2024 INSC 252

REPORTABLE

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4806 OF 2011

KRISHNADATT AWASTHY .....APPELLANT(S)

VERSUS

STATE OF MADHYA PRADESH & ORS. .....RESPONDENTS

WITH

CIVIL APPEAL NO. 4807 OF 2011

SUMER SINGH .....APPELLANT(S)

VERSUS

STATE OF MADHYA PRADESH & ORS. .....RESPONDENTS

CIVIL APPEAL NO. 4808 OF 2011

SMT. RAMRANI SINGH .....APPELLANT(S)

VERSUS

STATE OF MADHYA PRADESH & ORS. .....RESPONDENTS

CIVIL APPEAL NO. 4809 OF 2011

SMT. SHYAMA DEWEDI & ORS. .....APPELLANT(S)

VERSUS

STATE OF MADHYA PRADESH & ORS. .....RESPONDENTS

J U D G M E N T

J.K. MAHESHWARI J.

1. After perusal of the judgment and view expressed by esteemed brother Justice K.V. Viswanathan, in the facts of this case, I am not in a position to agree with the reasoning and conclusions as drawn by him, for which detailed reasons supporting my view is in succeeding paragraphs.

2. As per the facts of the case, the controversy in the present case revolves around selection and appointment for the post of Shiksha Karmi Grade-III in Janpad Panchayat Gaurihar, District Chhatarpur in the State of Madhya Pradesh which relates back to the year 1998. The appellants who are ten (10) in number and four (4) other candidates, in total fourteen (14) candidates who were close relatives of the members of selection committee, had been placed in the final selection list of 249 Shiksha Karmi Grade-III. For ready reference the appellants and their relations are described in a tabular form as under: -

Sl. No.	Candidate	Committee Member	Relationship
1.	Krishnadatt Awasthy	Pushpa Dvivedi (Chairman)	Maternal Nephew
2.	Shyama Dvivedi	Pushpa Dvivedi (Chairman)	Sister-in-law (Nanad)
3.	Prabha Dvivedi	Pushpa Dvivedi (Chairman)	Sister-in-law (Devrani)
4.	Rekha Avasthi	Pushpa Dvivedi (Chairman)	Niece
5.	Prabhesh Kumari	Pushpa Dvivedi (Chairman)	Niece
6.	Devendra Awasthi	Pushpa Dvivedi (Chairman)	Nephew (Sister's son)
7.	Sumer Singh	Swami Singh (Member)	Son
8.	Ramrani Singh	Swami Singh (Member)	Daughter in law
9.	Gita Rawat	Pushpa Dvivedi (Chairman)	Sister
10.	Rita Dwivedi	Pushpa Dvivedi (Chairman)	Sister of Vibha who is Devrani of Chairman

Thus, from the table above, the relationship of appellants with the members of the selection committee is apparent and un-disputed.

3. It is not inapposite to mention that at the previous stage of selection, after preparation of the select list of Shiksha

Karmi Grade-III by Janpad Panchayat, Gaurihar, the same was challenged by one Kunwar Vijay Bahadur Singh Bundela by filing an appeal before the Collector, District Chhatarpur, who vide order dated 31.08.1998 quashed the selection list and remitted the matter for fresh selection. Pursuant to the directions, fresh selection was conducted and the final selection list consisting of 249 candidates including the names of appellants and four others was published on 16.09.1998. As per the said select list appointment orders were issued on 17.09.1998 appointing the candidates including the present appellants. Being aggrieved by the selection and appointment of the appellants who were near relatives of members of the selection committee and non-selection of Smt. Archana Mishra who was an aspirant, filed an appeal before the Collector, District Chhatarpur on various grounds including the allegations as quoted in paragraph 14 of the order passed by esteemed brother. It is not in dispute that the present appellants were not impleaded as parties in the appeal before the Collector, though Chief Executive Officer Janpad Panchayat, Block Development Education Officer

and the President of the Education Committee were arrayed as parties.

4. On issuing notice in the said appeal, the counter affidavit was filed by the Chief Executive Officer, Janpad Panchayat, attaching the certificate given by the Sarpanch of the Panchayat acknowledging the relationship of the selected/appointed candidates with the members of selection committee. As per the material placed, the findings recorded by the Collector are relevant, which is reproduced as under: -

> "3. ……So far as the question of selection of the relatives of the members of Select Committee is concerned, it is proved that the members of the Committee have selected their relatives and the same is against the principles of law. The facts given in the appeal have been admitted by the Respondent Janpad Panchayat in its Reply that the Committee President Smt. Pushpa Dvivedi's sister-in-law (Nanad) Shyama Dvivedi daughter of Shiv Dass Dvivedi, her sister-in-law (Devrani) Vibha Dvivedi wife of Kailash Dvivedi, two sisters of the Devrani (Vibha Dvivedi) of the Committee President namely Kum. Rashmi Dvivedi and Km. Rita Dvivedi have been appointed at Serial No. 9 and 4 of the Select List. The certificate of Sarpanch has been attached by the Respondent as evidence in this regard. The Respondent has also admitted that Devender Kumar Avasthi son of Brij Bhushan Avasthi, Rekha Awasthi, daughter of Brij Bhushan Awasthi, Pravesh Kumar, daughter of Brij Bhushan Awasthi are also the maternal niece of the Chairman of the Selection Committee. Their

Selection No. is 176 and 30 respectively. Chief Executive Officer has also stated in his reply that Summer Singh, son of other member Swami Singh Sengar, daughter in law Ram Rani, wife of Rudra Pratap Singh, nephew Rajesh Singh Chauhan, son Som Prakash Singh have also been selected. Facts which have been admitted by the Chief Executive Officer in his reply, they are reliable. Chief Executive Officer has admitted in his reply Exh.-A that selection of Badri Prasad, son of Bhagwat Prasad has been made. He has been allocated 9 marks for experience, but the Experience Certificate is not found enclosed with his application. It is also proved from the reply submitted by District Panchayat that selection of Shri Krishan Dutt Awasthi, son of Sita Ram Awasthi has been made at No. 64. He is also the maternal nephew of the Chairman and at Appointment Order No. 90 selection of Geeta Rawat, - Ganga Prasad Rawat has been made. She is the real sister of Chairperson. Committee of District Panchayat has made the selection of his relatives in contravention of various Sections of MP Panchayat Raj Act. It has been restricted in Section 40(C) of Panchayat Raj Act that any of the office bearers shall not cause financial gain to his relatives. As per Section 40(C), act of any of the office bearers of Panchayat to get job for his any relative in Panchayat through his direct or indirect influence or to act to cause financial benefit to any of his relatives like carrying out of any work of the Panchayat through any kind of contract shall amount to gross negligence towards duties under the above Section and in such circumstances, if it is done, then office bearers of the Panchayat could be terminated. In Section 100 of the Act, acquisition of any interest by any member office bearer or employee directly or indirectly in any contract or any employment made is strictly prohibited. In the present case, members of the Committee of the District Panchayat have made the

> selection of their relatives in order to cause benefit to them in the entire selection procedure, which is contrary to the principles settled by the law. Any person cannot be the judge for himself. There is a principle of natural justice that judge should see all persons with same eye. Selection of the relatives of the members by the members has definitely caused the discrimination with other members. In such circumstances, selection of the relatives of the District Panchayat is not lawful, which is liable to be cancelled…
>
> As per the facts given in the case like respondents have admitted in the above paras that selection of the relatives of the members has been made in illegal manner, selection of these relatives is cancelled and the appointment so made is terminated."
>
> (emphasis supplied)

From the above observation it can be safely perceived that the members of the selection committee appointed the appellants who were their relatives and had given benefit to them which is arbitrary and discriminatory therefore vitiated.

5. The appellants assailed the said order of Collector by filing revision under Section 5 of the Madhya Pradesh Panchayat (Appeal and Revision) Rules, 1995 (hereinafter referred to as "A&R Rules"). It was submitted that quashment of their appointment by the Collector without joining them and affording an opportunity is in violation of the Principle of

Natural Justice. The appellants in the memo of revision had not denied their relationships with the members of the selection committee and only averred that "*it is the wrong allegation that the appointments of the petitioners have been cancelled by the Collector, Chhatarpur on the charge of being relatives.*"

6. The revisional authority (Commissioner Revenue) dismissed the revision vide order dated 14.03.2000, in para (6) of the order it was observed that the selection of the appellants is contrary to Section 40(C) of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereafter referred to as 'Adhiniyam'). The plea of non-joinder and not affording an opportunity of hearing was not found appealing because the relationship of the appellants with the members of the selection committee, gave undue favour to them and the same was not denied. The revisional authority was of the opinion that in the facts and circumstances of the case, not joining the appellants did not prejudice them. Further, the violation of principle of bias attracts in this case which vitiates the selection.

However, in absence of any prejudice, decision of the Collector is not required to be altered with.

7. Aggrieved by the order of revisional authority, appellants filed a writ petition under Article 226 of the Constitution of India before the High Court. Learned Single Judge with intent to afford an opportunity allowed the appellants herein to inspect the records of selection through their counsel, as spelt out in paragraph 13 of the order of Single Judge which is reproduced as under: -

> "13. During the course of hearing of this petition, as ordered earlier the Chief Executive Officer of the Janpad Panchayat was present with the original records of selection. Shri M.L. Choubey, learned counsel for the petitioners, was granted permission to inspect the records he inspected the records on 29.07.2008. The records have been perused by this Court and is returned back to Shri Shailesh Mishra after perusal."

Later, learned Single Judge formulated following three questions: -

(i) "The first question would be as to whether the appeal was maintainable before the Collector under Rule 3;

(ii) The second question is as to what is the effect of cancellation of the appointment of the petitioners, ordered without hearing them and without impleading them as parties; and,

(iii) The third and final question would be as to whether the Collector and Commissioner were

right in interfering with the selection of the petitioners for the reasons indicated by them in the impugned order i.e... the presence of the relatives as members of the selection committee in which petitioners had participated"

8. Question No. (i) relating to maintainability of appeal was answered against the appellants. The said question is not of much relevance at this stage, thus, in my view it is not required to be dealt with in detail. Further, the Learned Single Judge dealt questions no. (ii) and (iii) in detail as they relate to non-joinder of the appellants and affording them an opportunity of hearing and presence of relatives of appellants in the selection committee. The said question had been answered in paragraphs 20, 21, 22 and 23 of the order. In my view para 20 of the order of learned Single Judge is the foundational discussion on the issues therefore it is relevant and reproduced as under: -

> "20. Item No.3 of Rule 2 deals with Shiksha Karmi - Grade III, the educational qualification is Higher Secondary Certificate Examination passed, and the Selection Committee is to consist of: (i) Chairperson, Standing Committee of Education of Janpad Panchayat; (ii) Chief Executive Officer, Janpad Panchayat; (iii) Block Education Officer (Member Secretary); (iv) Two specialists in the subject to be nominated by the Standing Committee for Education of whom one shall be woman; and, (v) All members of the Standing

Committee of Education of whom at least one belongs to the Scheduled Castes, Scheduled Tribes or OBC. In the present case, there is no dispute that the Selection Committee was constituted as per the aforesaid provision, but presence of two members in the Selection Committee is to be taken note of. The President of the selection Committee is one Smt. Pushpa Dwivedi. She is Chairman of the Education Committee and she has participated in the process of selection of various candidates. Another member of the Selection Committee was one Shri Swami Singh, who is a Member of the Janpad Panchayat and has participated in the process of selection as a Member of the Education Committee. It is found by the Collector and the finding of the Collector is affirmed by the Commissioner to the extent that petitioner No.1 Smt. Shyama Dwivedi is the sister-in-law of the President of the Selection Committee Smt. Pushpa Dwivedi. According to the finding recorded Smt. Pushpa Dwivedi's sister-in-law (Nanand) Smt. Shyama Dwivedi; her Devrani Smt. Vibha Dwivedi; two sisters Rashmi Dwivedi and Rita Dwivedi have been appointed. Apart from these persons, her nephew Devendra Awasthi and her two nieces Ku. Rekha Awasthi and Ku. Prabhesh Kumari have been appointed. That apart, it is found that Smt. Gita Rawat, petitioner No.8, is also sister of Smt. Pushpa Dwivedi. From the aforesaid facts, it is clear that eight members of the family belonging to the President Smt. Pushpa Dwivedi have been selected for appointment on the post in question. Apart from the aforesaid eight persons petitioner Smt. Ramrani Singh is found to be daughter-in-law of Shri Swami Singh, who was Member of the Committee; Shri Sumer Singh, petitioner No.6, is found to be son of Shri Swami Singh and one of his nephew Shri Rajesh Singh has also been found to be appointed. Finding in this regard is recorded by the Collector and the Commissioner on the basis of the statement made by the Chief Executive Officer.

> The order-sheets dated 4.6.2002 and 24.6.2002 indicates that petitioners were directed to file affidavits to show as to whether this is a correct fact or not. The order-sheet dated 24.6.2002 indicates that time was sought by learned counsel for the petitioners to file specific affidavit of the petitioners denying their relationship with Members of the Selection Committee or office bearers of the Janpad Panchayat. Even though in pursuance to the aforesaid order, affidavits have been filed, but in these affidavits the facts are not denied and during the course of hearing Shri M.L. Choubey fairly admitted that petitioners are related to Smt. Pushpa Dwivedi and Shri Swami Singh, as recorded by the Collector and the Commissioner and he accepts the same, that being so, the finding recorded by the Collector and the Commissioner to the effect that all the petitioners are very closely related either to the President of the Committee, or its Member is a correct finding. According to the Collector and the Commissioner, the Panchayat Raj Adhiniyam prohibits grant of any undue benefit by Members and office bearers of the Panchayat to any of its relatives or family members. Finding recorded is that in this case some benefit has been granted."
>
> (emphasis supplied)

9. Paragraphs 21, 22 and 23 have already been reproduced by esteemed brother in para 27 in his judgment. Discernibly, in para 21 thereto the arguments regarding presence of the members of the selection committee do not materially affect the selection process was raised by the appellants, which is answered in paragraphs 22 and 23. As reflected from paragraph 22, it drew the inference that one

of the appellants had obtained less marks in higher secondary examination but she was accorded higher marks in oral interview and experience category, and included in her merit. While dealing with the case of other candidates observed they secured less marks in higher secondary in comparison to wait listed candidates and granted more marks in oral interview due to which, they found place in the selection list. In scrutiny of facts and the record learned Single Judge was of the opinion that the appellants herein received less marks in higher secondary whereas many persons whose names appearing in wait list received 78% to 79% marks and they were given less than three marks in oral interview, therefore, they have not been given place in selection list. In paragraph 23 of the order, the Learned Single Judge further dealt with the individual cases of the appellants and concluded that the appellants whose relatives were the members of the selection committee found favour in their appointment, therefore, due to bias such appointments stood vitiated. Applying the said analogy, the arguments of appellant(s) were not found convincing enough to interfere with the orders of the

Collector and Commissioner in exercise of scope of Article 226 to warrant interference by the High Court.

10. On analysing the order of the learned Single Judge in detail it is quite vivid that despite affording due opportunity to controvert the factum of relationship with the members of the selection committee and other fact findings, they have not refuted those allegations disputing their relationship. The record of the selection was produced before the Learned Single Judge bench and it was inspected by the advocate of the appellant(s) but they were not in a position to deny such facts and allegations. Accordingly, it was observed that the selection of the appellants who were relatives of the members of the selection committee, is not as per the spirit of Section 40 and 100 of the Adhiniyam which prohibits the office bearers to use any undue benefit to any of its relative and family members. Learned Single Judge applying the principles enunciated in the judgment of the **A.K. Kraipak and others Vs. Union of India and others; (1969) 2 SCC 262** and evaluating the facts refused to exercise the jurisdiction under Article 226 of the

Constitution of India. In the light of the judgment of the **State Bank of Patiala and others Vs. S.K. Sharma 1996 (3) SCC 364** learned Single Judge observed that appellants have afforded ample opportunity of hearing therefore not joining them party at the first instance before the Collector, should not prejudice them and the plea of violation of principle of natural justice is not justified.

11. The appellants challenged the order of the learned Single Judge in Writ Appeal before the Division Bench which was dismissed by the impugned judgement and the same is under challenge before us. In the impugned judgement, it is said that relationship of appellants with the members of selection committee has not been denied. Analysing the findings of paras 21 to 23 of learned Single Judge, it is seen how the relatives of the members of the selection committee were given higher marks in interview though they were having less marks in higher secondary and in the category of experience with the other wait-listed candidates who were given less marks in interview with an intent to push down the meritorious candidates in the

merit list The Division Bench referring the judgments of **A.K. Karipak (supra), J. Mohapatra & Co. & Anr. Vs. State of Orissa & Anr.; (1984) 4 SCC 103, Ashok Kumar Yadav & Ors. Vs. State of Haryana & Ors.; (1985) 4 SCC 417, Kirti Deshmankar Vs. Union of India & Ors.; (1991) 1 SCC 104, Gurdip Singh Vs. State of Punjab & Ors.; (1997) 10 SCC 641, Utkal University Vs. Nrusingha Charan Sarangi; (1999) 2 SCC 193, G.N. Nayak Vs. Goa University; (2002) 2 SCC 712, Govt. of T.N. Vs. Munuswamy Mudaliar and Anr.; 1988 Supp SCC 651: AIR 1988 SC 2232, Bihar State Mineral Development Corporation Vs. Encon Builders (I) (P) Ltd.; (2003) 7 SCC 418** and in paragraph 23 observed as under: -

> "The present factual matrix is to be tested on the aforesaid enunciation of law. We have reproduced the analysis made by the learned Single Judge. He has categorically recorded that the relatives of the members of the selection committee have been selected. The submission of the learned counsel for the appellants is that if the marks awarded by the interested persons are excluded then also they would be selected. The said submission, if we are permitted to say so, is a justification from hind sight. The result manifests itself. In the case at hand, it does not require Solomon's wisdom that

bias is in stricto sensu as from a reasonable mind could be thought. As we have referred to the authorities above, bias is a state of mind at work. Quite apart from above, when the degree of relationship is in quite proximity, bias is to be inferred and the authorities below have inferred the same and after detailed discussion, the learned Single Judge has given the stamp of approval to the same."

(emphasis supplied)

12. In the backdrop of the above factual matrix, as analysed and recorded, the Division Bench did not find any fault in the findings of two quasi-judicial authorities and learned Single Judge. While dismissing the appeal and refusing to entertain the plea of violation of principle of natural justice, it was observed that since the selected candidates were relatives of the office bearers of the committee, the possibility of reasonable likelihood of bias cannot be obliterated. Once the possibility of likelihood of bias kicks in, the selection process stands vitiated. It is said that in absence of any demonstrable prejudice to the appellants, their appointment cannot be approved. On the plea of not joining them as party before the Collector, the Division Bench observed in paragraph 11 as thus:

"11. The second aspect is whether the orders passed by the Collector and the Commissioner should have been quashed by the learned Single Judge as the

appellants who had been visited with adverse civil consequence were not arrayed as parties before the Collector. It is urged by the learned counsel for the appellants that in view of the law laid down in Inderpreet Singh Kahlon (supra) and M/s Laksmi Precision Screws Limited (supa), no person should be visited with an adverse civil consequence without affording him a reasonable opportunity of hearing. There cannot be any cavil on the aforesaid proposition. The learned Single Judge has placed reliance on the decision rendered in State Bank of Patiala and Others v. V.K. Sharma, (1996) 3 SCC 364 to come to hold that unless prejudice is caused due to non-granting of hearing, the orders should not be mechanically interfered with. It is worth noting that the appellants had preferred the revision. They participated in the hearing before the revisional authority in all aspects. The Commissioner had called for the entire selection proceeding and other documents on record were available to the petitioners therein. There was due deliberation in respect of the defence put forth by the revisionists. That apart, the learned Single Judge had called for the parties. In view of the aforesaid, we are of the considered opinion that though it was imperative on the part of appellants to implead the affected parties, yet as the affected parties had been given full opportunity from all aspects by the revisional forum as well as by the learned Single Judge, we do not think it apt and apposite to quash the order and remand the matter to the Collector to re-adjudicate singularly on the ground that the appellants herein should have been impleaded as a parties and that the matter should be reheard. The said exercise in the peculiar facts and circumstance so the case is unwarranted."

(emphasis supplied)

13. In view of the foregoing, it is clear that while challenging the selection and appointment of the appellant before the

Collector, they were not the party. However, in revision they challenged the said and afforded the opportunity but their contentions did not find favour with revisional authority. As per the findings recorded and also by Learned Single Judge, it is clear that the appellants were relatives of the members of the selection committee which is not permissible as per the spirit of Sections 40 and 100 of the Adhiniyam. The Division Bench confirmed those findings holding that in the facts of the case, reasonable likelihood of bias cannot be ruled out. It was also held that at initial stage the appellants were required to be joined as parties before the Collector but because they have been given due opportunity by the revisional authority, before learned Single Judge, it has not caused any prejudice. Looking to the uncontroverted facts only their non-joinder before the Collector would not vitiate the order impugned.

14. In the above factual background, it is required to be appreciated that whether due to non-joining the appellants before the Collector violates the principle of natural justice ? Consequently, whether the findings recorded against the appellants by two quasi-judicial authorities, writ court and

the writ appellate court is liable to be interfered with in this appeal?

15. For appreciating the said issue, it is necessary to refer Sections 40 and 100 of the Adhiniyam, which are reproduced as thus: -

> "40. Removal of office-bearers of Panchayat- (1) The State Government or the prescribed authority may after such enquiry as it may deem fit to make at any time, remove an office-bearer-
>
> (a) if he has been guilty of misconduct in the discharge of his duties; or
> (b) if his continuance in office is undesirable in the interest of the public:
>
> Provided that no person shall be removed unless he has been given an opportunity to show cause why he should not be removed from his office.
>
> Explanation- For the purpose of this sub-section "Misconduct" shall include-
> (a) any action adversely affecting,-
> (i) the sovereignty, unity and integrity of India; or
> (ii) the harmony and the spirit of common brotherhood amongst all the people of State transcending religious, linguistic, regional, caste or sectional diversities; or
> (iii) the dignity of women; or
> (b) gross negligence in the discharge of the duties under this Act;
>
> [(c) the use of position or influence directly or indirectly to secure employment for any relative in the Panchayat or any action for extending any pecuniary benefits to any relative, such as giving out any type of lease, getting any work done through them in the Panchayat by an office-bearer of Panchayat.

Explanation. – For the purpose of this clause, the expression "relative" shall mean father, mother, brother, sister, husband, wife, son, daughter, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law:]"

"100. Penalty for acquisition by a member, office bearer or servant of interest in contract. - If a member or office bearer or servant of Panchayat knowingly acquires, directly or indirectly any personal share or interest in any contract or employment, with, by or on behalf of a Panchayat without the sanction of or permission of the prescribed authority he shall be deemed lo have committed an offense under Section 168 of the Indian Penal Code, 1860 (XLV of 1860)."

16. On perusal of the said provision, the intention of the legislators is lucid that a person can be removed from the office mainly on two instances, firstly, if they are guilty of misconduct and secondly, their continuation in office is undesirable in public interest. The provision further attempts to enlist the events which typically fall within the definition of misconduct. Clause (c) of the first explanation to Section 40 encompasses use of position by direct or indirect influence to secure employment for the relatives and extending any pecuniary benefits to them as misconduct. Upon perusal, it is irrefutably inferred that functioning of the Panchayat must be free from influence in

selection and appointment and no undue benefit should be given to relatives in employment or any other pecuniary benefit. Otherwise contravention of this provision attracts removal of the office bearers. Further, it is apparent from the Explanation to clause (c), that the term 'relative' encompasses father, mother, brother, sister, husband, wife, son, daughter, mother-in-law father-in-law brother-in-law of the office bearer and such relationships are implied to be falling within the category of 'prohibited degree of relationship' in the matter of employment or to grant pecuniary benefit. Thus, it is explicit that relatives of elected office bearers, if secures an employment by the process where the office bearers were actively participating and controlling the process, it gives cause for removal of such office bearers.

17. As per factual matrix of the instant case, out of 14 candidates whose selection was set aside, 7 fall within the prohibited degree of relationships and others can be said to be in near relation. Though in the present case we are not concerned with the removal of office bearers, nonetheless, we should not lose track of the fact that the conduct of the

office bearers in giving undue benefits to their near relatives in an orchestrated manner to deprive other candidates of the opportunities despite them securing more marks in qualifying higher secondary examination, by and large amounts to 'misconduct' under the law. Upon challenge, the selection and appointment of successful candidates who were alleged to be in relationships with the office bearers has been set aside by the orders of the authorities and the High Court on the ground that the presence of reasonable likelihood of bias vitiates the selection process and consequently the appointment. Further, the plea of their non-joinder at initial stage was not found favour by both, the authorities and the High Court, by stating that since the candidates have been afforded sufficient opportunity however, their non-joinder before Collector would not be detrimental to the principle of natural justice. At this juncture it is imperative to address the question that when the selection and appointment is made in blatant violation of the principle(s) of natural justice what effect would it have on the selection of such candidates?

18. In the case at hand, the appellants countered the findings of Collector, Commissioner, learned Single Judge and the Division Bench on the ground of violation of *audi alteram partem*. It was contended that their appointment was cancelled without joining them at in initial proceedings before the Collector. The principle of natural justice does not solely depend on *audi alteram partem*. It needs to be prefaced by an action of the administrative or quasi-judicial authorities and the courts of common law jurisdiction in India to invalidate the orders based on rule of principle doctrine. The principle of natural justice emphasises the basic values which a common man cherishes throughout. The said principle is based on rules relating to fairness, reasonableness, equity and justice, good faith, and good conscience. It gives assurance of justice with the intent to develop confidence in the justice delivery process. The English law recognized two facets of natural justice *"nemo debet esse judex in propia causa"* which means no one can be a judge in his own cause and "*audi alteram partem*" means no one should be condemned

unheard. The preceding principle emphasises about the decision-making authority and the latter emphasises a procedure to be adopted in decision making, however, the deciding authority must be impartial and without bias, therefore, the element of the bias in the mind of the authority is an essential facet and the initial step to observe the principle of natural justice. The preceding principle emphasises that a man should not be a judge in his own cause. Thus as per the first requirement, the person who is involved in the process including a judge should be impartial and neutral and must be free from bias.

19. In the English judgement of **R Vs. Rand, (1866) LR 1 QB 230**, Blackburn, J observed thus "…*Wherever there is a real likelihood that the judge would, from kindred or any other cause, have a bias in favour of one of the parties, it would be very wrong in him to act; and we are not to be understood to say, that where there is a real bias of this sort this Court would not interfere;..*"

20. In another English judgment **R Vs. Sussex JJ, ex parte McCarthy (1924) 1 KB 256**, the King's Bench quashed the conviction on the ground of bias. Lord Hewart, CJ posed the question as thus: -

> "... The question therefore is not whether in this case the deputy clerk made any observation or offered any criticism which he might not properly have made or offered; the question is whether he was so related to the case in its civil aspect as to be unfit to act as clerk to the justices in the criminal matter."

and answered as under: -

> "... The answer to that question depends not upon what actually was done but upon what might appear to be done. Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice. Speaking for myself, I accept the statements contained in the Justices' affidavit, but they show very clearly that the deputy clerk was connected with the case in a capacity which made it right that he should scrupulously abstain from referring to the matter in any way, although he retired with the Justices; in other words, his one position was such that he could not, if he had been required to do so, discharge the duties which his other position involved. His twofold position was a manifest contradiction. In those circumstances I am satisfied that this conviction must be quashed, unless it can be shown that the applicant or his solicitor was aware of the point that might be taken, refrained from taking it, and took his chance of an acquittal on the facts, and then, on a conviction being recorded, decided to take the point.

21. In the case of **R Vs. Camborne JJ, ex parte Pearce,**

(1955) 1 QB 41 the QB observed that

'real likelihood was the proper test and that a real likelihood of bias had to be made to appear not only from the materials in fact ascertained by the party complaining, but from such further facts as he might readily have ascertained and easily verified in the course of his inquiries'

The question arose before the QB was

"... 'What interest in a judicial or quasi-judicial proceeding does the law regard as sufficient to incapacitate a person from adjudicating or assisting in adjudicating on it upon the ground of bias or appearance of bias?"

After discussing various judgements, it was held that –

"In the judgment of this Court the right test is that prescribed by Blackburn, J., namely, that to disqualify a person from acting in a judicial or quasi-judicial capacity upon the ground of interest (other than pecuniary or proprietary) in the subject-matter of the proceeding, a real likelihood of bias must be shown. This Court is further of opinion that a real likelihood of bias must be made to appear not only from the materials in fact ascertained by the party complaining, but from such further facts as he might readily have ascertained and easily verified in the course of his inquiries."

In the present case, for example, the facts relied on in the applicant's statement under RSC Order 59 Rule 3(2), might create a more sinister impression than the full facts as found by this Court, all or most of which would have been available to the applicant had he pursued his inquiries upon learning that Mr Thomas was a member of the Cornwall County Council, and none of these further facts was disputed at the hearing of this motion.

The frequency with which allegations of bias have come before the courts in recent times seems to indicate that Lord Hewart's reminder in Sussex JJ case [(1924) 1 KB 256: 1923 All ER Rep 233] that it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done' is being urged as a warrant for quashing convictions or invalidating orders upon quite unsubstantial grounds and, indeed, in some cases upon the flimsiest pretexts of bias. Whilst endorsing and fully maintaining the integrity of the principle reasserted by Lord Hewart, this Court feels that the continued citation of it in cases to which it is not applicable may lead to the erroneous impression that it is more important that justice should appear to be done than that it should in fact be done."

22. In the case of **Metropolitan Properties Co. (FGC) Ltd. Vs. Lannon, (1969) 1 QB 577,** Lord Denning observed and held as thus**: -**

"the principle evolved by Lord Hewart, CJ that 'justice should not only be done, but manifestly and undoubtedly be seen to be done'. In considering whether there was 'real likelihood' of bias, Court does not look at the mind of the decision-maker himself. "The Court looks at the impression which would be given to other people. Even if, he was as impartial as could be, nevertheless, if right-minded persons would think that, in the circumstances, there was a 'real likelihood' of bias on his part, then he should not sit. And if he does sit, his decision cannot stand."

"There must be circumstances from which a reasonable man would think it likely or probable that the justice, or chairman, as the case may

be, would, or did, favour one side at the expense of the other. The Court will not enquire whether he did, in fact, favour one side unfairly. Suffice it that reasonable people might think that he did."

The said test was explained in the case of **Hannam Vs. Bradford Corporation, (1970) 2 All ER 690** as thus: -

"If a reasonable person who has no knowledge of the matter beyond knowledge of the relationship which subsists between some members of the tribunal and one of the parties would think that there might well be bias and there is in his opinion a real likelihood of bias. Of course, someone else with inside knowledge of the characters of the members in question might say "Although things don't look very well, in fact there is no real likelihood of bias." That, however, would be beside the point, because the question is not whether the tribunal will in fact be biased, but whether a reasonable man with no inside knowledge might well think that it might be biased."

23. In another English judgment **R Vs. Gough, 1993 AC 646**, the question came before the House of Lords which used the expression 'real danger' of bias while applying the test of reasonable likelihood of bias. The Court emphasised the term "possibility of bias" rather than "probability of bias" and held as under: -

"… In my opinion, if, in the circumstances of the case (as ascertained by the court), it appears that there was a real likelihood, in the sense of a real possibility, of bias on the part of a justice or other member of an inferior tribunal, justice

requires that the decision should not be allowed to stand. I am by no means persuaded that, in its original form, the real likelihood test required that any more rigorous criterion should be applied. Furthermore, the test as so stated gives sufficient effect, in cases of apparent bias, to the principle that justice must manifestly be seen to be done, and it is unnecessary, in my opinion, to have recourse to a test based on mere suspicion, or even reasonable suspicion, for that purpose."

"In conclusion, I wish to express my understanding of the law as follows. I think it possible, and desirable, that the same test should be applicable in all cases of apparent bias, whether concerned with Justices or members of other inferior tribunals, or with jurors, or with arbitrators. Likewise, I consider that, in cases concerned with jurors, the same test should be applied by a Judge to whose attention the possibility of bias on the part of a juror has been drawn in the course of a trial, and by the court of appeal when it considers such a question on appeal. Furthermore, I think it unnecessary, in formulating the appropriate test, to require that the court should look at the matter through the eyes of a reasonable man, because the court in cases such as these personifies the reasonable man; and in any event the court has first to ascertain the relevant circumstances from the available evidence, knowledge of which would not necessarily be available to an observer in court at the relevant time. Finally, for the avoidance of doubt, I prefer to state the test in terms of real danger rather than real likelihood, to ensure that the court is thinking in terms of possibility rather than probability of bias. Accordingly, having ascertained the relevant circumstances, the court should ask itself whether, having regard to those circumstances, there was a real danger of bias on the part of the relevant member of the tribunal in

question, in the sense that he might unfairly regard (or have unfairly regarded) with favour, or disfavour, the case of a party to the issue under consideration by him…."

24. The above said English principles having been adopted by the Indian Courts, the Constitutional Bench in the celebrated judgment of **A.K. Kraipak and others (supra)** held as thus:

"…..The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased. We agree with the learned Attorney General that a mere suspicion of bias is not sufficient. There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct."

(emphasis supplied)

25. Further, in the case of **S. Parthasarathi Vs. State of Andhra Pradesh; (1974) 3 SCC 459** while drawing distinction of bias, "real likelihood" and "reasonable suspicion", the Court expanded the scope of bias. The relevant paragraphs of the said judgment are reproduced as under: -

"13. ……We are of the opinion that the cumulative effect of the circumstances stated above was sufficient to create in the mind of a

reasonable man the impression that there was a real likelihood of bias in the inquiring officer. There must be a "real likelihood" of bias and that means there must be a substantial possibility of bias. The Court will have to judge of the matter as a reasonable man would judge of any matter in the conduct of his own business (see R. v. Sunderland, JJ.) [(1901) 2 KB 357 at 373]

14. The test of likelihood of bias which has been applied in a number of cases is based on the "reasonable apprehension" of a reasonable man fully cognizant of the facts. The courts have quashed decisions on the strength of the reasonable suspicion of the party aggrieved without having made any finding that a real likelihood of bias in fact existed (see R. v. Huggins [(1895) 1 QB 563] ; R. v. Sussex, JJ., ex. p. McCarthy [(1924) 1 KB 256] ; Cottle v. Cottle [(1939) 2 All ER 535] ; R. v. Abingdon, JJ. ex. p. Cousins [(1964) 108 SJ 840] .) But in R. v. Camborne, JJ. ex. p Pearce [(1955) 1 QB 41 at 51] the Court, after a review of the relevant cases held that real likelihood of bias was the proper test and that a real likelihood of bias had to be made to appear not only from the materials in fact ascertained by the party complaining, but from such further facts as he might readily have ascertained and easily verified in the course of his inquiries.

XXX XXX XXX

16. The tests of "real likelihood" and "reasonable suspicion" are really inconsistent with each other. We think that the reviewing authority must make a determination on the basis of the whole evidence before it, whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The Court must look at the impression which other people have. This

follows from the principle that justice must not only be done but seen to be done. If right minded persons would think that there is real likelihood of bias on the part of an inquiring officer, he must not conduct the enquiry; nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. The Court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision..."

26. This Court while emphasising upon bias in the case of **Dr. G. Sarana Vs. University of Lucknow and others; (1976) 3 SCC 585** held that what has to be seen is whether there is a reasonable ground for believing that he was likely to have been biased. In deciding the question of bias, human probabilities and ordinary course of human conduct have to be taken into consideration. In case, the member of the group or board may be in a position to influence the other, then his bias is likely to operate in a subtle manner.

27. In the case of **J. Mohapatra & Co. & Anr. (supra)**, this Court emphasised that the doctrine of necessity applies not only to judicial matters but also to quasi-judicial and administrative matters. While reiterating the principle of

bias, it has been held that doctrine of necessity cannot be invoked because the members of the committee were appointed by a Government Resolution and some of them were appointed because they were holding official position. Such members, by virtue of the orders or statutes were made a part of the selection committee, are required to inform their position to the Government, however, without taking such recourse they cannot take a plea to apply the doctrine of bias.

28. This Court in another Constitution Bench case of **Ashok Kumar Yadav & Ors. (supra)** has reaffirmed the principle of bias holding that if a selection committee is constituted for the purpose of selecting candidates on merits and one of the members of the selection committee is closely related to a candidate appearing for the selection, it would not be enough for such member merely to withdraw from participation in the interview of the candidate and ask the authorities to nominate another person in his place on the selection committee, because otherwise all the selections made would be vitiated on account of reasonable likelihood of bias affecting the process of selection.

29. In the case of **Sk. Golap and others Vs. Bhuban Chandra Panda and others; 1990 SCC Online Cal 264**, while dealing with the issue of likelihood of bias, applying the principle "justice should not only be done but it should be seen to have been done" the Court held as under: -

> "7. ……We have no hesitation in believing also that he had no personal contact with the writ petitioners who were his erst-while clients since the previous writ petition was not decided in the recent past. These considerations do not, however, detract from the validity of the legal objection raised on behalf of the appellants. It is not necessary for the appellants to establish that the learned single Judge actually had a bias and that the said bias was the cause of the adverse verdict. The test to be applied in such cases is not whether in fact a bias has affected the judgment but whether there was a real likelihood of bias. The answer depends not upon what actually was done but upon what might appear to be done. Justice must be rooted in confidence; and confidence is destroyed when right minded people may have reason to go away thinking: "the Judge might have been biased."

30. Similarly, in the case of **Kirti Deshmankar (supra)** this Court re-emphasised that if the mother-in-law of the selected candidate was interested in the admission of her daughter-in-law, her presence in the meeting of the council vitiates the selection and it was not necessary to

categorically establish the bias. The Court observed that if in the selection process it is shown that there was a reasonable likelihood of bias, it is sufficient to set aside the such selection.

31. This Court in the case of **G.N. Nayak (supra)** again emphasising the element of impartiality in the mind of judicial, quasi-judicial or administrative body held as thus:

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> "33. Bias may be generally defined as partiality or preference. It is true that any person or authority required to act in a judicial or quasi-judicial matter must act impartially.
> "If however, 'bias' and 'partiality' be defined to mean the total absence of preconceptions in the mind of the Judge, then no one has ever had a fair trial and no one ever will. The human mind, even at infancy, is no blank piece of paper. We are born with predispositions and the processes of education, formal and informal, create attitudes which precede reasoning in particular instances and which, therefore, by definition, are prejudices." [Per Frank, J. in Linahan, Re, (1943) 138 F 2d 650, 652]
> 34. It is not every kind of bias which in law is taken to vitiate an act. It must be a prejudice which is not founded on reason, and actuated by self-interest — whether pecuniary or personal. Because of this element of personal interest, bias is also seen as an extension of the principles of natural justice that no man should be a judge in his own cause. Being a state of mind, a bias is sometimes impossible to determine. Therefore, the courts have evolved the principle that it is sufficient for a litigant to successfully impugn an

action by establishing a reasonable possibility of bias or proving circumstances from which the operation of influences affecting a fair assessment of the merits of the case can be inferred".

32. The case of **Gurdip Singh (supra)** is a case of similar nature as on hand, in paragraph 3 of the said case, this Court has observed as thus:

> "3. .....It has been established beyond doubt that the father of Respondent 3 being the Secretary of the Managing Committee of the school participated in the selection of his daughter, Respondent 3 and later on confirmation was given about such selection in favour of Respondent 3 where Respondent 3 by virtue of improper selection also constituted as one of the members of the Managing Committee giving confirmation. In the aforesaid circumstances, we set aside the selection of Respondent 3 as the Headmistress of the said school."

33. On the other side, learned counsel for the appellants has heavily placed reliance on the judgment of **Javid Rasool Bhat & Ors. Vs. State of Jammu and Kashmir & Ors.; (1984) 2 SCC 631** to contend that in absence of any allegation of mala fide, it would not be right to set aside the selection merely because one of the candidates happened to be related to a member of the selection committee who abstained from participating in the interview of that

candidate. The case of **Javid Rasool Bhat (supra)** is based on a written and oral test wherein the member of the selection committee for oral test was unaware of the marks obtained by the candidate in the written examination. The father of the candidate who was on the interview panel had left the premise at the time of interview. Thus, the Court found that there was no bias. While in the present case, as per the procedure prescribed and discussed, the members of selection committee were aware, how many marks have been obtained by individual candidates in qualifying exam and also in experience category and by shortage of how many marks they may be out from the merit list of selection. The members were aware that their relatives would appear for interview, therefore, they themselves passed a resolution on 01.08.2003 prior to starting the process of selection and decided to abstain from the interview of those particular candidates. Having knowledge of the fact that their relatives are appearing and even without intimating the same to the higher authorities for change of selection committee, they had participated in the process of selection and about 5% relatives got selected

and appointed by such an act. Therefore, in my opinion the judgment of **Javid Rasool Bhat (supra)** is disqualifiable on facts and is of no help to the appellants.

34. As ascertained from the discussion above, whether in a particular case, principles of natural justice have been contravened or not is a matter for the courts to decide from case to case. However, even with all its vagueness and flexibility, its two elements have generally been accepted, viz, (i) that the body in question should be free from bias, and (ii) that it should hear the person affected before it decides the matter. The first principle denotes that the adjudicator should be disinterested and unbiased; the prosecutor himself should not be a judge; the judge should be a neutral and disinterested person; a person should not be a judge in his own cause; a person interested in one of the parties to the dispute should not, even formally, take part in the adjudicatory proceedings. The basis of this principle is that justice should not only be done, but should manifestly and undoubtedly be seen to be done. According to **Lannon (Supra)**, the actual existence of bias

is not necessary. The test is "reasonable likelihood of bias", if a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision. Mere apprehension of bias is not enough and there must be cogent evidence available on record to come to the conclusion. In my view the said Doctrine has been adopted in pith and substance by Indian Courts.

35. As per the judgment of **Ridge Vs. Baldwin; 1964 AC 40**, it is said that the doctrine of natural justice is not only to secure justice but to prevent the miscarriage of justice. Such doctrine was held to be incapable of exact definition but what a reasonable man would regard as a fair procedure in particular circumstances would amount to prevent the miscarriage of justice. In the case of **Russell Vs. Duke of Norfolk; (1949) 1 AII ER 109 (CA)**, As Tucker, L.J. has expounded when the principles of natural justice are required to be seen, everything will depend on the actual facts of the case. He observed as thus: -

> "The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the

tribunal is acting, the subject-matter that is being dealt with and so forth."

36. On reverting to the facts of the present case and as observed in the table in Para 2 of this judgement, five of the present appellants fall within the prohibited degree of relatives as prescribed in the explanation of Section 40 of the Adhiniyam, while the remaining five have near relationships with the Committee members. It is also to observe that their relationships have not been denied by the present appellants at any juncture of this litigation. The process of selection is the same in which some of the appellants having prohibited degree of relationship and near relationship. To apply the test of reasonable likelihood of bias, the relationship of candidates with the office bearers is material which may have relevance when an action for removal of the office bearer is required**.** But by such an act substantial likelihood of bias in selection of relatives by the members of the Committee cannot be ruled out from the mind of a reasonable man as expressed by Lord Denning in the case of **Metropolitan Properties Co. (FGC) Ltd. (supra).** Additionally, the observation of the

learned Single Judge in paragraphs 17, 21, 22 and 23 of his judgement demonstrate the orchestrated manner in which bias has vitiated the selection process. In my view, it is sufficient to plant the seed of likelihood of bias in the mind of a reasonable man, thus, the test of reasonable likelihood of bias as propounded in the abovementioned judgements is satisfied if tested on the anvil of the facts of the present case.

37. In the present case, in my considered opinion, the findings recorded by the two quasi-judicial authorities, writ court and writ appellate court are based on the analysis of reasonable likelihood of bias which rightly stirs bias in the mind of a common man who could not get selected because the appellants have relations with the members of the selection committee. The detailed analysis of irregularities has been explained by the learned Single Judge and has been re-affirmed by the Division Bench. In my view the said stamp of approval should not be disturbed by this Court in exercise of jurisdiction under Article 136 of the Constitution of India.

38. Appellants have also vehemently contended that they have not been afforded an opportunity to be heard at the first stage before the collector, thus, non-adhesion to the principle of natural justice vitiates the process. At this stage, it is also crucial to mention that Indian Courts time and again have reiterated that principles of natural justice are neither treated with absolute rigidity nor as imprisoned in a straitjacket. It has many facets. Sometimes, this doctrine is applied in a broad way, sometimes in a limited or narrow. Applicability and requirements of natural justice depend upon the facts and circumstances of the case and it is not possible to lay down rigid rules as to when the principles of natural justice are to apply; nor as to their scope and extent. Everything depends on the facts and circumstances.

39. In the case of **Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shankar Pant and others; (2001) 1 SCC 182**, this Court on refinement of principles of natural justice observed in paragraph 2 as thus: -

> "2. While it is true that over the years there has been a steady refinement as regards this particular doctrine, but no attempt has been made and if we may say so, cannot be made to

> define the doctrine in a specific manner or method. Strait-jacket formula cannot be made applicable but compliance with the doctrine is solely dependent upon the facts and circumstances of each case. The totality of the situation ought to be taken note of and if on examination of such totality, it comes to light that the executive action suffers from the vice of non-compliance with the doctrine, the law courts in that event ought to set right the wrong inflicted upon the person concerned and to do so would be a plain exercise of judicial power. As a matter of fact the doctrine is now termed as a synonym of fairness in the concept of justice and stands as the most-accepted methodology of a governmental action."

In view of the above, due to steady refinement as regards to the doctrine of natural justice, there cannot be any straitjacket formula to apply. The doctrine will now be termed as a synonym of fairness in the concept of justice and stand as the most-accepted methodology for a governmental action.

40. This Court in the case of **Ashok Kumar Sonkar Vs. Union of India & Ors.; (2007) 4 SCC 54** while dealing with the principle of natural justice doctrine observed that it is well settled that the said doctrine cannot be put in any straitjacket formula. It may not be applied in each case unless prejudice is shown. It is not necessary where it

would be a futile exercise. The similar observations have been made by this Court in the case of **H.P. Transport Corpn. v. K.C. Rahi, (2008) 11 SCC 502.** In the said case, this Court in paragraphs 7 and 8 has observed as thus: -

> "7. The principle of natural justice cannot be put in a straitjacket formula. Its application depends upon the facts and circumstances of each case. **To sustain a complaint of non-compliance with the principle of natural justice, one must establish that he has been prejudiced thereby for non-compliance with principle of natural justice**.
>
> 8. In the instant case we have been taken through various documents and also from the representation dated 19-10-1993 filed by the respondent himself it would clearly show that he knew that a departmental enquiry was initiated against him yet he chose not to participate in the enquiry proceedings at his own risk. In such event plea of principle of natural justice is deemed to have been waived and he is estopped from raising the question of non-compliance with principles of natural justice. In the representation submitted by him on 19-10-1993 the subject itself reads "Departmental Enquiries". It is stated at the Bar that the respondent is a law graduate, therefore, he cannot take a plea of ignorance of law. Ignorance of law is no excuse much less by a person who is a law graduate himself."

41. The theory of prejudice had further been considered by this Court in the case of **Jankinath Sarangi Vs. State of**

Orissa; (1969) 3 SCC 392, this Court while dealing with the facts of the case observed as thus: -

> "5. .....If anything had happened the earth would have swollen rather than contracted by reason of rain and the pits would have become bigger and not smaller. Anyway the questions which were put to the witnesses were recorded and sent to the Chief Engineer and his replies were received. No doubt the replies were not put in the hands of the appellant but he saw them at the time when he was making the representations and curiously enough he used those replies in his defence. In other words, they were not collected behind his back and could be used to his advantage and he had an opportunity of so using them in his defence. We do not think that any prejudice was caused to the appellant in this case by not examining the two retired Superintending Engineers whom he had cited or any one of them. The case was a simple one whether the measurement book had been properly checked. The pleas about rain and floods were utterly useless and the Chief Engineer's elucidated replies were not against the appellant. In these circumstances a fetish of the principles of natural justice is not necessary to be made. We do not think that a case is made out that the principles of natural justice are violated."

42. In my considered opinion, the principle of law laid down on prejudice in the case of **S.K. Sharma (supra)** duly applies in the facts of this case in such a scenario. In the said case in paragraph 33, the Court summarises the principle emerging on discussion of the issue of violation of the

doctrine of natural justice. The relevant paragraph of the seven principles are reproduced as thus: -

> "33. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):
>
> (1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.
>
> (2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.
>
> (3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. **Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed.** Except cases falling under — "no notice", "no opportunity" and "no hearing" categories, **the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively.** If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice

including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said

requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] . The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice — or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action — the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, i.e., between "no notice"/"no hearing" and "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it 'void' or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent

officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.]

(6) **While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice**. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of State or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision."

After going through the facts of this case as discussed above, the present case falls within the ambit of the principle laid down in paragraph 33 (3) and (6), of the above case.

43. In the recent decision this Court in **State of Uttar Pradesh Vs. Sudhir Kumar Singh & Ors.; 2020 SCC Online SC 847**, in paragraph 39 explaining the principle of natural

justice and prejudice theory has been made which is reproduced as thus: -

> "(1) Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. **The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused**.
>
> (2) Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.
>
> (3) No prejudice is caused to the **person complaining of the breach of natural justice where such person does not dispute the case against him or it.** This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, **in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.**
>
> (4) **In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused.** This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.
>
> (5) The **"prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a**

definite inference of likelihood of prejudice flowing from the non-observance of natural justice."

In view of the foregoing, it is clear that the doctrine of natural justice would not apply as a straitjacket formula, violation of one limb of natural justice that is *audi altrem partem* can be accepted when the prejudice has been shown to be caused. A person who alleges the breach of the principle of natural justice is required to dispute the case against him in order to establish prejudice. In the cases where facts are not in dispute, the courts ought to refrain from passing order of remand. Lastly, the exception of prejudice must be more than the reasonable suspicion and should exist as strongly as a matter of fact.

44. In the narration of the facts as discussed above, it is clear that the appellants have emphasized on their non-joinder at the initial stage before the Collector. A bare perusal of the order passed by the Collector reflects that it is based on the counter-affidavit filed by the Janpad Panchayat whereby it is established that the appellants were related to the members of the selection committee. Subsequently,

the collector held the process to be vitiated by bias by applying the test of reasonable likelihood of bias. Once again, upon challenge being made by the appellants before the revisional authority, their relationship with the members of the selection committee was not disputed yet violation of doctrine of *audi altrem partem* was alleged merely due to non-joinder. After hearing them, the plea of non-impleadment did not find force before the revisional authority and the challenge did not succeed. Aggrieved appellants moved a writ petition before the High Court where ample opportunity was given by learned Single Judge and they were allowed to inspect the records. Thus, an opportunity to controvert the findings of the Collector and the Commissioner and factual narration thereof was duly afforded. After sufficient opportunities given by the Ld. Single Judge, the appellants neither denied their relationship with the members of the selection committee nor demonstrated that how the findings are perverse or contrary to record, causing any prejudice to them.

45. In the sequel of above factual narration, first limb of natural justice that is 'rule against bias' was proved as

reasonable likelihood of bias was fully established irrefutably. The violation of another limb i.e. *audi alteram partem*, which is procedural, has been prayed by the appellants on the pretext of their non-joinder at the initial stage; in my opinion, without showing prejudice mere non-joinder even at initial stage does not violate the natural justice doctrine in the case at hand.

46. As discussed, time and again, Indian Courts have emphasized that procedural formalities can be dispensed with when facts are admitted and undisputed and no apparent prejudice is caused to the parties from the alleged non-compliance of the procedure. The Courts have propounded 'useless formality' theory which revolves around the idea that in cases where there are admitted or undisputed facts, procedures and formalities may lose their relevance or serve no meaningful purpose, since the outcome may be no different in the absence thereof. This Court in ***M/s. Escorts Farms (Ramgarh) Ltd. v. Commissioner, Kumaon Division, Nainital, U.P. & Ors***. **2004 (4) SCC 281** observed that "*rules of natural justice are to be followed for doing substantial justice and not for*

completing a mere ritual of hearing without possibility of any change in the decision of the case on merits".

47. This Court in the case of ***Canara Bank v. Debasis Das*, (2003) 4 SCC 557** where order of removal was passed against charged employee as he could not produce his written brief within the time as provided, the order of removal was passed without considering his written brief. Upon preferring statutory appeal, though the employee filed written brief yet he could not convince the appellate authority and it was dismissed. While exercising writ jurisdiction, the Learned Single Judge Bench allowed the writ petition on the ground of violation of natural justice which was confirmed by Learned Division Bench of the High Court. This Court while exercising its jurisdiction under Art. 136 quashed the order of the Learned Single Judge and the Division Bench based on the finding of violation of natural justice.

> 12. Residual and crucial question that remains to be adjudicated is whether principles of natural justice have been violated; and if so, to what extent any prejudice has been caused. <u>It may be noted at this juncture that in some cases it has been observed that where grant of opportunity in terms of principles of natural justice does not</u>

> improve the situation, "useless formality theory" can be pressed into service.
> 23. As was observed by this Court we need not go into "useless formality theory" in detail; in view of the fact that no prejudice has been shown. As is rightly pointed out by learned counsel for the appellants, unless failure of justice is occasioned or that it would not be in public interest to dismiss a petition on the fact situation of a case, this Court may refuse to exercise the said jurisdiction (see *Gadde Venkateswara Rao* v. *Govt. of A.P.* [AIR 1966 SC 828]). It is to be noted that legal formulations cannot be divorced from the fact situation of the case.

48. Circling back to the facts of the instant case, when the hindsight a reasonable man looks at the action of appellants of not controverting their relationship with the parties and not demonstrating the manner in which they have been prejudiced before the revisional authority and Learned Single Judge Bench and Learned Division Bench of High Court, one would not be hesitant to hold that their representation before the collector would not have improved their case or compelled the collector to arrive at a different finding. Hence, in such a scenario, the plea of non-impleadment is a useless formality and the court should not entangle itself in procedural complexities.

49. In view of the principle of prejudice as carved out in the aforesaid judicial precedents and in the facts of this case, in my considered view the judgment passed by the learned Single Judge as confirmed in writ appeal reaffirming the judgment of the Collector and Commissioner, setting aside the selection of the appellants does not suffer from any infirmity, warranting the scope of interference of this Court in exercise of power under Article 136 of the Constitution of India. Accordingly, the appeals filed by the appellants stand dismissed affirming the order(s) impugned.

.....J.
[J.K. Maheshwari]

New Delhi;
04 April, 2024.

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4806 OF 2011

KRISHNADATT AWASTHY …Appellant (s)

Versus

STATE OF M.P. AND OTHERS ...Respondent(s)

WITH

CIVIL APPEAL NO. 4807 OF 2011

CIVIL APPEAL NO. 4808 OF 2011

CIVIL APPEAL NO. 4809 OF 2011

J U D G M E N T

K.V. Viswanathan, J.

1. Important questions in administrative law arise for consideration in these appeals. These are four Civil Appeals. They are filed in all by ten individuals. Together they call in question the judgment dated 15.12.2008 of the Division

Bench of the High Court of Judicature at Jabalpur in Writ Appeal Nos. 892 of 2008, 896 of 2008, 879 of 2008 and 878 of 2008. The appointments of the appellants as Shiksha Karmis-Grade III in the Janpad Panchyat, Gaurihar stands set aside by the proceedings before the Courts below. Aggrieved, they are before this Court.

Relevant facts:

2. The Madhya Pradesh Panchayat Shiksha Karmis (Recruitment and Conditions of Service) Rules, 1997 (hereinafter referred to as 'the Recruitment Rules') were framed in exercise of the powers conferred by sub-section (2) of Section 53, sub-section (1) of Section 70 read with sub-section (1) of Section 95 of the Madhya Pradesh Panchayat Raj Adhiniyam, 1993.

3. Under Rule 2(h), a "Shiksha Karmi" means the person appointed by Zila Panchayat or Janpad Panchayat, as the case may be, for teaching in the schools under their control.

4. Rule 5 prescribes the Methods of Selection and Recruitment. It provides for two modes of selection, namely, by direct recruitment and by promotion.

5. Under Rule 5(8), the Selection Committee for direct recruitment was statutorily prescribed and was to consist of members as specified in Schedule II and was to be constituted by the Zila Panchayat or the Janpad Panchayat. Under Schedule II for Siksha Karmi Grade III, the Selection Committee was to consist of the following:-

1. Chairperson, Standing Committee of Education of Janpad Panchayat;
2. Chief Executive Officer, Janpad Panchayat;
3. Block Education Officer (Member Secretary);
4. Two specialist in the subject to be nominated by the Standing Committee for Education of whom one shall be woman; and
5. All members from the Standing Committee of whom atleast one belongs to Scheduled Castes, Scheduled Tribes or OBC, in case there is no SC/ST/OBC member in the

Standing Committee then the same shall be nominated from the General Body.

6. Under sub-rule (9) of Rule 5, the Committee was to assess the candidates called for interview and award marks as follows:-

a) 60% marks for marks obtained in the qualifying examination as prescribed;

b) 25% marks for teaching experience;

c) 15% marks for oral test which may include i) communication skills in local dialect ii) knowledge of local environment iii) general knowledge iv) training and teaching aptitude and v) any other test which the Selection Committee may deem fit.

7. Under Rule 12, Appeal against the order passed under the recruitment rules may be made as per the provisions of the Adhiniyam. Rule 12 of the rules reads as under:-

> "12. **Appeal**.- Appeal against the order passed under these rules may be made as per provision of the Adhiniyam."

8. Independently, there is the Madhya Pradesh Panchayats (Appeal and Revision) Rules, 1995 (hereinafter referred to as 'the A&R Rules').

9. Under Rule 3 of the A&R Rules, the appeal was to lie in the case of an order passed by the Janpad Panchayat to the Collector of the District.

10. Rules 5 and 9, which are important are extracted hereinbelow:

> "**5. Revision**. - (1) (a) The State Government, the Commissioner, the Director of Panchayat, the Collector may on its/his own motion or on the application by any party, at any time for the purpose of satisfying itself/himself as to the legality or propriety of any order passed by or as to the regularity of the proceeding of, the authority subordinate to it/him call for and examine the record of any case pending before, or disposed of by, such authority and may pass such order in reference thereto as it/he may think fit :
>
> Provided that it/he shall not vary or reverse any order unless notice has been served on the parties interested and opportunity given to them for being heard:
>
> Provided further that no application for revision shall be entertained against an order appealable under the Act.
>
> (b) An application for revision by any party shall only be entertained if it is on the point of law and not on facts.

(2) Notwithstanding anything contained in sub-rule (1),-

(i) Where proceedings in respect of any case have been commenced by the State Government under sub-rule (1), no action shall be taken by other Officer mentioned in the said sub-rule in respect thereof; and

(ii) Where proceedings in respect of any such case have been commenced by the Officer mentioned in sub-rule (1), the State Government may either refrain from taking any action under this rule in respect of such case until the final disposal of such proceeding by such officer or may withdraw such proceeding and pass such order as it may deem fit.

9. Power of appellate or revisional authority.- The appellate or revisional authority after giving an opportunity to parties to be heard and after such further enquiry, if any, as it may deem necessary subject to the provisions of the Act and the rules made thereunder, may confirm, vary or set aside the order or decision appealed against."

These are the important rules for the disposal of this case.

Resolution for recusal – during Interview:

11. The Standing Committee of the Janpad Panchayat, before the recruitment process, on 01.08.1998, passed a resolution whereunder it was resolved that members of the selection committee whose close relatives are candidates

will not participate in the proceedings/deliberations and the two marks available to them for allotment to the candidate will be allotted to the Chief Executive Officer.

12. It was also resolved that if any close relative of any member, officer or subject expert appears for interview, then the marks to be given by that member, officer or subject expert should be given by the Chief Executive Officer and that member, officer or subject expert shall not be present at the venue of interview. The relevant part of the resolution is extracted hereinbelow:-

> "(C) Letter No. 423/S.T.98 dated 26.07.1998 of the Collector, Chhatarpur was read over by Chief Executive Officer, in which it has been mentioned that at the time of recruitment of teachers those members and officers also take part in the interview whose close relatives are the candidates due to which the entire selection process is likely to be affected. Therefore, the directions are given to immediately examine whether any candidate is the close relative of the member of the Committee in the interview. If any near relative of the member or the officer is the candidate, then such member or officer should not be present on the date of interview and any impartial person should be kept in his place. <u>The Committee unanimously decided that if any close relative of any member, officer or subject expert appears for interview then the marks to be given by that member, officer or subject specialist</u>

> should be given by Chief Executive Officer and that member, officer or subject expert shall not be present at the venue of interview. This resolution has been passed unanimously."
>
> (Emphasis supplied)

Appointment of the appellants:

13. The Janpad Panchayat, Gaurihar, after conducting the process of selection by direct recruitment, published the select list on 16.09.1998 and 249 candidates were notified for appointment. Orders of appointment were issued on 17.09.1998. The appellants joined duties and started discharging their functions. This is an undisputed fact.

Proceedings by R-4 – without impleading the appellants:

14. On 29.09.1998, Archana Mishra (R-4), who did not qualify, filed an Appeal (though called an appeal it is in the nature of an original proceeding challenging the selection) to the Collector, Chhatarpur. Only three people ex-officio, were made the respondents, namely, i) The Chief Executive Officer, Janpad Panchayat, Gaurihar; ii) Block Development Education Officer, Janpad Panchayat, Gaurihar and iii) the

President, Education Committee, Development Block Gaurihar. The appointed candidates were not impleaded. What is of importance to note is in para 9 of the memo of appeal, few of the selected candidates were named and the appointments challenged. Archana Mishra (R-4), inspite of having knowledge did not implead them. Para 9 is extracted hereunder:-

> "9. That the nepotism has been adopted during the selection process by violating the principles of natural justice by misusing the post by the President of the Select Committee and other members by appointing their relatives, for example the candidates who have been selected at Serial No. 56 and 57 of the Selection List are Shyama Dvivedi daughter of Shiv Dass Dvivedi who is the sister-in-law (Nanad) of Educational Committee's President Smt. Pushpa Dvivedi and her sister-in-law (Devrani) Smt. Vibha Dvivedi wife of Kailash Dvivedi, her nephew (sister's son) Devender Kumar Avasthi and her niece (sister's daughter) Rekha Avasthi daughter of Bran Bhushan Avasthi. In the same way, by misusing his post, the member of the Committee namely Swami Singh Senger has got selected his son Shamsher Singh (112), his daughter-in-law Ramrani wife of Rudra Pratap Singh (195), nephews Rajesh Singh Chauhan and Om Prakash Singh Chauhan and the Member Shri Harsh Vardhan Tripathi has got selected his real nephew Ravinder Singh son of Shri Jitender Singh Tripathi."

It will be clear that at least five of the appellants were named in the body of the appeal memo. This is set out to show that the present was not a case where the selected candidates remained unidentified. Even the members of the Committee against whom certain allegations were made were not impleaded by Respondent No.4. The following grievances were set out in the Appeal: a) The selection of candidates in the interview and the process of selection was very clumsy; b) There were a lot of irregularities and instances of corruption committed by the Selection Committee; c) Nepotism was adopted by the President of the Selection Committee and other members by violating the principles of natural justice and misusing their posts; and d) Some instances were set out to indicate how few selected candidates were the relatives of the members of the Selection Committee.

Order of the Collector:

15. By an order of 02.06.1999, the Collector allowed the Appeal even in the absence of the appointed candidates being made parties. He set aside the selection of 14 candidates (including the selection and appointment of the 10 appellants herein). Concerning the marks awarded to the appellant – Archana Mishra, it was, however, held by the Collector that marks for experience were given by the Committee and that she was also interviewed. As such, it was held that it was not possible to consider the determination of marks in the interview, since it was the discretion of the Committee to give the marks.

16. However, on the question of selection of the relatives of the members of the Selection Committee, it was held that members of the Selection Committee have selected their relatives. It was also held that these facts had been admitted by the Janpad Panchayat in its reply. It was held that evidence of relationship was certified by the Sarpanch, whose certificate was attached as evidence by the respondent. It

was held that as far as the Committee President was concerned, the Committee President's husband's sister, husband's brother's wife, nieces (2), nephews (2), sister, sister-in-law's sister (2) were alleged to have been appointed. It was also found that in the reply to the Chief Executive Officer it has been mentioned that the Standing Committee Member Swamy Singh's sons and daughter-in-law and nephew; and one son of Bhagwat Prasad had been selected. In all, 14 individuals including the 10 appellants by name, figured in the order of the Collector in para 3.

17. The Collector found that under Section 40(c) of the Panchayat Raj Act, any of the Office Bearers shall not cause financial gains to their relatives. It was also found that under Section 100 of the Panchayat Raj Act, acquisition by any member, office bearer or employee of any interest directly or indirectly in any contract or employment was strictly prohibited.

18. The Collector held that there was no necessity to summon the relatives since it was proved that the appointment of the relatives was contrary to the procedure. It was also held that since the ex-officio respondents have admitted about the selection of the relatives, the selection of the 14 candidates, including the 10 appellants, was cancelled and their appointments were terminated.

19. It is important to notice at this stage itself, Section 40(c) and Section 100 of the M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993, which reads as under:-

> "40 (c) the use of position or influence directly or indirectly to secure employment for any relative in the Panchayat or any action for extending any pecuniary benefits to any relative, such as giving out any type of lease, getting any work done through them in the Panchayat by an office-bearer of Panchayat.
>
> *Explanation.-For the purpose of this clause, the expression 'relative' shall mean father, mother, brother, sister, husband, wife, son, daughter, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law :*
>
> **100. Penalty for acquisition by a member, office bearer or servant of interest in contract.** - If a member or office bearer or servant of Panchayat knowingly acquires, directly or indirectly any personal share or

> interest in any contract or employment, with, by or on behalf of a Panchayat without the sanction of or permission of the prescribed authority he shall be deemed to have committed an offense under Section 168 of the Indian Penal Code, 1860 (XLV of 1860)"

20. Under the explanation to Section 40(c), nieces, nephews, sister-in-law's sister are not covered under the definition of relative. Of the fourteen candidates, whose appointments were set aside, without making them parties, several fall outside the definition of relative even going by the case of the Complainant. Of the total 14, seven fell outside the definition. Of the ten before us, five fall in the category outside the definition of relative. Since the appointed candidates were not made parties, these facts could not be brought to notice.

Revision before the Commissioner:-

21. On a revision being filed by the appellants, an interim order staying the execution of the order of 02.06.1999 was made on 25.06.1999. The interim order was also given effect to. The appellants were posted back to their respective

positions. In the revision, the appellants canvassed the ground of the violation of principles of natural justice. Before the revisional authority, the appellants specifically contended that they were appointed in accordance with law based on the merit list and that there was no irregularity. They disputed the allegation that they were appointed on account of the fact that they were relatives. However, the Commissioner rejected the argument holding that, if selection has been made in violation of the scheme, then the same can be cancelled without giving an opportunity. The Revisional Authority failed to notice that the entire selection had not been cancelled and only the selection of the 14 appointees including the 10 appellants had been cancelled. Ultimately, the revision was dismissed by an order of the Commissioner dated 14.03.2000. Since the order of the Commissioner in revision proceedings is crucial, the operative part is extracted hereinbelow:-

“6. (sic) On going through the record received for consideration on the arguments of both the parties, I have found that while examining the selection process, the Collector, Chhatarpur has clearly mentioned in his order dated 02.06.1999 that the members of the Selection Committee have selected their relatives. The respondent Janpad Panchayat has admitted that the Committee President Smt. Pushpa Dvivedi's sister-in-law (Nanad) Shyama Dvivedi, her daughter Shiv Dass Dvivedi, her sister-in-law (Devrani) Smt. Vibha, two real sisters of her sister-in-law namely Kumari Rashmi Dvivedi and Kumari Rita Dvivedi have been selected at Serial No. 9 and 4 of the Select List. The Respondent has also admitted that Devender Kumar Avasthi son of Brij Bhushan Avasthi is the nephew (sister's son) of President and Rekha Avasthi daughter Brij Bhushan Avasthi, Pravesh Kumari daughter of Brij Bhushan Avasthi are also the nieces (sister's daughters) of the President who have been selected at Serial No. 176 and 30 of the Select List. The Chief Executive Officer has also mentioned in his reply that another Member Swami Singh Senger's son Sumer Singh, daughter-in-law Raamrani wife of Rudra Pratap Singh, nephew Rajesh Singh Chauhan son of Som Prakash Singh have also been selected. 9 marks on the basis of experience have been given to the selected candidate Badri Prasad son of Bhagwat Prasad but the Experience Certificate has not been attached with his application. Shri Krishan Dutt Avasthi son of Sita Ram Avasthi, who has been selected at Serial No. 64, is the nephew (sister's son) of President and Gita Rawat (selected at Serial No. 190 of the appointment order) is the real sister of the President. In this way, after the above examination, holding of the Collector, Chhatarpur that the Select Committee of the Janpad Panchayat has selected their relatives contrary to the provisions of section 40-C of Madhya Pradesh Panchayat Raj Act and the selection rules, is. completely justified in view of the facts. So far as the plea of the Revisionists that the information and the opportunity of hearing was not given to the Revisionists in the appeal by

> the Collector, Chhatarpur nor they have been joined in the present appeal, therefore, the order dated 2.6.1999 is liable to be set aside, I am not agreed to this argument. (sic) In this regard, the Hon'ble High Court has clearly established in "Hira Lal Patel Versus Chief Executive Officer, Janpad Panchayat, Sargarh" reported in 1998 Volume-2 M.P.W.N. 39 that if the selection has not been made in accordance to the scheme then the same can be cancelled without giving the opportunity of hearing.
>
> It clearly appears from the above facts of the case that selection of the petitioners has been made contrary to the provisions of Madhya Pradesh Panchayat Raj Act, 1993 and principles prescribed for the selection. In the above situation, the order dated 02.06.1999 passed by the Collector, Chhatarpur is not liable to be interfered…."

Writ Petitions in the High Court:

22. The appointed candidates totaling eleven (including the ten appellants herein) filed Writ Petition No. 2522 of 2000 before the High Court of Madhya Pradesh at Jabalpur. On 03.03.2000, in the writ petition filed, an order directing maintenance of status *quo* was made. The writ petition came to be dismissed by the learned Single Judge on 31.07.2008. Before the learned Single Judge, grounds of violations of natural justice were argued. Apart from that, one of the other main grounds argued was that the role played by the relatives

has not been examined and that it was not established whether the selection was influenced by their participation.

23. It was pointed out that pursuant to the resolution passed before the selection by the Standing Committee on 01.08.1998, the relatives concerned had left the process of selection during the interview of the candidates who were their relatives. It was also pointed out that the marks to be given by the relatives were, as per the resolution, allotted to the Chief Executive Officer, who gave the marks. As such, it was argued that there was no reason to set aside the selection merely because there were relatives in the Selection Committee since they had recused when the case of the relatives came up. Yet another ground about the maintainability of the appeal was raised. Since that was not pressed before us, that is not being elaborated herein.

Reasons of the learned Single Judge:

24. The learned Single Judge permitted inspection of the records to the counsel for the appellants. The learned Single

Judge held that the argument of violation of natural justice was to be tested on the touchstone of actual prejudice. It was held by the learned Single Judge that when action or orders are challenged on the ground of non-grant of hearing, mechanical interference is not to be resorted to. The learned Single Judge held that the prejudice caused due to non-grant of hearing and the fact of the prejudice on the final outcome ought to be established.

25. The learned Single Judge noticed that wherever statutes contemplate a hearing, hearing ought to be given. However, the learned Single Judge overlooked the specific provision in Rule 9 of the A&R Rules which applied to the present case. The learned Single Judge relied on the judgment of ***State Bank of Patiala and Others*** vs. ***S.K. Sharma***, (1996) 3 SCC 364 and held that the order setting aside the appointment could not be quashed on the grounds of violation of natural justice. The learned Single Judge also held that the proceedings did not stop with the Collector;

that the matter travelled to the Commissioner where full opportunity of hearing was granted. The learned Single Judge held that the Commissioner decided the revision afresh on merits after hearing each and every objection of the appellants. Here again, the learned Single Judge completely overlooked Rule 5(1)(b) of the A&R Rules which clearly stipulated that an application for revision by any party shall be entertained only on point of law and not on facts.

26. The learned Single Judge further held that, during the course of hearing in the writ petition, entire documents were made available. It was held that the petitioners were not able to demonstrate as to what prejudice was caused by non-grant of hearing by the Collector.

27. Dealing with the argument that the presence of the relatives did not influence the selection, it was held:

“21. It is not in dispute that Smt. Pushpa Dwivedi and Shri Swami Singh were Members of the Selection Committee and they participated in the process of selection. However, the resolution and other documents only indicate that when relatives of Smt. Pushpa Dwivedi appeared for the interview, she left the interview board and the two marks available with her for allotment to the candidate were allotted by the Chief Executive Officer. Similarly, when relatives of Shri Swami Singh appeared for the interview, he is said to have left the proceedings and the two marks available with him were allotted by the Chief Executive Officer. On this ground, it was emphasized by Shri M.L. Choubey that the presence of relatives was of no consequence and it has not materially affected the process of selection. This aspect requires consideration.

22. As already indicated hereinabove under the statutory rules, out of l00 marks to be allotted 60% marks is based on the educational qualification. 25% marks is to be allotted by the Members of the Committee on the basis of experience and various other factors and thereafter 15% marks is to be allotted for oral interview. Records indicate that in the Selection Committee there were about 10 Members and out of these Members, two marks each were to be allotted by Smt. Pushpa Dwivedi, Shri Swami Singh, Smt. Rajrani Shukla - Member, Shri Bhurelal Khangar - Member, Shri Harshvardhan Singh, another Member. Thereafter, one mark each were to be allotted by Shri Ramdeo Patel, representative of MLA; Shri C.L. Maravi, Chief Executive Officer; Shri K.S. Chauhan - Block Education Officer; Ku. Meera Vishwakarma - Subject Expert; and, Shri A.P. Ahirwar, another Subject Expert. In this manner 15 marks were allotted. If the allotment made of marks under various category is taken note of and if it is compared with the marks allotted to some of the wait-listed candidates certain disparities can be apparently seen. Petitioner Smt. Shyama Dwivedi had obtained 50% in the Higher Secondary Certificate Examination. Accordingly, she has been allotted

30% marks for qualification. In the oral interview, she is allotted 11.10 marks. After adding the marks for experience she has received 58.10 marks. Compared to this is the case of Shri Yogendra Nigam, Shri Yogendra Soni, Shri Shivsharan, Shri Dinesh Kumar and Shri Satyendra Kumar. All these persons have received more than 75% marks in the Higher Secondary Certificate Examination and, therefore, they have received very high marks approximately between 46-47% for educational qualification, but by giving them only 3 marks in the interview their overall total percentage is kept around 50 and they are eliminated from the process of selection. In this manner, some benefit is granted to each of the petitioners. That apart, petitioner Smt. Vibha Dwivedi has received 57% marks in the Higher Secondary Certificate Examination; petitioners Devendra Awasthy and Krishnadutt Awasthi have received 55% and 69% marks; whereas petitioner Sumer Singh son of Shri Swami Singh has received 53% marks, accordingly their percentage for the qualifying examination is very less compared to other wait-listed candidates. These persons have been allotted 12.25, 8.95 and 15 marks in the interview and their overall mark is made over 55, so as to bring them within the zone of consideration. It is, therefore, apparent from a scrutiny of these results that most of the petitioners have received very less marks in the qualifying examination i.e. Higher Secondary Certificate Examination, whereas many persons whose name appear in the wait-list have received 78% and 79% marks in the qualifying examination, but they are allotted very low marks in the interview and experience, in some cases even less than 3 marks is allotted in the oral interview, as a result their selection is adversely effected. This is the reason why the Collector and the Commissioner thought it appropriate to interfere in the matter.

23- Petitioner No.6 Sumer Singh is son of Shri Swami Singh, a Member of the Selection Committee, and he has been allotted full 15 marks i.e. 100% marks have been allotted by each of the Committee Members. It is found that

> in this manner benefit in some way or the other is extended to each of the petitioners and this is the reason why the Collector and the Commissioner interfered in the matter. It is further found that one Badri Prasad, son of Bhagwat Prasad has been appointed and he has been given 9 marks for the experience, but in his file no experience certificate is available. It is found that petitioner Gita Rawat is the real sister of Smt. Pushpa Dwivedi and she has been selected after giving her high marks in the oral interview, even though she has only received 55% marks in the qualifying examination i.e. Higher Secondary. It is clear from a perusal of the records that eight close relatives of Smt. Pushpa Dwivedi, President of the Selection Committee, and Shri Swami Singh, a Member of the Selection Committee, have been appointed. The relatives selected are either sons, daughter, sisters, sister-in-law of the Members and after appreciating all these factors, the Collector and the Commissioner found that the selection of these close relatives are vitiated."

28. Thereafter, the learned Single Judge held that there was no case warranting interference under Article 226 of the Constitution of India and dismissed the writ petition. The learned Single Judge also relied on the judgment of this Court in ***A.K. Kraipak and Others*** vs. ***Union of India and Others***, (1969) 2 SCC 262.

Appeal to the Division Bench:

29. The matter was carried in appeal to the Division Bench. Before the Division Bench, the arguments on violation of natural justice and the correctness of the procedure adopted by the Selection Committee were canvassed. It was reiterated by the appellants that no case of the Selection Committee members influencing the selection of their relatives has been made out. The Division Bench cites the Single Judge's reliance on ***S.K. Sharma (supra)*** to hold that unless prejudice is caused due to non-grant of hearing, the order ought not to be mechanically interfered with. The following crucial findings of the Division Bench are important:

> "…. In view of the aforesaid, we are of the considered opinion that though it was imperative on the part of appellants to implead the affected parties, yet as the affected parties had been given full opportunity from all aspects by the revisional forum as well as by the learned single Judge, we do not think it apt and apposite to quash the order and remand the matter to the Collector to re-adjudicate singularly on the ground that the appellants herein should have been impleaded as parties and that the matter should be reheard. The said exercise in the peculiar facts and circumstances of the case is unwarranted."

30. Ultimately, the Division Bench though held that it was imperative on the part of Respondent No.4 to implead the affected parties, however, since the affected parties had been given full opportunity before the revisional authority and the learned Single Judge, thought it fit not to interfere. Thereafter, it examined the issue as to whether the selection was vitiated because of the participation of the relatives. On this aspect, it extracted the findings of the learned Single Judge and after relying on ***A.K. Kraipak (supra)*** and other cases in the context of bias upheld the order of the learned Single Judge. It appears that even during the pendency of the writ appeal, the appellants continued to work.

Appeal in this Court:

31. Challenging the order of the Division Bench dated 15.12.2008, special leave petitions were filed and on 19.01.2009, while issuing notice, this Court granted status *quo* in the matter. Thereafter, leave was granted on

12.05.2011 and the ad-interim orders granted earlier were made absolute till the disposal of the appeals.

Contentions of the parties:-

32. Before us, Mr. Neeraj Shekhar, learned counsel for the appellants has reiterated the contentions raised in the courts below on the issue of violation of natural justice and also about the factum of the committee members not influencing the selection. Reliance is placed on ***Daffodills Pharmaceuticals Limited and Another*** vs. ***State of Uttar Pradesh and Another***, 2019:INSC:1366 = (2020) 18 SCC 550 and ***Javid Rasool Bhat and Others*** vs. ***State of Jammu and Kashmir and Others***, (1984) 2 SCC 631. Learned counsel for the appellants has also sought to distinguish *A.K. Kraipak (supra)* and *S. K. Sharma (supra)*. He also relied upon ***Chairman, State Bank of India and Another*** vs. ***M.J. James***, 2021:INSC:732 = (2022) 2 SCC 301 to highlight the distinction between cases of "no opportunity at all" and

"adequate opportunity". Ultimately, it is pleaded that the appellants have been working for the last 25 years and that one of the appellants has, in fact, retired while others are on the verge of retirement. A chart has been filed to show that some of the appellants have received lesser marks than the complainant as well as the parties who seek to implead themselves here, which is set out hereinbelow.

Chart Indicating Marks of Interview-

S.NO	NAME OF THE APPLICANT	MARKS OB-TAINED IN % (INTERMEDIATE)	60% OF MARKS OB-TAINED	MARKS ON EXPERIENCE	MARKS OBTAINED IN INTERVIEW	TOTAL
488	**KRISHNA DUTT AWASTHY** S/O SITA RAM AWASTHY	69.72	41.77	9(ONE YEAR)	8.95	59.72
2098	**REKHA AWASTHY** D/O BRIJ BHUSHAN AWASTHY	63	37.80	17(TWO YEAR)	4.35	59.15

49	**SMT. RAM RANT SINGH SENGAR** D/O SHRI RUDRA PRATAP SINGH	58.80	35.28	17(TWO YEAR)	7.35	59.65
1231	**PRAWESH KUMARI** D/O BRIJ BHUHAN AWASTHY	58.62	35.17	17(TWO YEAR)	4.95	57.12
1587	**SMT. SHYAMA DIWEDI** D/O SHIV DAS DWIVEDI	50	30	17(TWO YEAR)	11.10	58.10
1588	**SMT. VIBHA DIWEDI** D/O KAILASH DWIVEDI	57.25	34.35	17(TWO YEAR)	5.40	56.75
1228	**RITA DIWEDI** D/O J.P. DIWEDI	68.00	40.80	9(ONE YEAR)	8.4	58.20
332	**SUMMER SINGH** S/O SWAMI SINGH	53.33	31.99	17(TWO YEAR)	15	63.99
1590	**GITA RAWAT** D/O GANGA PD. RAWAT	55.12	33.00	17(TWO YEAR)	5.30	55.30
2099	**DEVENDRA AWASTHY**	55	33.00	17(TWO YEAR)	12.25	62.25
1230	**RASHMI DWIVEDI** D/O J.P DWIVEDI	73.55	44.13	9(ONE YEAR)	4.40	57.53

Charts showing marks obtained by the Respondent No. 4 (Complainant) -

S.NO	**NAME OF THE APPLI-CANT**	**MARKS OB-TAINED IN % (IN-TERMEDIATE)**	**60% OF MARKS OBTAINED**	**MARKS ON EXPERIENCE**	**MARKS OBTAIN ED IN INTERVI EW**	**TOTAL**
524	**ARCHANA MISHRA**	47.75	28.65	17(TWO YEAR)	4.65	50.30

Charts showing marks obtained by the Applicants (Impleadment) –

S.NO	NAME OF THE APPLICANT	MARKS OBTAINED IN % (INTERMEDIATE)	60% OF MARKS OBTAINED	MARKS ON EXPERIENCE	MARKS OBTAINED IN INTERVIEW	TOTAL
124	**RAM SAKHA** S/O RAM MILHAN HARDENIA	46.25	27.75	17(TWO YEAR)	13.60	58.35
538	**ANIL KUMAR** S/O VIPIN BIHARI	60	36	9(ONE YEAR)	13.70	58.70
227	**SAJID HUSSAIN** S/O JAMUED HUSSAIN	72.62	43.57	---	15	58.57

33. We have also heard Ms. Mrinal Gopal Elker, learned counsel for the respondent-State of M.P. and Mr. Avadhesh Kumar Singh, learned counsel for respondent No. 4 – Archana Mishra and the parties who have filed applications for impleadment. Though no formal orders of impleadment were made, arguments were heard on the application. They contend that the orders of the Collector, revisional authority, learned Single Judge and the Division Bench warranted no

interference. They relied on ***S.K. Sharma (supra)*** and reiterated the aspect of there being no prejudice due to the non-compliance of the principles of natural justice. They highlighted the fact that even though the appellants received less marks in the basic qualifying examination, they have obtained higher marks in the interview; that relatives have come to be appointed; that there was reasonable likelihood of bias and that the relatives of committee members have obtained higher marks during the interview. They also relied on Section 40(c) and Section 100 of the M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam. They relied on the judgments of this Court on the aspect of bias and likelihood of bias, among them being, ***Dr. (Mrs.) Kirti Deshmankar*** vs. ***Union of India and Others***, (1991) 1 SCC 104, ***J. Mohapatra and Co. and Another*** vs. ***State of Orissa and Another***, (1984) 4 SCC 103, ***Ashok Kumar Yadav and Others vs. State of Haryana and Others, (1985) 4 SCC 417, A.K. Kraipak (supra)*** and ***Reference under Article 317(1)***

of the Constitution of India, In Re (2009) 1 SCC 337. They prayed for the dismissal of the appeals. The intervenors have also filed written statements supporting the State and reiterating the submissions that natural justice did not cause any prejudice.

Questions for consideration:

34. On the above factual background, the following questions arise for consideration:-

i) Were the principles of natural justice violated, during the conduct of the proceedings before the Collector under Rule 3 of the A&R Rules, 1995 read with Rule 12 of the Recruitment Rules?

ii) If indeed there was a violation of the *audi alteram partem* rule, would the appellants still fail for want of demonstration of any prejudice being caused to them?

iii) Further, if indeed there was violation of the *audi alteram partem* rule before the Collector, did the violation stand cured on account of the availment of the revisional proceedings before the higher authority?

iv) On facts, are the appellants entitled to a declaration of the invalidity of the orders setting aside their appointments to the post of Shiksha Karmi Grade-III?

Question Nos. 1 & 2:

i) Were the principles of natural justice violated, during the conduct of the proceedings before the Collector under Rule 3 of the A&R Rules, 1995 read with Rule 12 of the Recruitment Rules?

ii) If indeed there was a violation of the *audi alteram partem* rule, would the appellants still fail for want of demonstration of any prejudice being caused to them?

35. It is an undisputed factual position that the appellants, after a process of selection, were appointed as Shiksha Karmi Grade-III in the Panchayat and orders of appointments were issued to them on 17.09.1998. It is also undisputed that the appellants joined the post and started discharging their duties. This being the undisputed factual position, when Archana Mishra (R-4) challenged the selection and the consequential appointment, there was an obligation on her part, under Rule 9, to implead the selected candidates whose selection she was expressly challenging. At least at the stage when the Collector identified all the 14 names, Rule 9 of the A&R Rules, ought to have been complied with and notices ought to have been issued giving an opportunity to the selected candidates to set out their version and thereafter hold such enquiry as the Collector may deem necessary. This was also not done. This is all the more when only the appointment of the 14 candidates of the 249 appointees/candidates were set aside on the ground that

they were relatives and it was not a case of setting aside of the entire selection. It is well settled that in service matters when an unsuccessful candidate challenges the selection process, in a case like the present where the specific grievance was against 14 candidates under the category of relatives and when the overall figure was only 249, at least the candidates against whom specific allegations were made and who were identified ought to have been given notices and made a party. This Court has, even in cases where the selected candidates were too large, unlike in the present case, held that even while adjudicating the writ petitions at least some of the selected candidates ought to be impleaded even it is in a representative capacity. It has also been held that in service jurisprudence, if an unsuccessful candidate challenges the selection process the selected candidates ought to be impleaded. [See ***J.S. Yadav*** vs. ***State of Uttar Pradesh and Another***, (2011) 6 SCC 570 (para 31) and ***Prabodh Verma and Others*** vs. ***State of Uttar Pradesh and***

Others, (1984) 4 SCC 251 (para 28) and ***Ranjan Kumar and Others*** vs. ***State of Bihar and Others***, 2014:INSC:276 = (2014) 16 SCC 187 (paras 4,5,8,9 & 13)] This is not a case where the allegation was that the mischief was so widespread and all pervasive affecting the result of the selection in a manner as to make it difficult to sift the grain from the chaff. It could not be said and it is not even the case of the State that it was not possible to segregate the allegedly tainted candidates from the untainted candidates. [See ***Union of India and Others*** vs. ***G. Chakradhar***, (2002) 5 SCC 146 (paras 7 & 8), ***Abhishek Kumar Singh*** vs. ***G. Pattanaik and Others***, 2021:INSC:305 = (2021) 7 SCC 613 (para 72).

36. From time immemorial, the importance of the *audi alteram partem* rule has been emphasized and re-emphasized in several judicial pronouncements. Two of them are set out to highlight the underlying rationale. Chief Justice

Sabyasachi Mukharji in ***Charan Lal Sahu*** vs. ***Union of India,*** (1990) 1 SCC 613 felicitously described its importance:-

> "124. … It is true that not giving notice, was not proper because principles of natural justice are fundamental in the constitutional set up of this country. No man or no man's right should be affected without an opportunity to ventilate his views. We are also conscious that justice is a psychological yearning, in which men seek acceptance of their viewpoint by having an opportunity of vindication of their viewpoint before the forum or the authority enjoined or obliged to take a decision affecting their right…."
>
> [Emphasis supplied]

The above passage very much echoes what Lord Megarry said in ***John*** vs. ***Rees and Others***, [1969] 2 All E.R. 274 at 309 FG:-

> "It may be that there are some who would decry the importance which the courts attach to the observance of the rules of natural justice. "When something is obvious," they may say, "why force everybody to go through the tiresome waste of time involved in framing charges and giving an opportunity to be heard? The result is obvious from the start." Those who take this view do not, I think, do themselves justice. As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which, in the event, were

> completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change. Nor are those with any knowledge of human nature who pause to think for a moment likely to underestimate the feelings of resentment of those who find that a decision against them has been made without their being afforded any opportunity to influence the course of events."
>
> [Emphasis supplied]

37. This Court has held that the principles of natural justice reinforce the maxim that *justice should not only be done but should be seen to be done*. It has been held that non-observance of natural justice is itself prejudice to any individual. [***S.L. Kapoor*** vs. ***Jag Mohan and Others***, (1980) 4 SCC 379]. It has been held that the principle that no one can be inflicted with an adverse order without being afforded a minimum opportunity of hearing was a constant lode star that has lit the judicial horizon of this country. [See ***Daffodills Pharmaceuticals Limited and Another (supra)***]. Even the Division Bench, in the impugned order, recognizes the fact that it was imperative to implead affected parties though ultimately it rested the case on certain exceptions

which did not apply. This aspect has been elaborated hereinbelow.

38. In the light of the specific rule namely, Rule 9 of the A&R Rules, there was no escape from the fact that the affected parties, like the appellants, ought to have been impleaded by the Collector. Even *de hors* Rule 9, if civil consequences are to result to a party, opportunity ought to be given.

39. One of the two reasons given to justify the violation of the *audi alteram partem* rule is the finding that prejudice caused due to non-grant of hearing has not been established. Reference has been made to ***S.K. Sharma (supra)*** to justify this conclusion.

40. It is time to have a closer look at the facts in ***S.K. Sharma (supra)*** to understand as to in what circumstances that exception was carved out. The grievance raised by the delinquent employee in ***S.K. Sharma (supra)*** was not that

there was total absence of notice. The grievance was that a set of nine documents including the statements of three individuals was not supplied to him. The delinquent was advised to peruse, examine and take notes of the said documents/statements half an hour before the commencement of the enquiry proceedings. It was admitted that the list of documents/statements was supplied. This Court found that though the copies of the statements were not supplied, the delinquent was permitted to peruse the same more than three days prior to the examination of the witnesses. In that background, the Court examined the question whether under the circumstances there was substantial compliance of the clause in the regulations, providing for supply of copies of statements, not later than three days before the commencement of the examination by the witness before the enquiring authority. It was expressly noticed in the judgment that the records of the case did not

disclose that the delinquent had protested about denial of adequate opportunity to cross-examine.

41. In fact, ***S.K. Sharma's case (supra)***, after noticing the leading case of ***Ridge*** vs. ***Baldwin,*** 1964 AC 40 expressly records that where there is total violation of principles of natural justice, the violation would be of a fundamental nature. ***S.K. Sharma's case (supra)*** explicitly records that "a distinction ought to be made between violation of the principle of natural justice, *audi alteram partem*, as such and violation of a facet of the said principle. In other words, distinction between "no notice"/"no hearing" and "no adequate hearing" or to put it in different words, "no opportunity" and "no adequate opportunity", was highlighted. The principle in ***S.K. Sharma's case (supra)*** about the distinction between "no opportunity" and "no adequate opportunity" has also been followed in ***M.J. James (supra).***

42. Unlike in ***S.K. Sharma's case (supra)*** on which both the learned Single Judge and the Division Bench have relied upon to non-suit the appellants, the present is a case of no notice and no hearing in breach of an express rule.

43. In the present case, before the Collector, only the Complainant – Archana Mishra and the ex-officio respondents were arrayed as parties. Allegations directly on the conduct of the appellants and the committee members were traded thick and fast. The order of the Collector and the Revisional Authority, in fact, makes no reference either to the definition of relative in the explanation to Section 40(c) or to the resolution providing for recusal of committee members who had their near relations appearing for the interview. The categories excluded from the definition of relatives are also not noticed. Based on inferences drawn from the records produced by the ex-officio respondents, conclusive findings were recorded by the Collector and the appointments of the

appellants and four others were set aside. The order of the revisional authority is a reiteration of the order of the Collector. These have been endorsed in the judgment of the learned Single Judge and the Division Bench.

44. As this Court observed in ***Charan Lal Sahu (supra)***, justice is a psychological yearning in which individuals seek acceptance of their viewpoint by having an opportunity, before their rights are affected. Lord Megarry in ***John vs. Rees and Others (supra)*** rightly emphasized the feeling of resentment to those who find that decision against them has been made behind their back. Those are telling observations.

45. The material that worms into the record behind the back of a party does have a tendency to condition the minds of the reviewing authorities. Very often, it may happen that the said one-sided version smuggled in stealthily, may cloud their mind and make them oblivious to the plight of the party who is denied *audi alteram partem*. Strong convictions then get

mollified; the initial sense of outrage gets dampened and the feeling of unfairness that engulfed one at the commencement of the proceeding may slowly wither away. The opposing parties to justify the breach may then hunt for a rule from the basket of exceptions to the principles of *audi alteram partem* and offer it, to lend a veneer of legitimacy to the order originally made in violation of the principles of natural justice. All this may seduce the mind and propel it to condone the total denial of opportunity. A conscious effort needs to be made to steer clear of that trap.

46. The principle of prejudice as set out in ***S.K. Sharma's case (supra)*** had absolutely no application to the present case as the present was a case of complete denial of opportunity. The exception was wrongly invoked and misapplied to the facts of the present case.

Question No.3

Does the violation at the original stage of the principles of natural justice stand cured by the revisional proceeding?:-

47. The second reason given by the learned Single Judge and affirmed by the Division Bench was that the appellants had full opportunity before the revisional authority and the High Court. The relevant finding from the judgment of the learned Single Judge is extracted hereinbelow:-

> "17. Even though when the appeal was filed by respondent Smt. Archana Mishra before the Collector, petitioners were never heard and the Collector passed the order without hearing the petitioners, the matter did not end there. Petitioners availed of the opportunity of filing a revision before the Commissioner. When the matter travelled to the Commissioner in this manner, full opportunity of hearing was granted to the petitioners and the entire selection record and other documents, which formed the basis for passing of the order by the Collector, were available before the Commissioner, petitioners had access to the same and Commissioner decided the revision afresh on merits after considering each and every objection of the petitioners. Thereafter, during the course of hearing in this petition also, the entire selection proceedings and other documents were available on record and the petitioners were given full opportunity to demonstrate before this Court that their selection was proper or that the finding with regard to their relatives participating in the selection process is an incorrect or

improper finding. Petitioners admitted that their relatives had participated in the selection, but only argued that their presence did not influence their selection. This is a matter which can be looked into on the basis of the material available on record and during the course of hearing of this petition, the petitioners were not in a position to demonstrate as to what was the prejudice caused for non-grant of hearing by the Collector. Even if no hearing was granted before the Collector, but when full opportunity of hearing was granted and was availed of by the petitioners before the Commissioner in the revision and when the Commissioner had passed the order after so hearing the petitioners, merely because petitioners were not impleaded as party in the proceedings held before the Collector it cannot be said that the entire action of the appellate authority and the revisional authority stands vitiated on this ground. This is a case where petitioners had ample opportunity of putting up their defence and objections before the Commissioner and the Commissioner having appreciated the dispute on merits after hearing the petitioners, this court is not inclined to interfere in the matter merely on the technical ground of non-grant of opportunity. It has to be held that non-grant of opportunity during the proceedings held before the Collector does not vitiate the action taken against the petitioners as they were given full and reasonable opportunity by the Commissioner before passing the order and petitioners having availed of the same, cannot have any grievance on this count. Accordingly, the second ground of attack also fails being unsustainable."

The above finding for a start overlooks Rule 5(1)(b) and the body of case law that are relevant.

48. The question about whether at all the breach of natural justice can be cured at the appellate stage and if so in what circumstances has vexed the courts for the last several decades. In England, it was Lord Megarry who spoke first in ***Leary*** vs. ***National Union of Vehicle Builders,*** [1970] 2 All ER 713. The learned Judge had no doubt in his mind when he proclaimed, *"As a general rule, at all events, I hold that a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in an appellate body."* This remained the legal position till ***Ferd Dawson Calvin vs. John Henry Brownlow Carr & Ors.,*** (1979) 2 WLR 755 came on the horizon. Lord Wilberforce, speaking for the Privy Council felt that the principle elucidated by Lord Megarry was too broadly stated. The Privy Council held:

> "It remains to apply the principles above stated to the facts of the present case. In the first place, their Lordships are clearly of the view that the proceedings before the Committee were in the nature of an appeal, not by way of an invocation, or use, of whatever original jurisdiction the

> Committee may have had. The nature of the appeal is laid down by Section 32 of the Australian Jockey Club Act 1873, and by the Rules. Under the Act, the appeal is to be in the nature of a re-hearing - a technical expression which does little more than entitle the Committee to review the facts as at the date when the appeal is heard (see *Builders Licensing Board (N.S.W.) v. Sperway Constructions (Sydney) Pty. Ltd.* (1976) 51 A.L.J.R. 260, 261, per Mason J.), not one which automatically insulates their findings from those of the Stewards. The decision is to be " upon the real merits and justice of the case " -- an injunction to avoid technicalities and the slavish following of precedents but not one which entitles the Committee to brush aside defective or improper proceedings before the Stewards. The section is then required to be construed as supplemental to and not in derogation of or limited by the Rules of Racing. This brings the matter of disputes and discipline clearly into the consensual field. The Rules of Racing (Local Rules 70-74) allow the Committee to take account of evidence already taken and of additional evidence, and confer wide powers as to the disposal of appeals."

49. The issue was again grappled with by the House of Lords in ***Lloyd and Others*** vs. ***McMahon,*** [1987] 1 AC 625 which ultimately gravitated to the view that the answer to the question would depend on the particular statutory provision providing for the higher remedy. Lord Bridge of Harvich stated the following in his judgment:

> "…This is because the question arising in the instant case must be answered by considering the particular statutory

> provisions here applicable which establish an adjudicatory system in many respects quite unlike any that has come under examination in any of the decided cases to which we were referred. We are concerned with a point of statutory construction and nothing else."
>
> In their Lordships opinion:
>
> "…But I cannot see any reason why it should be necessary to seek leave to invoke the supervisory jurisdiction of the court when any party aggrieved by the certificate is entitled as of right to invoke the much more ample appellate jurisdiction which the statute confers. It is the very amplitude of the jurisdiction which, to my mind, is all- important. Whether the auditor has decided to certify or not to certify, the court is empowered to confirm or quash the decision, to vary the decision if a certificate has been issued by the auditor, and in any case to give any certificate which the auditor could have given. The language describing the court's powers could not possibly be any wider. Procedurally there is nothing either in the statute or in the relevant rules of court to limit in any way the evidence which may be put before the court on either side…."

50. Applying this test in ***Lloyd (supra)***, the answer in the present case is simple. Rule 5(1)(b) of the A&R Rules does not provide an ample review or a full-fledged enquiry at the revisional stage. The revision was to be entertained only if it is on the point of law and not on facts. The discussion,

however, on this issue would not be complete unless a survey of the judgments of this Court is done.

51. The seeds for this thought-process was sown by Chief Justice S.R. Das in **The State of Uttar Pradesh** vs. **Mohammad Nooh**, 1958 SCR 595. In fact, Justice Jeevan Reddy noticed this judgment in ***S.K. Sharma's case (supra)***. Chief Justice Das speaking for the majority in the Constitution Bench held as follows:-

> "On the authorities referred to above it appears to us that there may conceivably be cases-and the instant case is in point-where the error, irregularity or illegality touching jurisdiction or procedure committed by an inferior court or tribunal of first instance is so patent and loudly obtrusive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision. If an inferior court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior court's sense of fair play the superior court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the court or tribunal of first instance, even if an appeal to another inferior court or tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what ex facie was a nullity for reasons aforementioned. This would be so all the more if

> the tribunals holding the original trial and the tribunals hearing the appeal or revision were merely departmental tribunals composed of persons belonging to the departmental hierarchy without adequate legal training and background and whose glaring lapses occasionally come to our notice. The superior court will ordinarily decline to interfere by issuing certiorari and all we say is that in a proper case of the kind mentioned above it has the power to do so and may and should exercise it. We say no more than that."

52. In ***Shri Farid Ahmed Abdul Samad and Another*** vs. ***The Municipal Corporation of the City of Ahmedabad and Another***, (1976) 3 SCC 719, an attempt was made to cover up the breach of the *audi alteram partem* rule by seeking refuge under the principle that proceedings in the higher body would cure the breach in the original body. Justice P.K. Goswami, speaking for a three-Judge Bench, rebuffed it and echoed sentiments similar to the one expressed in ***Lloyd (supra)*** in the following words:-

> "22. We should make it clear that provision for appeal is not a complete substitute for a personal hearing which is provided for under Section 5A of the Land Acquisition Act. This will be evident from a perusal of Clause 3 of Schedule B itself. The character of the appeal contemplated under Clause 3(ii) of Schedule B is only with regard to the examination of the following aspects:

(1) whether the order or approval of the plan is within the powers of the Bombay Act, and

(2) whether the interests of the appellant have been substantially prejudiced by any requirement of this Act not having been complied with.

The appeal is confined under Clause 3 of Schedule B to the examination of only the twin aspects referred to above. There is no provision for entertainment of any other relevant objection to the acquisition of land. For example a person whose land is acquired may object to the suitability of the land for the particular purpose acquired. He may again show that he will be at an equal disadvantage if his land and house have to be acquired in order to provide accommodation for the poorer people as he himself belongs to the same class of the indigent. He may further show that there is a good alternative land available and can be acquired without causing inconvenience to the occupants of the houses whose lands and houses are sought to be acquired. There may be other relevant objections which a person may be entitled to take before the Commissioner when the whole matter is at large. The Commissioner will be in a better position to examine those objections and consider their weight from all aspects and may even visit the locality before submitting his report to the Standing Committee with his suggestions. For this purpose also a personal hearing is necessary. The appeal court under the Schedule B to the Bombay Act, on the other hand, is not required under Clause 3 to entertain all kinds of objections and it may even refuse to consider the objections mentioned earlier in view of the truncated scope of the hearing under Clause 3(ii) as noted above. We are, therefore, unable to accept the submission that the appeal provided for under Schedule B is a complete substitute for a right to personal hearing and as such by necessary implication ousts the applicability of Section 5A of the Land Acquisition Act."

53. In ***Institute of Chartered Accountants of India*** vs. ***L.K. Ratna and Others***, (1986) 4 SCC 537, Justice R.S. Pathak (as the learned Chief Justice then was) negated a valiant attempt by the counsel for the appellant to cling on to the appellate proceeding as a panacea for the violation of *audi alteram partem* at the original stage. His Lordship aligned with the *Leary* line of reasoning.

> "17. It is then urged by learned counsel for the appellant that the provision of an appeal under Section 22-A of the Act is a complete safeguard against any insufficiency in the original proceeding before the Council, and it is not mandatory that the member should be heard by the Council before it proceeds to record its finding. Section 22-A of the Act entitles a member to prefer an appeal to the High Court against an order of the Council imposing a penalty under Section 21(4) of the Act. It is pointed out that no limitation has been imposed on the scope of the appeal, and that an appellant is entitled to urge before the High Court every ground which was available to him before the Council. Any insufficiency, it is said, can be cured by resort to such appeal. Learned counsel apparently has in mind the view taken in some cases that an appeal provides an adequate remedy for a defect in procedure during the original proceeding. Some of those cases as mentioned in Sir William Wade's erudite and classic work on "Administrative Law" 5th edn. But as that learned author observes (at p. 487), "in principle there ought to be an observance of natural justice equally at both stages", and

If natural justice is violated at the first stage, the right of appeal is not so much a true right of appeal as a corrected initial hearing: instead of fair trial followed by appeal, the procedure is reduced to unfair trial followed by fair trial.

And he makes reference to the observations of Megarry, J. in *Leary v. National Union of Vehicle Builders*. Treating with another aspect of the point, that learned Judge said:

If one accepts the contention that a defect of natural justice in the trial body can be cured by the presence of natural justice in the appellate body, this has the result of depriving the member of his right of appeal from the expelling body. If the rules and the law combine to give the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied with an unjust trial and a fair appeal? Even if the appeal is treated as a hearing de novo, the member is being stripped of his right to appeal to another body from the effective decision to expel him. I cannot think that natural justice is satisfied by a process whereby an unfair trial, though not resulting in a valid expulsion, will nevertheless have the effect of depriving the member of his right of appeal when a valid decision to expel him is subsequently made. Such a deprivation would be a powerful result to be achieved by what in law is a mere nullity; and it is no mere triviality that might be justified on the ground that natural justice does not mean perfect justice. As a general rule, at all events, I hold that a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in an appellate body.

The view taken by Megarry, J. was followed by the Ontario High Court in Canada in *Re Cardinal and Board of Commissioners of Police of City of Cornwall*. The Supreme Court of New Zealand was similarly inclined in *Wislang v. Medical Practitioners Disciplinary Committee*, and so was *the Court of Appeal of New Zealand in Reid v. Rowley*".

54. The learned Judge (Pathak, J.) followed up the above principle by setting out an approach to cases, which repays study. It was held:

> “18. But perhaps another way of looking at the matter lies in examining the consequences of the initial order as soon as it is passed. There are cases where an order may cause serious injury as soon as it is made, an injury not capable of being entirely erased when the error is corrected on subsequent appeal. For instance, as in the present case, where a member of a highly respected an publicly trusted profession is found guilty of misconduct and suffers penalty, the damage to his professional reputation can be immediate and far-reaching. "Not all the King's horses and all the King's men" can ever salvage the situation completely, notwithstanding the widest scope provided to an appeal. To many a man, his professional reputation is his most valuable possession. It affects his standing and dignity among his fellow members in the profession, and guarantees the esteem of his clientele. It is often the carefully garnered fruit of a long period of scrupulous, conscientious and diligent industry. It is the portrait of his professional honour. In a world said to be notorious for its blase attitude towards the noble values of an earlier generation, a man's professional reputation is still his most sensitive pride. In such a case, after the blow suffered by the initial decision, it is difficult to contemplate complete restitution through an appellate decision. Such a case is unlike an action for money or recovery of property, where the execution of the trial decree may be stayed pending appeal, or a successful appeal may result in refund of the money or restitution of the property, with appropriate compensation by way of interest or mesne profits for the period of deprivation. And, therefore, it seems to us, there is manifest need to ensure that there is no breach of fundamental procedure

> in the original proceeding, and to avoid treating an appeal as an overall substitute for the original proceeding."

55. ***L.K. Ratna's case (supra)*** was distinguished in ***United Planters Association of Southern India*** vs. ***K.G. Sangameswaran and Another***, (1997) 4 SCC 741. That was a case where the jurisdiction of the Appellate Authority to record evidence and to come to its own conclusion on the questions involved was very wide. The appellate provision provided that even if the evidence is recorded in the domestic enquiry and the order of dismissal is passed thereafter, it would still be open to the appellate authority to record evidence. In those state of affairs, this Court, in para 18, 27 and 28 of the said judgment, has held as under:-

> "18. From a perusal of the provisions quoted above, it will be seen that the jurisdiction of the Appellate Authority to record evidence and to come to its own conclusion on the questions involved in the appeal is very wide. Even if the evidence is recorded in the domestic enquiry and the order of dismissal is passed thereafter, it will still be open to the Appellate Authority to record, if need be, such evidence as may be produced by the parties. Conversely, also if the domestic enquiry is ex parte or no evidence was recorded during those

proceedings, the Appellate Authority would still be justified in taking additional evidence to enable it to come to its own conclusions on the articles of charges framed against the delinquent officer.

27. The learned counsel, in support of his arguments that the defect is not curable has placed reliance on the decision of this Court in *Institute of Chartered Accountants of India v. L. K. Ratna*. It was, no doubt, laid down in this case that a post-decisional hearing cannot be an effective substitute of pre-decisional hearing and that if an opportunity of hearing is not given before a decision is taken at the initial stage, it would result in serious prejudice, inasmuch as if such an opportunity is provided at the appellate stage, the person is deprived of his right of appeal to another body. There may be cases where opportunity of hearing is excluded by a particular service or statutory rule. In *Union of India v. Tulsiram Patel*, pre-decisional hearing stood excluded by the second proviso to Article 311(2) of the Constitution and, therefore, the Court took the view that though there was no prior opportunity to a government servant to defend himself against the charges made against him, he got an opportunity to plead in an appeal filed by him that the charges for which he was removed from service were not true. Principles of natural justice in such a case will have to be held to have been sufficiently complied with. In *Maneka Gandhi v. Union of India* and in *Liberty Oil Mills v. Union of India* an opportunity of making a representation after the decision was taken, was held to be sufficient compliance. All depends on facts of each case.

28. In the instant case, the appellant has contended that the respondent did not participate in the domestic enquiry in spite of an opportunity of hearing having been provided to him. He was also offered the inspection of the documents, but he did not avail of that opportunity. He himself invoked the jurisdiction of the Appellate Authority and the order of dismissal passed against him was set aside on the ground that the appellant did not hold any domestic enquiry. It has already been seen above that

> the Appellate Authority has full jurisdiction to record evidence to enable it to come to its own conclusion on the guilt of the employee concerned. Since the Appellate Authority has to come to its own conclusion on the basis of the evidence recorded by it, irrespective of the findings recorded in the domestic enquiry, the rule laid down in *Ratna case* will not strictly apply and the opportunity of hearing which is being provided to the respondent at the appellate stage will sufficiently meet his demands for a just and proper enquiry.
> [emphasis supplied]

56. In ***Jayantilal Ratanchand Shah*** vs. ***Reserve Bank of India and Others***, (1996) 9 SCC 650, A Constitution Bench of this Court held that opportunity even if assumed to be denied at the original stage, no grievance could be raised as the appellate authority gave such an opportunity:

> "16. In impugning the order of the Currency Officer of the Bank it was submitted on behalf of the petitioner that no opportunity of being heard was given to the Society so as to enable it to explain the reasons for delay in submitting the declaration form. Even if we proceed on the assumption that such an opportunity of personal hearing was imperative to comply with the rules of natural justice the petitioner cannot raise any grievance on that score for the appellate authority gave them such an opportunity before dismissing their appeal. This apart, as noticed earlier, the appellate authority has given detailed reasons for its inability to accept the explanation of the Society for not filing the declaration in time…."

The provision providing for appeal in Section 8(3) of the High Denomination Bank Notes (Demonetisation) Act, 1978 reads as under:-

> "8(3). Any person aggrieved by the refusal of the Reserve Bank to pay the value of the notes under sub-section (2) may prefer an appeal to the Central Government within fourteen days of the communication of such refusal to him."

57. Three other cases need only a brief mention. In ***Olga Tellis and Others*** vs. ***Bombay Municipal Corporation and Others,*** (1985) 3 SCC 545, (Para 51) Chief Justice Y.V. Chandrachud found that no opportunity was given to the petitioners. However, it was observed that hearing in ample measure was given by this Court. Ultimately, the case was found to be covered by the exception carved out in ***S.L. Kapur (supra)*** and writ was denied since on admitted and indisputable facts only one conclusion was possible. It was held that Court should not issue futile writs. For the issue under consideration, this is really not an authority. Equally so, in ***Charan Lal Sahu (supra)***, the Court expressly

recorded that on the facts and circumstances of that case, since sufficient opportunity was available when the review application was heard on notice, no further opportunity was necessary. The Court recorded that it could not be said that injustice was done and further recorded that "to do a great right" after all it is permissible sometimes "to do a little wrong". That case concerned a challenge to the validity of the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985.

58. In ***The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another*** vs. ***Ramjee***, (1977) 2 SCC 256 cited by the learned counsel for the private respondents in the written submissions again does not directly deal with this issue. There the issue was about the interpretation of Regulation 26 of the Coal Mines Regulations, which read as under:-

> "**26. Suspension of an Overman's Sirdar's, Engine driver's, shot firer's or Gas-testing Certificate**- (1) If,

> in the opinion of the Regional Inspector, a person to whom an Overman's, Sirdar's, Engine-driver's, Shot-firer's or Gas-testing Certificate has been granted is incompetent or is guilty of negligence or misconduct in the performance of his duties, the Regional Inspector may, after giving the person an opportunity to give a written explanation, suspend his certificate by an order in writing.
>
> (2) Where the Regional Inspector has suspended a certificate under sub-regulation (1) he shall within a week of such suspension report the fact to the Board together with all connected papers including the explanation if any received from the person concerned.
>
> (3) The Board may, after such inquiry as it thinks fit, either confirm or modify or reduce the period of suspension of the certificates, or cancel the certificate."

In this case, the delinquent handed over an explosive to an unskilled hand resulting in injury to an employee. The Regional Inspector of Mines immediately enquired and on the delinquent's virtual admission found the incident to be true. The Regional Inspector gave an opportunity for explanation and, after considering the materials before him, forwarded the papers to the Chairman with a recommendation for cancellation of the certificate under Regulation 26. The Board had an explanation (styled appeal) from the delinquent and also recommendation by the

Regional Inspector for cancellation of the certificate. The Regional Inspector had not suspended the delinquent but had merely held an enquiry and made a recommendation for cancellation of the certificate. One of the delinquent's argument in this Court was that since the Regional Inspector did not suspend the respondent's certificate, the Board had no jurisdiction and that the Regional Inspector had no power to recommend, but only to report and that the recommendation influenced the Board. It was further argued that the Board should have given a fresh opportunity to be heard before cancellation. The argument was repelled by holding that the difference between suspension plus report and recommendatory report was a distinction without a difference. It was also held that the delinquent had filed an appeal against the report of the Regional Inspector to the Chairman of the Board. He was heard in compliance with the Regulation 26.

In conclusion, Justice Krishna Iyer held the following:-

> "15. These general observations must be tested on the concrete facts of each case and every miniscule violation does not spell illegality. If the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures."

Not only was that a case where the Regional Inspector held an enquiry, additionally, the Board also heard the delinquent. That was not a case on the issue under consideration here. This case also is of little assistance to the respondents.

59. The principles deducible are as follows:-

i) *audi alteram partem* as a facet of natural justice wherever applicable at the original stage ought to be strictly complied with.

ii) In cases where the jurisdiction of the appellate/revisional/higher body is circumscribed like in ***Farid (supra)*** and in the case at hand, courts ought to reject the argument that the hearing before the appellate/revisional/ higher body, has cured the breach of the *audi alterm partem* rule at the original stage.

iii) Ordinarily, violation of the *audi alteram partem* rule, at the original stage, will not be curable in appeal/revision. However, if the jurisdiction of the appellate/revisional/higher body is comprehensive as found in ***Jayantilal Ratan Chand (supra)*** and ***Sangameswaran (supra),*** the Courts may be justified in concluding on the given facts, that the breach of the *audi alteram partem* rule, in the original stage, has stood redressed due to the scope and sweep of the higher proceeding. However, it will be purely within the discretionary power of the court depending on the facts of the case. This, in turn, will depend on the

court being satisfied that the fair opportunity given by the higher body has ensured complete justice. Even in cases where the appellate jurisdiction/jurisdiction of the higher body is comprehensive as found in the provisions of the ***Jayantilal Ratan Chand (supra)*** and ***Sangameswaran (supra),*** there may be circumstances where the court may find that the violation does not stand cured. If, on a given set of facts, the court is of the opinion that ample opportunity has not been forthcoming and complete justice has not been done, the court in its discretion, will be justified in concluding that the violation of the principles of natural justice does not stand cured. In exercising the discretion, the court will be justified in factoring in the circumstances as the one set out in para 18 of ***L.K. Ratna (supra).***

60. Applying the above principles, it is found that the present case is covered by proposition (ii) above. The

revisional power is severely circumscribed by Rule 5(1)(b) of the A& R Rules and is confined to points of law.

61. In view of that, on facts, it is held that the breach of principles of natural justice in the proceedings before the Collector did not stand cured on account of the proceedings before the revisional authority. Equally so, judicial review proceedings being a review of the decision-making process and not being a merits review, such proceedings also cannot be a cure for the violation of the *audi alteram partem* rule before the fact-finding authority.

Question No.4

To what relief the appellants are entitled to?

62. As would be clear from the sequence of facts set out above, the appellants were appointed as Shiksha Karmi Grade-III and they joined their duties in September, 1998. Of all the candidates who appeared, only one of them - Archana Mishra (R-4) took up the matter in challenge and

filed proceedings before the Collector under Rule 3 of the A&R Rules read with Section 12 of the Recruitment Rules. Before the Collector, she impleaded only the Officers ex-officio. Even though allegations of *mala fide* and favouritism in the markings during interview were made neither the members of the Committee in their individual capacity nor the selected and appointed candidates, like the appellants were made parties. A reading of the order of the Collector and the revisional authority, discloses that, the resolution passed by the Standing Committee of the Panchayat on 01.08.1998 providing for recusal of the committee members from the statutory committee and for re-allocation of marks by vesting it in the Chief Executive Officer, was not even discussed in the orders. It is difficult to speculate, what the response of the Collector and the revisional authority would have been, if they were posted of the recusal resolution. Neither in the order of the Collector nor in the order of the revisional authority is the definition

of relative as available in explanation 40(c) of the M.P. *Adhiniyam* set out or discussed. Admittedly, seven out of the 14 candidates did not come within the definition of 'relative', under the explanation to Section 40(c).

63. Learned counsel for the appellants here have, citing the resolution of 01.08.1998, contended that adequate precautions like recusal and absence from the venue was taken. Learned counsel contends that there is no material to show that the committee members influenced the selection process. Even the Collector, it is pointed out, has recorded in the order that it was not possible for the Collector to consider the determination of the marks of interview since it was the discretion of the committee. Even after so holding, the Collector set aside the appointments only of the appellants merely on the basis that there was an admission by the Chief Executive Officer, impleaded ex-officio, about the factum of some candidates being related to the

committee members. While the Collector and the revisional authority only put it on the factum of some candidates being related, without examining the definition of relative, the learned Single Judge drew some inferences additionally based on the qualifying marks and the marks awarded in the interview.

64. It will be of interest to notice that in ***B.N. Nagarajan and Ors.*** Vs. ***State of Mysore and Ors.,*** [1966] 3 SCR 682, a similar inference drawn only on the basis of the low qualifying marks was not favourably looked at by this Court. This Court held:-

> "… For example, it was alleged in para 15 that one Shri D.C. Channe Gowda who is the son-in-law of the Second Member of the Public Service Commission, Shri Appajappa, was an ordinary B. E. Graduate with only 49.8% marks. But even if he had only 49.8% of the marks, this is not conclusive to show that he should not have been selected because the whole object of interviewing candidates is to judge their eligibility or suitability apart from the standard displayed by them in the written examination. We are unable to hold that on these facts any mala fides or collateral object has been proved."

65. What is also of concern is that the resolution of recusal, even though specifically argued before the learned Single Judge, has been brushed aside only because of the inferences drawn based on the marks. There was gross violation of the principles of natural justice at the original stage and on facts it is held that the violation did not get cured at the revisional stage.

66. Neither the learned Single Judge nor the Division Bench have examined the legal effect of the resolution dated 01.08.1998 providing for recusal. Learned counsel for the appellants has placed reliance on the judgment in ***Javid Rasool Bhatt (supra)*** which also distinguishes the judgment in ***A.K. Kraipak (supra)***. Learned Counsel relies on the following paragraph in ***Javid Rasool Bhatt (supra)***.

> "14. Great reliance was placed by the learned counsel on *A.K. Kraipak v. Union of India* on the question of natural justice. We do not think that the case is of any assistance to the petitioners. It was a case where one of the persons, who sat as member of the Selection Board, was himself one of the persons to be considered for selection. He participated in the deliberations of the Selection Board

> when the claims of his rivals were considered. He participated in the decisions relating to the orders of preference and seniority. He participated at every stage in the deliberations of the Selection Board and at every stage there was a conflict between his interest and duty. The Court had no hesitation in coming to the conclusion that there was a reasonable likelihood of bias and therefore, there was a violation of the principles of natural justice. In the case before us, the principal of the Medical College, Srinagar, dissociated himself from the written test and did not participate in the proceedings when his daughter was interviewed. When the other candidates were interviewed, he did not know the marks obtained either by his daughter or by any of the candidates. There was no occasion to suspect his bona fides even remotely. There was not even a suspicion of bias, leave alone a reasonable likelihood of bias. There was no violation of the principles of natural justice."

67. It is also seen that ***Javid Rasool Bhatt (supra)*** finds express mention and approval in ***Ashok Kumar Yadav (supra)*** [Para 18].

> "18……The procedure adopted by the Selection Committee and the member concerned was in accord with the quite well-known and generally accepted procedure adopted by the Public Service Commissions everywhere. It is not unusual for candidates related to members of the Service Commission or other Selection Committee to seek employment. Whenever such a situation arises, the practice generally is for the member concerned to excuse himself when the particular candidate is interviewed. We notice that such a situation had also been noticed by this Court in the case of *Nagarajan* v. *State of Mysore* where it was pointed out that in the absence of mala fides, it would not be right to set aside the selection merely because one of the

> candidates happened to be related to a member of the Selection Committee who had abstained from participating in the interview of that candidate. Nothing unusual was done by the present Selection Committee. The girl's father was not present when she was interviewed. She was one among several hundred candidates. The marks obtained by her in the written test were not even known when she was interviewed…. In the case before us, the Principal of the Medical College, Srinagar, dissociated himself from the written test and did not participate in the proceedings when his daughter was interviewed. When the other candidates were interviewed, he did not know the marks obtained either by his daughter or by any of the candidates. There was no occasion to suspect his bona fides even remotely. There was not even a suspicion of bias, leave alone a reasonable likelihood of bias. There was no violation of the principles of natural justice.
>
> We wholly endorse these observations."
>
> (emphasis supplied)

68. Equally so, in ***Jaswant Singh Nerwal*** vs. ***State of Punjab and Others***, 1991 Supp (1) SCC 313 distinguishing ***A.K. Kraipak (supra),*** this Court reiterated the finding in ***Javid Rasool Bhatt (supra)*** and ***B.N. Nagarajan (supra).***

69. Learned counsel for the appellants rightly argued that in ***Javid Rasool Bhatt (supra),*** while the Chairman of the J&K Public Service Commission was the Chairman of the

Selection Committee, the other two members were the Principal of the two government medical colleges in Srinagar and Jammu, respectively. As contended by the learned counsel for the appellants, even to a case other than a Public Service Commission the principle of recusal has been recognized and that judgment in ***Javid Rasool Bhatt (supra)*** has been endorsed in ***Ashok Kumar Yadav (supra).***

70. In the present case, it was a statutory committee framed under the Recruitment Rules and to ensure a fair selection, recusal resolution was passed by the standing committee before the selection. ***J. Mohapatra (supra)*** recognizes the distinction between committees constituted under administrative measures and committees under statutory rules or regulations, while explaining the ease with which composition in cases of non-statutory committees could be changed.

71. Learned counsel drew attention to the chart (set out in para 32 above) to demonstrate that, in some instances, the marks obtained by the Complainant - Archana Mishra and the parties seeking impleadment in the interview, were more than the marks secured by some of the appellants. Had an opportunity being given to them before the Collector they would have demonstrated these facts, to dispel the argument of bias and favouritism, contends the learned counsel.

72. Learned counsel for the State and the parties seeking impleadment have vehemently countered these submissions. They contended first that the principle of ***Ashok Kumar Yadav (supra)*** can only apply to Public Service Commissions. They relied on ***Reference under Article 317(1) of the Constitution of India, In Re*** (2009) 1 SCC 337 to reinforce this point. This contention overlooks the fact that ***Javid Rasool Bhatt (supra)*** affirmed in ***Ashok Kumar Yadav (supra)*** was not a case of Public Service

Commission. It is only that the Chairman of the Public Service Commission was the Chairman of the selection committee with the other two Members in that case being the Members of the two Government Medical Colleges in Srinagar and Jammu respectively. Moreover, in the present case, the Committee is a statutory Committee set up under the Recruitment Rules of 1997. This aspect is independent of the point of breach of natural justice at the original stage.

73. Learned counsel for the State and the private respondents contends that the selection and appointment is vitiated on the ground of bias and likelihood of bias irrespective of recusal of the relative members in the committee. The judgment of ***Dr. (Mrs.) Kirti Deshmankar (supra)*** cited by them was a case where the mother-in-law of the candidate did not recuse. Equally so, in the case of ***J. Mohapatra (supra)*** there was no recusal. The judgment of ***A.K. Kraipak (supra)*** cited by them also stands

distinguished in ***Javid Rasool Bhatt (supra), Ashok Kumar Yadav (supra)*** and in ***Jaswant Singh Nerwal (supra)*** for the reasons rightly stated therein.

74. This is not a case where from the facts, only one admitted or indisputable factual position emerges, warranting denial of the issuance of the writ. This Court, following the limited exception carved out by Chinnappa Reddy, J. in ***S.L.Kapur (supra)*** has held that since Courts do not issue futile writs, in cases where on admitted or indisputable facts only one conclusion is possible, then writs will not follow. This is, even if there was violation of principles of natural justice. This principle has been followed in ***M.C. Mehta*** vs. ***Union of India***, (1999) 6 SCC 237 and ***Aligarh Muslim University and Others*** vs. ***Mansoor Ali Khan***, (2000) 7 SCC 529. These cases have no application whatsoever to the facts of the present case. This is not such a case. In this case, it could not be said that only

one admitted or indisputable factual position is possible. Hence issue of a writ will not be futile.

75. Given a chance before the Collector perhaps the appellants would have met each and every objection of the sole Complainant-Archana Mishra (R-4). Perhaps they may have not. One does not know. Respondent No.4 ought to have impleaded the candidates who were selected and appointed, including the appellants, before the Collector. Even if she failed, the Collector ought to have given an opportunity to implead, with a stern direction that failure to implead would result in a dismissal. This is all the more so in the teeth of Rule 9 of the A&R Rules. For the failure of Respondent No.4 and the Collector, the appellants cannot be made to pay.

76. Approaching the home stretch, one question still remains:- Whether at this distance of time should the matter be remitted back to the Collector for a fresh enquiry? The

selection is of the year 1998. By virtue of interim orders through out, the appellants have functioned in office and are discharging their duties for the past more than twenty five years. One of them has even superannuated. At this distance of time, it will not be in the interest of justice to remand the matter for a fresh enquiry.

77. In view of the above, the appeals are allowed. The judgment of the Division Bench of the High Court passed in the writ appeals are set aside. The result would be that the appeal filed by Respondent No.4 Archana Mishra before the Collector, Chhatarpur, would stand dismissed. The appellants would be entitled to continue in service, deeming their appointments as valid and would be entitled to all service benefits. No order as to costs.

…..……J.
(K.V. Viswanathan)

New Delhi;
April 04, 2024.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4806 OF 2011

KRISHNADATT AWASTHY .....APPELLANT(S)

VERSUS

STATE OF MADHYA PRADESH & ORS. .....RESPONDENTS

WITH

CIVIL APPEAL NO. 4807 OF 2011

SUMER SINGH .....APPELLANT(S)

VERSUS

STATE OF MADHYA PRADESH & ORS. .....RESPONDENTS

CIVIL APPEAL NO. 4808 OF 2011

RAMRANI SINGH .....APPELLANT(S)

VERSUS

STATE OF MADHYA PRADESH & ORS. .....RESPONDENTS

CIVIL APPEAL NO. 4809 OF 2011

SHYAMA DEWEDI & ORS. .....APPELLANT(S)

VERSUS

STATE OF MADHYA PRADESH & ORS. .....RESPONDENTS

O R D E R

In view of the divergent views expressed by us in the aforesaid appeals, the Registry is directed to place the matter before Hon'ble the Chief Justice of India for constitution of a larger Bench. In the meantime, interim order passed earlier shall remain in operation.

.....J.
(J.K. MAHESHWARI)

.....J.
(K.V. VISWANATHAN)

NEW DELHI;
APRIL 04, 2024.