

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WP(C)No.4240/20007**

Date of Pronouncement 2nd April, 2009

News Line and Others Petitioners
Through : Mr. Aseem Mehrotra, Advocate for petitioner

Versus

Union of India and Others Respondents
Through : Mr. Amarendra Sharan, ASG with Mr. Rajeev
Sharma, Advocate for Prasar Bharti.

Mr. P.P. Malhotra, ASG, Mr. Rajeev Mehra,
Advocate for respondent/UOI.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

1. Whether reporters of local papers may be allowed to see the Judgment ? **Yes**
2. To be referred to the Reporter or not? **Yes**
3. Whether the Judgment should be reported in the Digest? **Yes**

G.S. SISTANI, J.

1. The petitioners were admittedly successful in getting empanelled as producers for commissioning of programmes to be telecast on DD-Kashir Channel. The process of empanelment was effected by way of selection on the basis of certain guidelines formulated by Prasar Bharati in consultation with the Union Ministry of Information and Broadcasting, the respondents herein. Admittedly, the decided course of action pursuant to the empanelment was to enforce the *inter se* rights and obligations of the petitioners and Prasar Bharati through a contract. However, even before the contract in question could get executed, certain discrepancies were alleged in the process of empanelment thereby leading to its

cancellation. Aggrieved, the petitioners have filed the present petition under article 226 of the Constitution of India, seeking quashing of the order cancelling the empanelment of the petitioners. *Inter alia*, the petitioners have also sought a writ mandamus seeking specific performance of contract decided to be executed into between the parties.

2. Factual matrix, as culled out from the pleadings of the parties, is outlined as under:

2.1 The respondents conceived the launching of DD Kashir Channel in Jammu and Kashmir. The commissioning of programmes and serials to be telecast on the DD Kashir Channel for the year 2006 is stated to have been funded by the Government of India vide a special package worth Rs. 100 crore announced by the PMO to salvage the situation in the militancy hit Jammu and Kashmir valley which lost its audience to Pakistan T.V.

2.2 With a view to achieve the said purpose, applications were invited from prospective producers with the last date 22.7.2005. About 1100 persons applied in response to the said advertisement. Simultaneously, the Prasar Bharati, in consultation with the Ministry of Information and Broadcasting, suggested guidelines for empanelment of producers for Doordarshan and the same were discussed with the producers in Srinagar and Delhi. A few amendments to these guidelines were suggested by the producers and the suggestions were accepted by the authorities and incorporated in the final guidelines that were issued. The guidelines provided for talent hunt throughout the country, especially J. & K. on

competition basis. Thus, in order to pave way for audience friendly programmes, alongside the process of empanelment, a theme contest, open for J. and K. people only, was conducted by Doordarshan. The people were asked to send their entries, scripts, ideas for the programmes to be telecast on Doordarshan. Several entries were received by Doordarshan under this contest.

- 2.3 The process of empanelment was completed in October 2005. Producers including the petitioners were issued Letters of Intent in different categories.
- 2.4 Complaints regarding various irregularities were received by the respondents, and on the basis thereof, a preliminary enquiry was also registered by the CBI bearing no. PE-DAI-2006-A-001. The respondent no. 1 also constituted a Fact Finding Committee through Mr. Rajat Bhargava, Additioal Director General (Finance), All India Radio.
- 2.5 The Fact Finding Authority found various irregularities in selection, and in view thereof, the Prasar Bharati was advised by the Ministry of Information and Broadcasting to quash the empanelment and frame *de novo* guidelines for selection.
- 2.6 The petitioners, in the meanwhile, approached the High Court, which vide order dated 28.3.2007, directed the Prasar Bharti to take a final decision in the matter within a period of eight weeks.
- 2.7 The respondents vide order dated 22.5.2007 came to the conclusion that the possibility of bias could not be ruled out, and therefore, scrapped the earlier selection process and directed for inviting fresh proposals in terms of the new policy

inasmuch the earlier policy was found to be flawed.

2.8 The panel of the petitioners expired on 7.4.2008.

2.9 Aggrieved, the petitioners have filed the present petition, seeking, *inter alia*, quashing of the cancellation order dated 22.5.2007 and specific performance of the contract that was to be concluded between the parties.

3. Mr. Aseem Mehrotra, learned counsel for the petitioners, has stoutly argued that the impugned cancellation order is in violation of the principles of natural justice inasmuch as the petitioners have not been supplied the alleged adverse material, that is, the Report of Dr. Rajat Bharagava along with the documents which is the sole basis of the arguments under challenge. It is submitted that judicial dicta in ***State Bank of India v. D.C. Aggarwal***¹, ***M.J. Sivani & Others v. State of Karnataka and Others***², ***M.A. Jackson v. Collector of Customs***³, ***Benny & Others v. Registrar of Co-operative Societies***⁴, and ***Inderpreet Singh Kahlon & Others v. State of Punjab and Others***⁵ is settled if the adverse material is not supplied to the affected party, the entire proceedings and the order passed thereto would be *non est* and void. In the same breadth, learned counsel for the petitioners, whilst relying upon the decisions in ***K.I. Shephard***

¹ (1993) Suppl. 1 SCC 13

² (1995) 6 SCC 289

³ (1998) 1 SCC 198

⁴ (1998) 5 SCC 269

⁵ (2006) 11 SCC 356

and Others v. Union of India and Others⁶ and **Neelima Mishra v. Harinder Kaur Pintal & Others**⁷, has submitted that even if the impugned order is considered as an administrative order, then also the principles of natural justice have to be followed.

4. It is submitted by learned counsel for the petitioners that the impugned order of cancellation lies in the teeth of the order of this Court dated 28.3.2007 whereby the respondents were categorically directed to allow the petitioners to make representations before the Fact Finding Authority. *Qua* the post-decisional hearing afforded to the petitioners, learned counsel has relied upon **K.I. Shephard and Others v. Union of India and Others**⁸ and **Shekhar Ghosh v. Union of India and Others**⁹ to bring home the point that post-decisional hearing is no hearing in the eye of law as Prasar Bharati was acting under the instruction of the Ministry of Information and Broadcasting and the result of the hearing is a foregone conclusion which vitiates the order under challenge.
5. It is further contended that the impugned cancellation order has been passed at the instance of the Ministry of Information and Broadcasting as is apparent from the letter dated 23.10.2006, and thus, there has been no application of mind by the Prasar Bharati.

⁶ (1987) 4 SCC 431

⁷ (1990) 2 SCC 746

⁸ *supra* n. 6

⁹ (2007) 1 SCC 331

6. Relying on the decisions in **Onkar Lal Bajaj v. Union of India**¹⁰ and **Inderpreet Singh Kahlon & Others v. State of Punjab and Others**¹¹, it is contended by learned counsel that the action of Prasar Bharati in canceling the selection process without advertng to the facts of any individual case is a case of non-application of mind and arbitrariness which is not permissible in law and can be corrected by a writ of certiorari and mandamus.
7. It is contended by learned counsel for the petitioners that the finding of bias/likelihood of bias, as recorded in the impugned cancellation order, is without any factual basis inasmuch as there is no material for coming to such a conclusion. The only assertion is that Dr. S.S. Toshkhani was a writer for a producer who was in Category “C” and he was an expert for category “B” on 3.2.2006. It is established from facts that Dr. S.S. Toshkhani has no remote connection with any of the selected producers. On this point, reliance has been placed on the decisions in **Jaswant Singh Nerwal v. State of Punjab & Others**¹² and **Tata Cellular v. Union of India & Others**¹³.
8. Learned counsel for the petitioners, whilst seeking the relief of specific performance of contract, has relied upon the decisions in **Gujarat State Financial Corporation v. Lotus Hotels Pvt. Limited**¹⁴

¹⁰ (2003) 2 SCC 673

¹¹ *supra* n. 5.

¹² (1991) Suppl. 1 SCC 13

¹³ (1994) 6 SCC 651

¹⁴ (1983) 3 SCC 379

9. *Per contra*, Mr. A. Sharan, learned Additional Solicitor General appearing on behalf of the respondents no. 2 to 4, has resisted with vehemence the submissions made by the petitioners. It is contended that the earlier selection process, which was quashed, because of being vitiated due to irregularities including bias, was under a policy which has been changed and replaced by a new policy. Under this new policy, the parameters, method, entitlement are different from the earlier policy, therefore, at this stage, no direction can be issued to give effect to a policy which is non-existent. This argument, it is submitted by the learned ASG, is contextualized by the trite proposition that it is well within the competence of public authorities to change or formulate a new policy. It is further submitted that the doctrine of legitimate expectation and equitable estoppel also do not help the petitioner inasmuch as the petitioners have not been denied the opportunity to participate in the selection procedure under the new policy and have also been exempted from payment of processing fees and have also been allowed to re-submit the previous proposal or to submit new proposal.

10. It is next contended by learned ASG that the contract between the parties was, indisputedly, never concluded and thus, in the given circumstance, it is submitted by Mr. A. Sharan that mere selection of the petitioners would not clothe them with any right for grant of contract or execution of agreement, and more so, when no formal agreement was entered into between the parties and certain formalities which

were required to be carried out were also not performed by the parties. On this line of argument, reliance has been placed on the decisions in ***Shankarsan Das v. Union of India***¹⁵, ***Mrs. Asha Kaul and Another v. State of Jammu and Kashmir and Others***¹⁶, ***All India S.C. and S.T. Employees Association and Another, etc., v. A. Arthur Jeen and Others, etc.***¹⁷, and ***Food Corporation of India and Others v. Bhanu Lodh and Others***¹⁸.

11. Taking his point further, Mr. Sharan has further submitted that the petitioners, under the guise of the writ of mandamus, cannot seek the relief of specific performance of contract. Reliance, in respect of this submission, has been placed on the decisions of the Apex Court in ***Binny Limited and Another v. V. Sadasivan and Others***¹⁹, ***Noble Resources Ltd. v. State of Orissa and Another***²⁰ and ***Ramchandra Murarilal Bhattad and Others v. State of Maharashtra and Others***²¹.

12. It is further adduced that the original empanelment was for a period of two years w.e.f. 7.4.2006 to 7.4.2008. It is thus submitted that no mandamus can be invoked in respect of an empanelment process, the term period whereof has expired. Mr. Sharan has relied upon ***State of U.P. and Others v.***

¹⁵ (1991) 3 SCC 47

¹⁶ (1993) 2 SCC 573

¹⁷ (2001) 6 SCC 380

¹⁸ (2005) 3 SCC 618

¹⁹ (2005) 6 SCC 657

²⁰ (2006) 10 SCC 236

²¹ (2007) 2 SCC 588

***Harish Chandra and Others*²², *Syndicate Bank and Others v. Shankar Paul and Others*²³, and *M.P. Electricity Board, through the Chief Engineer, MPEB v. Virendra Kumar Sharma*²⁴** to canvass the trite proposition that no mandamus can be issued for making selection from an expired panel or for awarding work to a person on a panel which has expired.

13. Drawing the attention of this Court to the findings of the Fact Finding Authority, Mr. Sharan has further submitted that there was reasonable likelihood of bias in the original process of empanelment inasmuch certain applicants were members of creative teams in certain projects and were interested in empanelment of those parties. Relying on the case of ***A.K. Kraipak and Others v. Union of India and Others*²⁵**, it is submitted that quashing of an entire selection process cannot be faulted with when such selection process is vitiated with bias.

14. It has been strongly urged before this Court that the relief for specific performance sought in the present petition has already been declined in the previous petition filed in this Court. This relief, it is stated, was not granted to the petitioner despite the prayer and arguments to that effect on behalf of the petitioners.

²²(1996) 9 SCC 309

²³(1997) 6 SCC 584

²⁴(2002) 2 SCC 650

²⁵(1969) 2 SCC 262

15. It is also adduced by Mr. Sharan, that the impugned cancellation order was premised on the Report of the Fact Finding Authority, which, *inter alia*, found various irregularities in the selection, viz.

- (i) Uniform Procedure not followed by the Evaluation Committee;
- (ii) The selection was vitiated by bias as certain experts of the the Evaluation Committee for some proposals were themselves members of creative team in other proposals
- (iii) Persons who were not having requisite eligibility were considered and selected;
- (iv) Some persons were given extra time to submit details, etc.

16. Refuting all allegations of the petitioners not having been afforded with an opportunity of hearing, it is argued by Mr. A. Sharan that the petitioners were duly heard before passing of the impugned order, and therefore, there was substantial compliance with the principles of natural justice as laid down in the leading authority in ***Union of India and Another v. Tulsiram Patel and Others***²⁶. Mr. Sharan has further relied upon the cases pertaining to mass cheating, viz. ***The Bihar School Examination Board v. Subhas Chandra Sinha and Others***²⁷ and ***Hira Nath Mishra and Others v. The Principal, Rajendra Medical College, Ranchi and Another***²⁸, wherein no individual right of hearing was granted.

²⁶ (1985) 3 SCC 398

²⁷ (1970) 1 SCC 648

²⁸ (1973) 1 SCC 805

17. Relying on the decisions in **State Bank of India and Another v. Somvir Singh**²⁹ and **All India ITDC Workers Union and Others v. ITDC and Others**³⁰, it is contended by Mr. Sharan that the jurisdiction of this Court, whilst exercising its powers under Article 226 of the Constitution of India, is limited to examining the process of decision-making and does not extend to examining the merit of the decision. It is submitted that once it is found by the Court that there was no illegality or impropriety in the decision-making process, the Court cannot sit in appeal over the decision of the administrative authority.

18. It is further contended by Mr. Sharan that the reliance of the petitioners on the case of **Omkar Lal Bajaj v. Union of India**³¹ is misconceived and the ratio in the said judgment cannot be applied in the present case inasmuch as in the said case there were several committees spread all over the country which made selection for allotment of petrol pumps, gas agencies, etc., whereas in the present case, there was only one Selection Committee comprising the persons interested in the subject-matter itself. It is contended that the present case is covered more in fact and ratio by the case in **A.K. Kriapak v. Union of India**³², and therefore, quashing of the entire selection cannot be faulted with. Moreover, in

²⁹ (2007) 4 SCC 778

³⁰ (2006) 10 SCC 66

³¹ (2003) 2 SCC 673

³² AIR 1970 SC 150

Omkar Lal Bajaj v. Union of India³³, there was no change in policy whereas in the present case, there is a change in the policy, and thus, the petitioners cannot claim that they should be adjudged in accordance with the policy which is non-existent. Furthermore, in the aforementioned case, the validity of a panel did not expire whereas in the present case, the panel has expired on 7.4.2008, and therefore, no mandamus can be issued to select petitioners from expired panel.

19. Learned counsel for the petitioners has countered the submissions of respondents no. 2 to 4 by filing a rejoinder. It is submitted that despite the fact that letters of sanction were awarded, the execution of the agreement was kept in abeyance by the Prasar Bharati at the instance of the Ministry of Information and Broadcasting, which fact emerged from the information provided by the Prasar Bharati to the producers under the Right to Information Act, 2005. It is the case of the petitioners that though the impugned cancellation order is premised on the Fact Finding Report, the respondents in their counter-affidavit have admitted that the petitioners were never associated in the enquiry conducted by Dr. Rajat Bharagava since the same was an internal administrative fact finding enquiry. It is thus the case of the petitioners that the decision reached by the Prasar Bharati is in violation of the principles of natural justice inasmuch as the decision that has been taken is based on an enquiry report in which the petitioners were admittedly never associated and a copy of

³³ (2003) 2 SCC 673

the report was also never supplied to the petitioners till the filing of the counter-affidavit. Learned counsel, whilst drawing the attention of this Court to the preface of the enquiry report, has submitted that though the preface shows that Dr. Rajat Bhargava associated the complainants, that is, representative of Independent Television Producers Welfare Movement and Kashmir Producers Association and officials of the Prasar Bharati during the course of whereas the producers were not associated with the enquiry. It is argued that once the alleged complainants and officials of Prasar Bharati were given opportunity of hearing before the enquiry officer then the successful producers ought to also have been given an opportunity of hearing. It is submitted that the entire enquiry is vitiated by violation of the principles of natural justice and the report ought to be rejected on this ground alone

20. It is further submitted that the Fact Finding Report was never supplied to the petitioners and was initially withheld on the ground that it would impede the process of investigation and thereafter, the copy of the enquiry report dated June 2006 was placed on record in the month of August, 2007. It is thus the case of the petitioners that the Report in question was never supplied to the petitioners for more than one year though the Report is taken to be the factor for canceling the selection process. It is also submitted that the report submitted with the counter-affidavit is incomplete inasmuch as all annexures to the report are missing. It is submitted that a request was made to the Ministry of Information and

Broadcasting, Prasar Bharati and Doordarshan under the Right to Information Act, 2005 for supply of Annexures to the report of Dr. Rajat Bhargava, however, the authorities are shifting the onus on each other.

21. It is further submitted that the impugned cancellation order does not accord with the findings of the Report inasmuch as:

- (i) In the entire Report, there is no finding that any of the petitioners had committed any irregularity much less illegality.
- (ii) The Report does not discuss as to which guidelines were violated.
- (iii) There is no whisper in the entire report as to which Official of the Prasar Bharati or an expert had committed the alleged irregularity and what action has been taken in that respect.
- (iv) The enquiry was ordered only with an objective to favour the producers who were not issued letters of sanction.
- (v) The Report of Dr. Rajat Bhargava is ex facie illegal inasmuch as the selection process was executed by the officials of Prasar Bharati and the selection of the petitioners was purely on merit as is evident from the information provided under the Right to Information Act, 2005.

(vi) There was no occasion to constitute a fact finding authority inasmuch as the selection of the petitioners was done purely on merit.

(vii) The conclusions in the Report of Dr. Rajat Bhargava are based on conjectures and surmises and there is no material to come to a conclusion for cancellation of the entire selection process.

22. It is further argued by learned counsel for the petitioners that mere violation of the guidelines would ipso facto not justify cancellation of the empanelment when such guidelines were formulated by the Prasar Bharati in consultation with the I&B Ministry.

23. It is the case of the petitioners that once the letters of sanction have been issued in favour of the petitioners, a right exists in their favour for execution of final agreements which admittedly was stalled at the instance of the Ministry.

24. As regards the adversarial findings in the Fact Finding Report, it is submitted that these findings do not relate to the petitioner and the same is clear from the information provided under the Right to Information Act, 2005.

25. Qua the letter dated 23.10.2006, it is submitted that the said letter of the I & B Ministry, it is submitted that the said letter is only an internal D.O. and not the decision of the Ministry, and further, that in the reply filed by the Ministry there is no reference to the letter dated 23.10.2006.

26. I have heard the parties at length and given my thoughtful consideration to the matter.

27. The petitioners appear to have staked their claim to restoration of the empanelment on the pre-supposition that there was a valid and subsisting contract between the parties. This, in my considered view, is a rather circular argument inasmuch as no inchoate or subsisting contract was ever in existence between the parties. Mere selection of the petitioners in the panel of producers did not vest the petitioners with any substantive right to seek enforcement of contract, more so when no such contract ever took place between the parties. The petitioners' plea for a writ of mandamus is, thus, without merit and deserves to be rejected outrightly.

28. It is, however, the second leg of the petitioners' case challenging the manner in which the empanelment came to be scrapped that merits attention of this Court. The primary assault herein is launched against the impugned order dated 22.5.2007, reproduced as under:

**PRASAR BHARATI
(BROADCASTING CORPORATION OF INDIA)
DIRECTORATE GENERAL: DOORDARSHAN
DOORDARSAN BHAVAN, COPERNICUS MARG
NEW DELHI – 110001**

F. No. 11/11/2007- KC

Date: 22/05/2007

ORDER

In compliance of the Order dated 28/7/2007
passed by the Hon'ble High Court of Delhi in WP(C)
No. 32/2007, WP(C) 24/2007, 25/2007, 26/2007,

30/2007, 31/2007, 32/2007, 33/2007, 34/2007, 36/2007, 37/2007, 39/2007, 40/2007, 41/2007, 42/2007 and 43/2007, the matter regarding the commissioning of programmes has been considered by the Competent Authority. Pursuant to the said Order, representations have received from 28 persons which have been also duly considered.

After going through the records and relevant facts of the Competent Authority finds the applications were invited from the eligible Companies and Firms for forming a panel of Producers for production of television programme for the Kashir Channel. About 1300 applications were received and a selection process in terms of guidelines issued in June, 2005, was initiated and assignment letters were issued to 36 short-listed producers.

However, before further steps could be taken in the matter, complainants regarding serious irregularities in the selection process were received by the Ministry of Information and Broadcasting, Government of India. In the light of the complaints, the Government of India ordered an inquiry into the selection process. The enquiry was conducted by Dr. Rajat Bhargava, Additional Director General (Finance) of All India Radio. The enquiry revealed a number of procedural and other irregularities in the selection process and systematic shortcomings. The enquiry revealed that a uniform procedure was not followed by the Evaluation Committee and through a biased procedure certain producers/directors were

permitted to make changes in their creative teams at the time of interview by the Committee. Other producers were not aware that such permission had been given in a few cases and, therefore, could not take advantage of this facility to make changes. The enquiry also revealed that certain non-officials who were members of the Evaluation Committee for some proposals, were themselves members of the creative teams in respect of other proposals, a fact sufficient by itself to create a situation of conflict of interest and resultant bias. It was also found that extra time for submission of documents was granted to certain category of applicants that too after interviews had been held. Re-tabulation was done in respect of such applicants. It was also reported that time and log sheets were not maintained. Certain other findings regarding irregularities were also recorded. In view of the findings recorded during the enquiry and the systematic shortcomings, which were noticed, the earlier guidelines have been proposed to be substituted by a fresh guideline, with the approval of the Prasar Bharati Board.

The Competent Authority has considered the conspectus of facts and is of the view that some of the irregularities found during the enquiry are such which go to the very root of the matter, for instance, the circumstance, of certain members of the Evaluation Committee themselves being interested in certain proposals. The fact that such persons did not actually evaluate proposals in which they were interested is not a mitigating circumstance. The very fact that members of the Evaluation Committee were themselves interested

in certain proposals can justify the inference that they could as well have given adverse ratings to proposals, which potentially could provide competition to the proposals in which they were interested. The possibility of reasonable likelihood of bias cannot be ruled out. In view of such like circumstances and the fact that the guidelines in question have also been found to be flawed and are being replaced it is felt that that the proper course of action would be to scrap the earlier selection process in whole and to invite fresh proposals in terms of the new guidelines. However, it will be fair and just that while inviting fresh proposals, the earlier applicants/selectees are not burdened with fresh processing fee and their proposals be considered on the basis of the processing fee already paid by them. Such persons should also have the option of either relying upon their earlier proposals/pilot or submitting a fresh pilot.

The Competent Authority has also considered the assertions made in the 28 representation received from the selected producers. He finds that there is nothing in the said representations, which would suggest that the course of action outlined above is not appropriate or uncalled for.

In view of the facts and circumstances stated above the Competent Authority after careful consideration orders that:

- i. the earlier selection process is scrapped.

- ii. The petitioners/ applicants who had applied earlier would have the right to submit their proposals in accordance with the fresh guidelines issued. All such applicants would also have the option of relying upon their earlier proposal or submitting their fresh proposal with pilot in terms of new guidelines. However, they shall not be required to pay fresh processing fee.

The Competent Authority further directs that a copy of this order be sent to each of the 36 producers to whom assignment letters were issued.

sd/-

(Ananya Banerjee)

Sr. Director of Programmes

For Director General

29. As is apparent from the aforesaid impugned order dated 22.5.2007, the findings and recommendations of the Fact Finding Authority were the principle ground for the Prasar Bharati to cancel the empanelment. Given that the findings and recommendations of the Fact Finding Authority were not binding in nature, the decision of the Prasar Bharati to scrap the empanelment was clearly a manifestation of exercise of administrative discretion. It is precisely this exercise of administrative discretion by the Prasar Bharati which this Court has to examine within the circumscribed limits of its power of judicial review under Article 226 of the Constitution of India.

30. It is noteworthy that there has been a significant change of events pursuant to the filing of the present petition. In such

a case, any relief which this Court dispenses today must necessarily accord with the circumstances that have unfolded pursuant to the filing of the present petition. For one, the guidelines on the basis whereof the empanelment was instituted have been replaced by new guidelines. Secondly, the duration for which the panel was constituted has expired. The expiry of the panel during the pendency of the case, though a *fait accompli*, has rendered all claims of the petitioners virtually dead. The change in the policy has proved to be the 'ultimate climax' that has buried to death all claims of the petitioners. It is noteworthy that although the petitioners have not disputed the change in policy, they have argued that the change of policy is impervious to the impugned decision of cancellation. What the petitioners have sought to argue is that this Court must decide the challenge made to the cancellation notwithstanding the change in cancellation.

31. Turning the clock back, the facts of this case indubitably show that though the petitioners were successful, the process of empanelment was found to be extensively rigged with procedural irregularities, which irregularities were further found to be attributable to the flawed guidelines which now stand replaced by new guidelines. Thus, the decision to scrap the empanelment was more in the nature of a policy imperative which was effected by Prasar Bharati in order to give way to the new guidelines. While the scrapping of the guidelines was largely actuated and sufficiently backed by the

findings of the Fact Finding Authority, it would not be incorrect to state that the supercession of the new guidelines has ex post facto vindicated the cancellation of the empanelment. Moreover, there is nothing to suggest mala fides or arbitrariness in the formulation of the new policy.

32. There is also nothing put forth by the petitioners to suggest that the cancellation of the empanelment was brought about by the respondents in utter disregard of the principles of natural justice. The lone plea taken by the petitioners is that that no individual hearing was afforded to the petitioners during the inquiry thereby inviting the wrath of the principle of *audi alteram partem*.

33. The plea taken by the petitioners qua non-compliance with the principles of natural justice, I am afraid, carries no weight. It is true that the *audi alteram partem* principle is a very ancient one, deriving strength from a Biblical passage. and the application of this rule to judicial proceedings is beyond doubt. Where however it is extended to non-judicial orders or to administrative orders the application of this principle is subject to some limitations. These are set out in great detail in S.A. de Smith's *Judicial Review of Administrative Actions*, pp. 167 to 179. I need only to refer two of those exceptions : Firstly, where the obligation to give notice and the opportunity of being heard would obstruct the taking of prompt action especially action of a preventive or remedial nature and secondly where the power exercised is disciplinary.

34. It is to be borne in mind that where the primary objective of any selection process is to fulfil the duty of conducting the selection fairly and the harassment to which the affected party may be put, namely, the necessity of sitting again for a fresh selection, is incidental to the fulfilment of the aforesaid primary purpose it will be unreasonable to stretch the principle of *audi alteram partem*. Where allegations of the practice of the unfair means on an extensive scale in a particular selection are brought alleged and after proper inquiry into the truth of those allegations is satisfied, it is expected of the selecting authorities to act very promptly in cancelling the selection and conducting the selection afresh. A long drawn out process of holding an inquiry after giving notice to every producer who was empanelled in the present case likely to be affected by the order of cancellation and an opportunity of being heard would not only cause inordinate delay but would obstruct the fulfilment of the statutory duty of the authority concerned. In this regard, the following passages from S. A. de Smith, at p. 175, may be reproduced :

"That urgency may warrant disregard of the principle of *audi alteram partem* rule in other situations is generally conceded. There will be disagreement however about the circumstances in which a deviation ought to be permissible. In a recent Canadian case the need to protect the public against fraudulent dealings in securities was held to justify summary action."

35. I also take my cue, *inter alia*, from the judgment in the *Bihar School Examination Board v. Subhash Chandra Singh* (1970) 1 SCC 648, wherein it the Apex Court categorically observed that

the rule of *audi alteram partem* was being stretched too far and that some restriction should be made on the application of the principle. The Bihar School Examination Board, which was entrusted with the duty of conducting Secondary School Examination, conducted the said examination, in March, 1969, at various centres including Hanswadih centre in Sahabad District. The results for other centres were published some time in July, 1969, but the results from that centre were withheld and subsequently it was announced that the examinations of all subjects held there were cancelled because of the unfair means practised on a large scale at that centre. The examinees were therefore given the option of appearing at the Secondary School Board Examination to be held in September, 1969. This order was challenged in an application under Article 226 of the Constitution before the Patna High Court, on the main ground that before cancelling the examinations the Board should have given the persons affected by such cancellations an opportunity of being heard. The High Court while observing that the very high percentage of marks obtained by the candidates who appeared at the centre gave rise to a suspicion that unfair means were practised, nevertheless struck down the order of cancellation on the sole ground that the examinees were not given an opportunity to show cause and thereby the well-known principle of natural justice viz.— *audi alteram partem*—was not observed. In coming to this conclusion, the High Court relied on a previous judgment of the Supreme Court in *Board of High*

*School and Intermediate Examination, U.P., Allahabad v. Ganshyam Das Gupta*² and also on a decision of the Patna High Court in *Ajit Singh v. Ranchi University*³ The Supreme Court had no hesitation in reversing the order of the High Court. The Court was satisfied from a scrutiny of the marks obtained by the candidates at that centre, that unfair means were practised on a very extensive scale. Their Lordships observed that this was not a case of charging a particular candidate with having adopted unfair means but that it was a simple question as to whether where unfair means appear to have been practised on an extensive scale in a centre the Board would be justified in ordering the holding of a fresh examination, without giving to every candidate affected by the order an opportunity of being heard. To quote Their Lordships:

"If it is not a question of charging any one individually with unfair means but to condemn the examination as ineffective for the purpose it was held, must the Board give an opportunity to all the candidates to represent their cases? We think not. It was not necessary for the Board to give an opportunity to the candidates if the examinations as a whole were being cancelled. The Board had not charged any one with unfair means so that he could claim to defend himself. The examination was vitiated by adoption of unfair means on a mass scale. In these circumstances it would be wrong to insist that the Board must hold a detailed inquiry into the matter and examine each individual case to satisfy itself which of the candidates had not adopted unfair means. The examination as a whole had to go."

36. Having regard to the facts of the present case, there was no valid and subsisting contract between the parties, mere selection of the petitioners in the panel did not vests in the petitioners any substantive right to seek enforcement of

contract. Having carefully perused the pleadings and documents filed on record, I find no merit that the empanelment has been scrapped by the Prasar Bharati without due compliance with the principles of natural justice. The impugned order dated 22.5.2007 is a clearly-worded and well-reasoned order which, inter alia, states the following three reasons that actuated cancellation, namely, (a) a uniform procedure was not followed by the Evaluation Committee, (b) bias in the selection procedure, (c) the guidelines were inept and fraught with shortcomings. In suchlike matters, it has been held that the Courts should not interfere with the decision but only the decision-making process. Taking into consideration that there were large number of applicants for the process of empanelment, there was no requirement of personal service of notice or hearing to the petitioners. The Prasar Bharati in its wisdom and for the reasons for which no ground of bias has been raised, a fresh policy has been raised giving new guidelines to overcome procedural irregularities and such other lacunae identified by the Fact Finding Authority. Moreover, in the peculiar facts and circumstances that have transpired pursuant to the filing of the present, when the panel stands expired and the old guidelines have been replaced by the new, I am afraid that there is nothing which this Court can do to allay the case of the petitioners. It must also be noted that the impugned order dated 22.5.2007 clearly states that while inviting fresh proposals, the earlier applicants/selectees would not be

burdened with fresh processing fee and their proposals would be considered on the basis of the processing fee already paid by them. It is further stated that such persons would also have the option of either relying upon their earlier proposals/pilot or submitting a fresh pilot. This, in my view, would ensure that no undue hardship or prejudice is caused to the petitioners.

37. In view of the foregoing discussion and findings, the petition is bereft of merits, and is accordingly rejected. All interlocutory applications, having been rendered infructuous, are disposed off.

April 02, 2009
'lssn'

G.S. SISTANI, J.