Court Appellate Side Rules, the single Judge is invested with the powers to deal with the petition.

4. The learned single Judge of co-ordinate bench, in identical circumstances, dealing with Cr. Writ Petition No.560/2015 by order dated 30.4.2015, referring to the Judgment of the Division Bench in the matter of Manjeetsing (supra) had recorded that, the petition is entertainable by the Division Bench. The papers of instant petition were placed before the Honourable Acting Chief Justice, who directed constitution of the Division Bench to deal with the issue raised by the learned single Judge by order dated 6.5.2015.

5. In the matter of Manjeet Sing, the challenge was raised to an order passed by the externing authority in exercise of powers conferred under sections 56 and 57 of the Maharashtra Police Act, 1951 before the High Court directly, without availing the remedy of an appeal under section 60 of the Act. A preliminary objection as such, was raised on behalf of the State that, the order impugned therein having been passed in the quasi judicial proceedings, in terms of rule 18(23) of Chapter XVII of the Bombay High Court Appellate Side Rules, 1960, the matter will have to be heard and decided by the learned single Judge. The Division Bench took a view that, the order impugned neither discloses adjudication of any dispute, nor it discloses any pronouncement of decision on any right of the concerned party. It is merely a prohibitory action by the externing authority for maintenance of law and order, within the jurisdiction of the concerned authority. Undoubtedly, the proceedings require the authority to comply with the rule of fair play and offering an opportunity to the concerned party to put forth his say in the matter, before the person is externed from any area. Undoubtedly the action results in affecting the civil rights of the party. However, the action nowhere includes any decision on any right of the party by the concerned authority, nor any adjudication thereof, besides that the order is based on subjective satisfaction of the concerned authority.

6. The Division Bench, in the matter of Manjeetsingh dealing with the issue as to whether the decision of the authority can be said to be judicial or purely administrative, referred to the observations in the Judgment of the Supreme Court in case of Jasvant Sugar Mills Limited (AIR 1963 SC 677) as below:-

"....A judicial decision is not always the act of a judge or a tribunal invested with power to determine questions of law or fact; it must however be the act of a body or authority invested by law with authority to determine questions of disputes affecting the rights of citizens and under a duty to act judicially. A judicial decision always postulates the existence of a duty laid upon the authority to act judicially. Administrative authorities are often invested with authority or power to determine questions, which affect the right of citizens. The authority may have to invite objections to the course of action proposed by him, he may be under a duty to hear the objectors, and his decision may seriously affect the rights of citizens but unless in arriving at his decision he is required to act judicially, his decision will be executive or administrative."

The Division Bench referred to the Judgment in the matter of Province of Bombay versus Kausldas S. Advani and others (1950) SCN 222, wherein, it has been observed in para No.13 as under

".... In the performance of an executive act, the authority has certainly to apply his mind to the materials before him; but the opinion he forms is a purely subjective matter which depends entirely upon his state of mind. It is of course necessary that he must act in good faith, and if it is established that he was not influenced by any extraneous consideration, there is nothing further to be said about it. In a judicial proceeding, on the other hand, the process or method of application is different."

7. In the matter of Sandhi Mamad Kala Versus. State of Gujrat (1973) (14 GLR 384), the full bench of the Gujrat High Court has concluded that, the order passed under section 56 and the preventive action taken by taking recourse to provisions of the Maharashtra Police Act, 1951 under the relevant part of Maharashtra Police Act, 1951 is in exercise of administrative powers by the authority, as it is observed, where an administrative power is exercised by the

statutory authority and exercise of such power involves civil consequences to a person, the statutory authority must disclose the ground on which the exercise of powers is based.

8. When one speaks of ground, in this context, one means, the grounds as distinguished from the reasons in support of the grounds. Therefore, in case of externment orders, it would be sufficient to indicate the general nature of material allegations on which the externing authority has come to a conclusion that, the case fulfills particular part of section 56 and preventive action under that part should be taken by it.

9. Considering provisions of section 60 of Maharashtra Police Act, 1951, the State Government, dealing with an appeal is mandated to give a reasonable opportunity to the appellant to hear either personally or by a pleader, advocate, attorney and after such further enquiry, if any, as it may deem necessary, confirm, vary, cancel or set aside the order appealed against and make its order accordingly. The provisions providing for an appeal do not mandate the appellate authority to record the reasons in support of the final conclusion although the recording of reasons is desirable. What is required on the part of the State Government is to extend a reasonable opportunity to the appellant to hear either personally or by a pleader or by an Advocate or attorney and secondly the appellate authority shall, after such further enquiry, if any, as deemed necessary, may either confirm or vary or cancel the order, since the order passed by the externing authority is under challenge before the appellate forum i.e. the State Government, the material relied upon by the externing authority for issuance of the order is available with the State Government i.e. the appellate authority and it would be obligatory on the part of the appellate authority to pass an appropriate order on perusal of the record and after extending an opportunity of hearing to the appellant.

10. Merely because the appellate authority is required to determine the question affecting the civil rights of the appellant, that itself does not make the determination judicial. It is the duty to act judicially, which invests it with that character. What distinguishes an act judicial from administrative is therefore the duty imposed upon the authority to act judicially.

11. The decision of the Supreme Court in the matter of Board of Higher Secondary School and Intermediate Education, U.P. Alahabad versus G.Gupta reported in AIR 1962 SCC 1110 is relevant for consideration. Respondents in the aforesaid matter, objecting to the order passed by the appellant directed cancellation of the results and debarred them from appearing at the examinations. The High Court ruled in their favour. As such, the matter was carried by the Board of Higher Secondary and Intermediate Education to the Supreme Court. The question that was raised before the Apex Court was, as to whether there was any duty cast on the appellate committee, under the Act and the Regulations to act judicially and whether it is a quasi judicial body. What constitutes a quasi judicial act, is discussed in the matter of Province of Bombay V/s Kusaldas S. Advani referred supra, wherein, two tests are laid down :

"(I) That if a statute empowers an authority not being a Court in the ordinary sense, to decide the dispute arising out of a claim made by one party under the Statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a lis and prima facie, in absence of anything in the statute to the contrary, it is the duty of the authority to act judicially and the decision of the authority is quasi judicial act.

(II) That if a statutory authority has power to do any act which will prejudicially affect the subject, then although there are no two parties apart from authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be quasi judicial act provided the authority is required by the statute to act judicially. In other words, while the presence of two parties besides the deciding authority will prima facie and in the absence of any other factor impose upon the authority the duty to act judicially, the absence of two such parties is not decisive in taking the act of the authority out of the category of quasi judicial act if the authority is nevertheless required by the statute to act judicially."

12. In the matter of Subhash Kool V/s Daund Taluka Sahakari Dudh Utpadak Sangh (2006 (4) Bom. Cases Reporter 607), the matter in issue was, as to whether the order passed in exercise of powers under section 4 of the

Maharashtra Cooperative Societies Act, 1960 can be construed as a quasi judicial order. The Division Bench referred to various Judgments in paragraph Nos.6 to 14 which are quoted as below:-

"6. The contention of the appellant is that the order dated 14.10.2005 was not passed under any of the provisions of the said Act but merely in furtherance of the Government policy revealed from the said Government Resolution, Referring to clause Nos.10 to 13 r/w clause 6 of the said Government Resolution, it was argued that the act of opening of the bank account and the collection of milk in the specified areas are in terms of the Government policy comprised under the said Government Resolution and have nothing to do with the statutory provisions comprised under the said Act. The provisions of the above referred clauses apparently disclose the policy of the Government in relation to registration of the milk producers society. Besides the Clause 10 of the said Government Resolution specifically refers to the permission to be in consonance with the policy of the Government and not on the basis of the objective appreciation of the materials placed before such authority. Besides, at times there could be only one applicant before the authority and there may not be a contest in the form of lis between two parties for the purpose of registration of the milk producers society. Therefore, by no stretch of imagination it can be said that the order passed in such proceedings would be said to be a quasi judicial order."

"7. In (R. v. Manchester Legal Aid Committee) 1, reported in 1952 (1) All England Reports 480, it was held that when the decision of an administrative body is actuated in whole or in part by questions of policy, the duty to act judicially may arise in the course of arriving at such decision. Thus, if, in order to arrive at a decision, though the authority can entertain proposals and objections, but has to consider evidence, then there is a duty to act judicially in the course of such inquiry. It was specifically observed in the said decision that an administrative body in ascertaining facts or law may be under a duty to act judicially notwithstanding that its proceedings have none of the formalities of and are not in accordance with the practice of a Court of law. At the same time, it was also observed that, if an administrative body in arriving at its decision at no stage has before, it any form of lis and throughout has to consider the question from the point

of view of policy and expediency, it cannot be said that it is under a duty at any stage to act judicially."

"8. In the (Advani Province of Bombay v. K.S. Advani), reported in A.I.R. 1950 S.C. 222, it was held that the procedure for investigation of facts or for reception of evidence may vary according to the requirements of a particular case. There need not be any hard and fast rule in such matters, but the decision which the authority arrives at, must not be his subjective, personal or private opinion. It must be something which conforms to an objective standard or criterion laid down or recognized by law, and the soundness or otherwise of the determination must be capable of being tested by the same external standard. This is the essence of a judicial function which differentiates it from an administrative function; and whether an authority is required to exercise one kind of function or the other depends entirely upon the provisions of the particular enactment."

"9. In (Radeshym Khare and another v. The State of Madhya Pradesh and others) 3, reported in A.I.R. 1959 S.C. 107, it was held that three requisites are to be satisfied in order to classify an act of a body to be a judicial act and they are: the body must have legal authority, it must be to determine the questions affecting the rights of the parties and it must have the duty to act judicially. The Apex Court clearly ruled that the determining test to ascertain whether an act authorized by statute is a quasi-judicial act or an administrative act is whether the statute has expressly or impliedly imposed upon the statutory body the duty to act judicially. The question whether or not there is a duty to act judicially must be decided in each case with reference to the facts and circumstances of that particular case and the construction of the particular statute with the assistance of the general principles laid down in judicial decisions."

"10. I (Board of High School and Intermediate Education, others U.P. Allahabad v. Ghanshyam Das Gupta and others) 4, reported in A.I.R. 1962 S.C. 1110, it is held that though there is no express provision in the U.P. Intermediate Education Act or the Regulations framed thereunder casting a duty on the Examination Committee to act judicially, the manner of the disposal, which requires it to be on the basis of the material placed before it, and considering the serious effects of the decision of

the Examination Committee on the examinee concerned, it leads to the conclusion that a duty is cast on the Examination Committee to act judicially, particularly as it has to decide objectively certain facts which may seriously affect the rights and careers of the examinees, and therefore, though there are no two parties, apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority would yet be a quasi judicial act."

"11. In (Jaswant Sugar Mills Ltd., Meerut v. Lakshmi Chand and others), reported in A.I.R. 1963 S.C. 677, it was held that:

"The authority may have to invite objections to the course of action proposed by him, he may be under a duty to hear the objectors, and his decision may seriously affect the rights of the citizens but unless in arriving at his decision he is required to act judicially, his decision will be executive or administrative. Legal authority to determine questions affecting the rights of citizens, does not make the determination judicial; it is the duty to act judicially which invests it with that character. What distinguishes an act judicial from administrative is therefore the duty imposed upon the authority to act judicially."

"12. In (Dwarkanath v. Income-tax Officer, Special another Circle, D-ward Kanpur and another), reported in A.I.R. 1966 S.C. 81, it was held that:

"The provisions of a statute may enjoin on an administrative authority to act administratively or judicially. If the statute expressly imposes a duty on the administrative body to act judicially, it is a clear case of a judicial act. But the duty to act judicially may not be expressly conferred but may be inferred from the provisions of the statute. It may be gathered from the cumulative effect of the nature of the rights affected, the manner of the disposal provided, the objective criterion to be adopted, the phraseology used, the nature of the power conferred, of the duty imposed on the authority and other indicia afforded by the statute. In short, a duty to act judicially may arise in widely different circumstances and it is not possible or advisable to lay down a hard and fast rule or an inflexible rule of guidance."

"13. In (State of Gujrat and another v. M/s Krishna others Cinema and others), reported in A.I.R. 1971 S.C. 1650, the power to issue, revoke or suspend a license conferred upon the District Magistrate under the Bombay Cinemas (Regulation) Act, 1953 and the Rule of 1954 made thereunder was held to be exercisable on satisfaction of the concerned officer of certain objective conditions and being plainly quasi judicial in nature."

"14. In (Indian National Congress (I) v. Institute of Social Welfare and others), reported in (2002) 5 S.C.C. 685, while dealing with the question as to whether the Election Commission, in exercise of powers under section 29-A of the Representation of the People Act, 1951, acts administratively or quasi judicially, after taking stock of the decisions in (R. v. Dublin Corporation) 9, (1878) 2 Ir. R. 371, (R. v. Electricity Commrs.) 10, (1924), 1 KB 1: 1923 All ER Rep 150 (Province of Bombay v. Khushaldas S. Advani) 11, A.I.R. 1950 S.C. 222 held that the legal principles, laying down when an act of a statutory authority would be a quasi judicial act, which emerge from the aforesaid decisions are that (a) a statutory authority empowered under a statute to do any act, (b) which would prejudicially affect the subject, (c) although there is no lis or two contending parties and the contest is between the authority and the subject and (d) the statutory authority is required to act judicially under the statute, the decision of the said authority is quasi judicial. "

13. The Supreme Court in the matter of State of NCT of Delhi and another V/s Sanjeev alias Bitoo AIR 2005 SC 2080 has proceeded to construe the order passed under the Delhi Police Act, directing externment of the respondent therein as an administrative order. The order passed by the externing authority was a matter of challenge before the Appellate Forum, which was confirmed and the learned single Judge of Delhi High Court quashed the order passed by the Lieutenant Governor of the Delhi passed under section 51 of the Act. The Supreme Court proceeded on the footing that, the order of externment is administrative action. The observations of the Supreme Court in paras Nos.16, 18, 21 and 28 are relevant for consideration which are quoted as below:-

"16. The present trend of judicial opinion is to restrict the doctrine of immunity from judicial review to those classes of cases which relate to deployment of troupes, entering into international treaties, etc. The distinctive features of some of these recent cases signify the willingness of the Courts to assert their power to scrutinize the factual basis upon which discretionary powers have been exercised. One can conveniently classify under three heads the ground on which administrative action is subject to control by judicial review. The first ground is 'illegality', the second 'irrationality' and the third 'procedural impropriety'. These principles were highlighted by Lord Diplock in *Council of Civil Service Unions v. Minister for the Civil Services* (1984) (3) All. ER.935 (commonly known as CCSU case). If the power has been exercised on a non-consideration or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated. (See *Commissioner of Income-tax v. Mahindra and Mahindra Ltd* (AIR 1984 SC 1182). The effect of several decisions on the question of jurisdiction has been summed up by Grahame Aldous and John Alder in their book "Applications for Judicial Review, Law and Practice", thus:

"There is a general presumption against ousting the jurisdiction of the Courts, so that statutory provisions which purport to exclude judicial review are construed restrictively. There are, however certain areas of governmental activity, national security being the paradigm, which the Courts regard themselves as incompetent to investigate, beyond an initial decision as to whether the government's claim is bona fide. In this kind of non-justiciable area judicial review is not entirely excluded, but very limited. It has also been said that powers conferred by the Royal Prerogative are inherently unreviewable but since the speeches of the House of Lords in *Council of Civil Service Unions v. Minister for the Civil Services* this is doubtful. Lords Diplock, Scaman and Roskill appeared to agree that there is no general distinction between powers, based upon whether their source is statutory or prerogative but that judicial review can be limited by the subject matter of a particular power, in that case national security. Many prerogative powers are in fact concerned with sensitive, non-justiciable areas, for example, foreign affairs, but some are reviewable in principle, including the prerogatives relating to the civil

service where national security is not involved. Another non-justiciable power is the Attorney General's prerogative to decide whether to institute legal proceedings on behalf of the public interest. "

"17....."

"18. The Court will be slow to interfere in such matters relating to administrative functions unless decision is tainted by any vulnerability enumerated above; like illegality, irrationality and procedural impropriety. Whether action falls within any of the categories has to be established. Mere assertion in that regard would not be sufficient."

"19...."

"20..."

"21. The principles of judicial review of administrative action were further summarized in 1985 by Lord Diplock in CCSU case as illegality, procedural impropriety and irrationality. He said more grounds could in future become available, including the doctrine of proportionality which was a principle followed by certain other members of the European Economic Community. Lord Diplock observed in that case as follows:

".... Judicial review has I think, developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case-by-case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognized in the administrative law of several of our fellow members of the European Economic Community. -

"Lord Diplock explained 'irrationality' as follows:

"By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness'. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

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"28. In the case as noted above, all the relevant aspects were considered and High Court was not justified in holding to the contrary. The Appeal was heard primarily to clarify certain doubtful areas. In view of some divergent views expressed by different Benches of the High Court, though the period of externment was over."

14. In order to determine whether a power is an administrative power or a quasi judicial power, one must look to the nature of the power conferred, the persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. (A.K. Kraipak versus Union of India (1970) 1 SCR 457). In the matter of Board of High School and Intermediate Education, U.P. versus Ghanshyam Das Gupta (AIR 1962 SC 1110), it is observed,

"where the statute in question is silent as to the manner in which the power conferred should be exercised by the authority acting under it, the exercise of power will depend on the express provisions of the statute read along with the nature of rights affected, the manner of disposal provided, the objective criteria, if any, to be adopted, the effect of the decision on the persons affected and other indicia afforded by the statute."

It would, therefore, be seen that, where a statutory authority is given power to make decision or perform an act which affects rights of individuals or imposes obligation on them, the duty to act judicially need not be expressly super imposed on the statutory authority. It may be inferred from the nature of the power conferred, its impact on the right of the citizen and such other relevant circumstances. While examining the character of the order as judicial or administrative, one has to consider as to whether a decision is based solely or exclusively on the application of objective standards to ascertain facts but if it is founded on subjective satisfaction of the statutory authority, the duty to act judicially would be clearly excluded and the decision would be an administrative decision as opposed to quasi judicial decision. The basic test, therefore, for distinguishing between an administrative decision and a quasi judicial decision is, whether the decision of the statutory authority is based solely and exclusively on the application of legal principles of objective standards to the facts found on the material placed before it, without any extraneous considerations or it is guided by consideration of policy or expediency and is based on the subjective satisfaction of the statutory authority.

15. The Honourable Supreme Court considered the scheme of sections 56 to 61 of the Bombay Police Act, (now The Maharashtra Police Act) in the matter of Hari Gavali versus Deputy Commissioner of Police (1956 Cri LJ 1104) and Bhagubai Dullabhabhai Bhandari Versus The District Magistrate, Thane. In Hari Gawali's matter, the Honourable Supreme Court quoted with approval observations of the Chief Justice Patanjali Shastri in the matter of The State of Madras versus V.G. Row (1952 Cri LJ 966), wherein, it has been observed that, the externment of individuals, like preventing detention, is largely precautionary and based on suspicion. The Supreme Court has emphasized the fact that, under the relevant provisions, the question has to depend upon the subjective satisfaction of the officer or authority concerned, either in the first instance or in the appeal. It is clear that, sections 56 and 57 under which externment orders could be passed in different sets of circumstances mentioned therein, in terms provided that, the officer passing the order has to form his own opinion and has to satisfy himself about the existence of circumstances that warrant issuance of order in case of given individual, while the tenor of section 60 suggests that, the State Government

as the appellate authority has to consider the matter subjectively. Subsection 3 of section 60 empowers the State Government to make such further enquiry as it deems fit before confirming, varying or setting aside the order passed by invoking sections 56 and 57.

16. The learned single Judge, while considering the nature of the proceedings under sections 56 and 57 of the Bombay Police act, in the matter of Nabukhan Mohammed Hussain Khan versus S. Ramamurthi (1971 Mh. L.J. 633), in paragraph No.9 of the Judgment, on consideration of the Judgments of the Honourable Supreme Court referred to above, observed as below:-

"..... such disclosure of the process of reasoning would, in my view, defeat the very object with which proceedings under the said special provisions are undertaken. Secondly, under the relevant provisions of the Act, nor merely the officer passing the order but also the appellate authority acting under section 60 of the Act has to decide the question on his or its subjective satisfaction. If, therefore, the officer concerned has to decide the matter subjectively and has to form his subjective opinion as to whether on the material placed before him the proposed externment order should be passed or not, it would be incongruous to require the said officer to disclose his reasons or process of reasoning by which he has satisfied himself about the veracity or otherwise of the allegations contained in notice under section 59. The appellate authority also, it is clear from the observations of the Supreme Court in Hari Gawali's case, has to decide the matter in appeal subjectively by applying its own mind to all the materials that would be placed before it....."

17. The necessity of recording reasons by the external authority or by appellate authority while passing the order, has also been considered in various Judgments. The Supreme Court has considered the peculiar nature of the proceedings, which are necessarily as preventive measure and looking to provisions of section 59 of the Act, has overruled the objections as regards necessity of recording reasons. The provision of section 59 itself imposes limited obligations on the authority to explain to the proposed externee of the general nature of material allegations against him. Considering the nature of proceedings, the complete disclosure of the

material gathered by the law enforcement authority need not be disclosed to the proposed externee. The Supreme Court in the matter of Pandharinath Shridhar Rangnekar V/s. Dy. Commissioner of Police, State of Maharashtra (AIR 1973 SC 630) has observed in paragraph No.9 of the Judgment, as quoted below:-

"9. These provisions show that the reasons which necessitate or justify the passing of an externment order arise out of extraordinary circumstances. An order of externment can be passed under cl.(a) or (b) of Section 56, if, and only if, the authority concerned is satisfied that witnesses are unwilling to come forward to give evidence in public against the proposed externee by reason of apprehension on their part as regards the safety of their person or property. A full and complete disclosure of particulars such as is requisite in an open prosecution will frustrate the very purpose of an externment proceedings. If the show-cause-notice were to furnish to the proposed externee concrete data like specific dates of incidents or the names of persons involved in those incidents, it would be easy enough to fix the identity of those who out of fear of injury to their person or property are unwilling to depose in public. There is a brand of lawless element in society which it is impossible to bring to book by established methods of judicial trial because in such trials, there can be no conviction without legal evidence. And legal evidence is impossible to obtain, because out of fear of reprisals witnesses are unwilling to depose in public. That explains why Section 59 of the Act imposes but a limited obligation on the authorities to inform the proposed externee " of the general nature of the material allegations against him." That obligation fixes the limits of the correlative right of the proposed externee. He is entitled, before an order of externment is passed under Section 56, to know the material allegations against him and the general nature of those allegations. He is not entitled to be informed of specific particulars relating to the material allegations."

18. In para No.14 of the Judgment, the Supreme Court has considered the issue of recording reasons by the appellate authority i.e. State Government. It is observed thus:-

"14. The third and fourth points have the same answer as the second point just dealt with by us. Precisely for the reasons for which the proposed externee is only

entitled to be informed of the general nature of the material allegations, neither the externing authority nor the State Government in appeal can be asked to write reasoned order in the nature of a Judgment. If those authorities were to discuss the evidence in the case, it would be easy to fix the identity of witnesses who were unwilling to depose in public against the proposed externee. A reasoned order containing a discussion of the evidence led against the externee would probably spark off another round of tyranny and harassment."

19. It is thus clear that, the scheme of the Act does not insist the externing authority to make disclosure of the material collected against the externee, on which reliance is to be placed, except general nature, that too, of material allegations, while taking preventing measures. Apart from this, there is also no obligation on the externing authority or the appellate authority to record the reasons. The order of externment is founded on the subjective satisfaction of the statutory authority and as such, the duty to act judicially would be clearly excluded and the decision would be an administrative decision as opposed to quasi judicial decision.

20. The issues, as to whether the authority while passing an order of externment under section 56 of the Maharashtra Police Act, 1951 is bound to give reasons in support of the order and as to whether the State Government exercising powers in appeal against the order of externment under section 60 of the Act is bound to disclose reasons in support of its order, has been considered by the full bench of the Gujrath High Court in the matter of Sandhi Mamad Kala versus State of Gujrath (1973 (14) GLR 384). To the issue as to whether the order of externment can be construed as an administrative or quasi judicial, the full bench of the Gujrath High Court has recorded the finding that functions discharged by the externing authority clearly suggest that, it is an administrative and not a quasi judicial function. In paragraph Nos.9, 10 and 11 of the Judgment, the full bench has observed thus:-

"9. It is clear on a plain reading of Section 56, in the context of the provisions in which it occurs, that it is a preventive measure. It undoubtedly involves restraint or hardship on individuals who are subjected to its drastic rigour but it does not

partake in any way of the nature of punishment. It is taken by way of precaution to prevent mischief to the community. The section is, as pointed out by the Supreme Court in *Hari Gawali v. Deputy Commissioner of Police* MANU/SC/0010/1956: 1956 Cri LJ 1104, "based on the principle that it is desirable in the larger interests of society that the freedom of movement and residence of a comparatively fewer number of people should be restrained so that the majority of the community may move and live in peace and harmony and carry on their peaceful avocations untrammelled by any fear or threat of violence to their person or property". The measure contemplated by the section is not punitive but preventive and since every preventive measure is based on the principle that a person should be restrained from doing something which, if left free and unfettered, it is reasonably probable he would do, it must necessarily proceed in all cases, to some extent, on suspicion or anticipation as distinct from proof."

"Patanjali Shastri C.J., pointed out in *the State of Madras v. V.G. Row* MANU/SC/0013/1952: 1952 Cr.LJ 966, "externment of individuals, like preventive detention, is largely precautionary and based on suspicion" and to these observations may be added the following words uttered by the learned Chief Justice in that case with reference to the observations of Lord Finlay in *Rex v. Halliday* (1917) A.C. 260, namely, that "the Court is the least appropriate tribunal to investigate into circumstances of suspicion on which such anticipatory action must be largely based". This being the nature of proceeding, it is impossible to conceive how, it could ever be regarded as quasi judicial. The circumstances to be inquired into by the externing authority would be, if not wholly, at least to some extent, circumstances of suspicion and the question to be considered by the coexisting authority would be whether these circumstances are such as require taking of anticipatory action. These are not matters which are amenable to judicial approach. They cannot be assessed by any objective standards."

"10. We must then proceed to consider the nature of the function discharged by the externing authority under section 56. No so far as the portion of that section relevant for our purpose is concerned, it is clear on a plain grammatical construction of its language, that in order to attract its applicability, two conditions must be satisfied. First, the externing authority must be satisfied that the

movements or act of any person are causing or calculated to cause alarm, danger or harm to person or property or that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapters XII, XVI or XVII of the Indian Penal Code or in the abetment of any such offence and secondly, in the opinion of the externing authority, witnesses would not be willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property. Now these matters in respect of which the externing authority is required to be satisfied before an order of externment can be passed by it, are not all matters susceptible of objective determination. The determination of these matters is deliberately left by the Legislature to the subjective satisfaction of the externing authority. The externing authority may be the Commissioner or the District Magistrate or the Sub-Divisional Magistrate, specially authorised in this behalf by the State Government. Each of these officers is charged with the duty of maintaining law and order and preventing commission of offences and for this reason, the power conferred under Section 56 which is a power in aid of this function, is advisedly entrusted to these officers."

"These officers acting as externing authority would also, by reason of their long experience and special expertise, be best fitted to decide whether the movements or acts of any person are calculated to cause alarm, danger or harm to person or property or there are reasonable grounds for believing that such person is about to be engaged in the commission of offence. Moreover, even after the externing authority is satisfied about these matters, it would still have to consider whether any preventive action should be taken against the person concerned under the section. The externing authority would have to take into account various considerations such as the nature of the activities of the person concerned, the degree of probability of continuance of such activities, the gravity of the apprehended harm, the need for public security or maintenance of law and order and the requirement of public interest. The externing authority would also have to consider what preventive action should be adopted against the person concerned, or, in other words, what is the extent to which his freedom should be curtailed. Section 56 places two alternatives before the externing authority so far as the

nature of the action to be taken by it is concerned. The externing authority may direct such person so to conduct himself as shall seem necessary in order to prevent violence and alarm or extern him from the areas within the limits of his jurisdiction or such area and any distinct or district or any part thereof contiguous to it."

"The externing authority would have to choose between these two alternatives and decide what in the circumstances of the case is the better course to adopt in order to mitigate the evil. These are all matters which must necessarily be decided by the externing authority in its subjective satisfaction. They are by their very nature not amenable to objective determination and could not be intended to be judged by objective standards. They are essentially matters which have to be administratively determined for the purpose of taking preventive action. To hold that these matters must be judicially determined would be to introduced an element which would lob the power of externment of much of its efficacy as a preventive measure. Moreover, it is difficult to imagine that the Legislature could have ever intended that the decision of the externing authority on these matters should be liable to be subjected to judicial scrutiny, which it would necessarily be, if it were held to be a quasi judicial decision. Such a decision in exercise of a power of this kind could hardly be a fit subject matter for judicial reviewability. The analysis of the function to be discharged by the externing authority also, therefore, clearly suggests that it is an administrative and not a quasi judicial function."

"11. This conclusion becomes almost irrefutable when we turn to the procedure prescribed in Section 59 for making an order of externment under Section 56. Section 56 requires that the externing authority or any officer above the rank of an inspector authorised by that officer shall inform the person in writing of the general nature of the material allegations against him and give him a reasonable opportunity of tendering an explanation regarding them and if such person wants to examine any witnesses on his behalf, he is given a right to do so, provided, of course, this right is not abused by an attempt to examine witnesses only for the purpose of vexation or delay. The person concerned is also given a right to appear before the officer holding the inquiry by an advocate or attorney for the purpose of tendering his explanation and examining the witnesses produced by him. But here

the right of audi alteram partem given to him ends. He is not entitled to know the particulars of the material allegations against him nor is he entitled to be told what are the witnesses who have given statements against him or what are the contents of those statements. He is also not entitled to have those witnesses produced before the inquiry officer for the purpose of cross-examination. He is completely left in the dark so far as these matters are concerned and the only thing which is furnished to him is "the general nature of the material allegations against him".

"This is, of course, necessary, because, otherwise, if the names of the witnesses were to be disclosed and they were to be produced for cross-examination, the object and purpose of Section 56 would be wholly frustrated. It is because witnesses are not prepared to depose in public against the proposed examinee and on that account it is not possible to take action against him under the ordinary law of the land, that preventive action is sought to be taken against him under Section 56. The disclosure of the names of the witnesses and their statements or furnishing of particulars of the material allegations against the proposed examinee is, therefore, in the very nature of things, impossible. This was pointed out by the Supreme court in Hari Gawali v. Deputy Commissioner of Police (supra) where it was said:-

"The grounds available to an examinee had necessarily to be very limited in their scope, because if evidence were available which could be adduced in public, such a person could be dealt with under the preventive sections of the Code of Criminal Procedure, for example, under Section 107 or Section 110. But the special provisions now under examination proceed on the basis that the person dealt with under any of the sections 55, 56 or 57 is of such a character as not to permit the ordinary laws of the land being put in motion in the ordinary way, namely, for examining witnesses in open court who should be cross-examined by the party against whom they were deposing. The provisions we are now examining are plainly intended to be used in special cases requiring special treatment, that is, cases which cannot be dealt with under the preventive sections of the Code of Criminal procedure."

"If this is the procedure to be followed by the external authority before making an order of externalment, does it not clearly indicate that the function of the external authority is an administrative function ? It is impossible to conceive of any quasi judicial process in which the basic right to correct or controvert any statement prejudicial to his view is denied to the person against whom the process is adopted. The right to correct or controvert any relevant statement brought forward to the prejudice of a person is an essential procedure attribute of a quasi judicial function and where this is lacking, the function cannot possibly be regarded as quasi judicial. The argument of the petitioners was that merely because a certain area out of the principles of natural justice is taken out by the procedure prescribed section 59, it does not follow that the function of the external authority is an administrative function. There are many instances, said the petitioner, where even in cases of exercise of admittedly quasi judicial function, some one or more of the rules of natural justice may be found to be excluded by the statute or statutory rules. What is the extent to which the rules of natural justice apply to exercise of a quasi judicial power would always depend on the statute which confers such power on the statutory authority or on the rules made under that statute. Therefore, merely because some are out of the rules of natural justice is excluded by the procedure prescribed in Section 59, it should not necessarily lead to the inference that the function of the external authority is an administrative function."

"Now it is undoubtedly true that the rules of natural justice are not such as can be reduced to any formula, exclusive or inclusive, which can have universal application to every kind of inquiry. What particular rules of natural justice should apply in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the inquiry is held and the constitution of the statutory authority appointed for that purpose. Vide *Gondalal v. State* (1963) 4 G.L.R. 326 and *A.K. Kraipak v. Union of India* MANU/SC/0427/1969: (1970)1 SCR 457. If, therefore, an Inroad is made into the rules of natural justice by a statutory provision or rules made under a statute, that would not affect the character of the function, if otherwise, it is a quasi judicial function. But the question would always be, what is the extent of the inroad made by the statutory provision or rules. If the inroad is slight, it might leave the essential

character of the function unscathed. But the position would be different if the inroad is large. Where the inroad is such that it destroys the basic and essential procedural attribute of a quasi judicial function, it would not be possible to characterise the function as quasi judicial. The question in these cases is always one of degree. The nature of function has to be determined on a conspectus of all the considerations and there, the absence of a procedural attribute which is basic and essential to a quasi judicial function would be a very important determinative factor. Here in the present case, there is practically no opportunity afforded to the proposed externee to correct or controvert any statements which might have been made prejudicial to him. What we may call the other side of the case is completely shut out to him. That, in our opinion, is the very negation of a quasi judicial process."

"It is indeed difficult to imagine a quasi judicial process where a whole record is excluded from the scan and scrutiny of a party to the inquiry. If the function of the externing authority were quasi judicial function, the order of externment would be a quasi judicial order amenable to judicial review and this Court would be entitled to call for the record of the case in order to examine the validity of the order of externment. But how would this Court exercise its power of judicial review, if a substantial part of the record is withheld from it ? It is obvious that the statements of the witnesses who have deposed against the proposed externee cannot be disclosed to this Court because, if the Court were to look at them, they would also have to be given to the proposed externee and that would expose the witnesses and defeat the object and purpose of adopting preventive action under Section 56. It would not, therefore, be open to this Court to require the externing authority to disclose the statements of the witnesses and that would clearly indicate that the order of externment was not intended to be amenable to the power of judicial review. We have, in the circumstances, no doubt that the function discharged by the externing authority under Section 56 is an administrative function as opposed to a quasi judicial function."

"This would appear to be clear on principle but, even apart from principle, there are observations of the Supreme Court in *Hari Gawali v. Deputy Commissioner of Police* (Supra) which clearly support this conclusion. The Supreme Court, after

referring to various matter which may have to be considered by the externing authority while making an order of externment, pointed out in Hari Gawali v. Deputy Commissioner of Police "These are all matters which cannot be examined by this Court in an objective way, when the legislature has provided for the subjective satisfaction of the authorities or officer who have been entrusted with the duty of enforcing those special provisions of the Act". If these matters are left to the subjective satisfaction of the externing authority, then obviously, as pointed out above, the function discharged by the externing authority must be held to be an administrative function. If that be so, the necessity of giving reasons cannot be imported in an order of externment on the basis that it is a quasi judicial order."

21. The argument that, while exercising appellate powers, the nature of proceedings in the appeal are necessarily a quasi judicial proceedings and the State Government is under duty to act judicially in disposing of the appeal, has also been considered by the full bench of the Gujrath High Court. The State Government is bound to deal with the appeal in the same manner, as the externing authority and shall have to take into account the material available before the externing authority in support of its order and has to satisfy itself. Legislature has itself left the matter to the subjective satisfaction of the authority, which surely include the State Government. In paragraph Nos.18 and 19 of the Judgment, the full bench of Gujrath High Court has observed thus:-

"18. That takes us to the next question whether an appeal against an order of externment is a quasi judicial proceeding and the State Government is under a duty to act judicially in disposing of the appeal. Now all the reasons which have weighed with us in taking the view that the power exercised by the externing authority in making an order of externment is administrative and not quasi judicial are wholly applicable to the determination of the question whether the power exercised by the State Government in disposing of the appeal is quasi judicial. The State Government as the appellate authority is bound to examine the question before it in the same manner as the externing authority by taking into account various consideration of policy or expediency which are not matter of objective assessment but which rest on the subjective satisfaction of the deciding authority."

"The nature of the power and the manner of its exercise do not change when the proceeding goes higher from the external authority to the State Government. Then again the State Government can look at the part of the record consisting of the statements of the witnesses, without disclosing it to the proposed external and decide the appeal on the basis of such record. The same objection as regard judicial reviewability by reason of a part of the record being withheld from the proposed external would arise also in the case of an appeal as in the case of the proceedings before the external authority and the same impracticability of giving reasons without disclosing a part of the record to the proposed external which affects the exercise of power by the external authority, would also affect the disposal of appeal by the State Government. We are unable to see how the State Government could be regarded as exercising quasi judicial power while disposing of the appeal. In fact, as pointed out by the Supreme Court in the passage quoted by us from the Judgment in *Hari Gawali v. Dy. Commissioner of Police* (supra), the determination of various matters necessary for the purpose of deciding whether, and if so, what preventive action should be taken, is left by the Legislature to the subjective satisfaction of the authorities which include the State Government."

"19. The petitioner, however, relied on the decision of the Supreme Court in *Nagendra Nath v. Commissioner of Hills Division*, to which we have already referred in another connection. We have set out the contention which was urged on behalf of the Commissioner before the Supreme Court in that case and we need not reiterate it once again. The Supreme Court while dealing with this contention made the following observations which are strongly relied upon on behalf of the petitioner:-

"Where there is a right vested in an authority created by statute, be it administrative or quasi judicial, to hear appeals and revisions it becomes its duty to hear judicially, that is to say, in an objective manner, impartially and after giving reasonable opportunity to the parties concerned in the dispute, to place their respective cases before it."

"The Supreme Court also quoted with approval two passages, one of Lord Haldane and the other of Lord Moulton in *Local Government Board v. Arlidge*

(1915) A.C. 120 in support of their observations. Now prima facie these observations might seem to suggest that wherever an appeal is provided against an order, the appellate authority, whether it be administrative or quasi judicial, is under a duty to act judicially in disposing of the appeal. But if we look at the judgment of the Supreme Court a little more closely, it will be clear that the Supreme Court never intended to lay down any such absolute proposition. The Supreme Court, as a matter of fact, pointed out in an earlier part of the judgment that if, "the matter had rested only with the provisions of the Act, apart from the rules made under Section 36 of the Act, much could have been said in support of "the contention that the several authorities concerned with the settlement of excise shops which included the appellate authorities were merely administrative bodies, and, therefore not amenable to the writ jurisdiction of the High Court."

"But, according to the Supreme Court, the rules made under Section 36 of the Act made a vital difference by approximating the procedure to be followed "by the Appellate Authorities, to the regular procedure observed by courts of justice in entertaining appeals" and the function exercised by the appellate authorities was, therefore, regarded as a quasi judicial function. It will thus be seen that the Supreme Court relied considerably on procedural attributes for the purpose of coming to the conclusion that the appellate authorities were exercising quasi judicial powers. It cannot, therefore, be laid down as an absolute proposition that whenever there is a right of appeal given against an order made by a statutory authority, the appellate authority would be under a duty to act judicially in disposing of the appeal. The question whether the State Government is exercising a quasi judicial power or an administrative power in disposing of the appeal would depend on various considerations to which we have already adverted. This decision of the Supreme Court does not compel us to reach a conclusion different from the one we are otherwise inclined to take. We accordingly hold that the State Government disposing of an appeal against an order of externment is not under a duty to act judicially and does not exercise a quasi judicial power. No obligation to give reasons can, therefore, be imported in the exercise of the power of the State Government in disposing of the appeal."

22. Thus from the analogy derived from the Judgments of the Honourable Supreme Court as well as the decision of the full bench of Gujrath High Court, it is clear that, the authority dealing with externment proceedings i.e. the Sub-Divisional Magistrate or the Deputy Commissioner, as the case may be or the State Government, dealing with the appeal against the order of externment, are expected to pass the order, which shall be founded on the subjective satisfaction of the statutory authorities and that, the duty to act judicially would be clearly excluded and that the decision would be an administrative decision, as opposed to quasi judicial decision. As has been observed by the Supreme Court in the Judgments referred to above, there is no obligation to record reasons, which can not therefore be imported in section 60 of the Bombay Police Act, the appellate power exercisable by the State Government while disposing appeal or by the externing authority, while passing the initial order.

23. So far as the first question as regards the nature of the order passed under section 60 of the Maharashtra Police Act by the State Government is concerned, it shall have to be construed as an administrative order and not quasi judicial one.

24. The question as to whether the said order would be "an order" within meaning of explanation to Rule 18 of Chapter XVII of the Bombay High Court Appellate Side Rules, is answered in the negative. The necessary consequence thereof is that, the writ petition challenging the order passed by the State Government under section 60 of the Maharashtra Police Act does not fall within the prescription of 'order' under explanation to Rule 18 of Chapter XVII of the Bombay High Court Appellate Side Rules and as such is not covered by clause 23 of Chapter XVII Rule 18.

25. In the instant matter, since the period prescribed under the impugned order, directing externment of the petitioner has come to an end, the petition is rendered infructuous and as such the criminal writ petition stands disposed of having been rendered infructuous.