

AFR**Neutral Citation No. - 2024:AHC-LKO:32333****Reserved on 23.4.2024****Delivered on 25.4.2024****Court No. - 20****Case :-** WRIT - C No. - 3070 of 2024**Petitioner :-** B.S.S. Public School, Raebareli Thru. Manager, Sri Bhaiya Lal Singh And Others**Respondent :-** Union Of India Thru. Secy. Dep'tt. Of School Edu. And Literacy, Ministry Of Education, And Others**Counsel for Petitioner :-** Rakesh Kumar Chaudhary, Ayush Chaudhary**Counsel for Respondent :-** A.S.G.I., C.S.C., Krishna Lal Yadav, Pankaj Patel, Shashank Bhasin**Hon'ble Shree Prakash Singh, J.**

1. Heard Sri S.C. Mishra, learned Senior Counsel assisted by Sri Ayush Chaudhary, learned counsel for the petitioners, Sri Shailendra Kumar Singh, learned Chief Standing Counsel and Sri Vivek Shukla, learned Additional Chief Standing Counsel for the opposite party no.5, Sri Krishna Lal Yadav, learned counsel for the opposite party no.1 and Sri Shashank Bhasin, learned counsel for the opposite party nos. 2 to 4.

2. By means of the present writ petition, the petitioners have assailed the order dated 26.02.2024 bearing no. CBSE/Aff. No. 2130934/E-35280/2024 whereby, the affiliation of the petitioners' school has been withdrawn, while holding it that the petitioners' school is found responsible for violation of the provisions envisaged under clause 12.2.1, 12.2.11 and 12.2.12 of the affiliation bye-laws.

3. The factual matrix of the case is that the petitioner no. 1, i.e., B.S.S. Public School, Raebareli (hereinafter referred to as an 'Institution'), is an academic institution, established in the year 1987 and is being run by the petitioner no. 2 society, which is a registered society under Societies Registration Act, 1860. The school was granted affiliation with Central Board of Secondary Education (hereinafter, referred to as 'CBSE') to run secondary level classes i.e. IXth and Xth on 27.03.2008, for three years, which was extended from time to time and

was further granted affiliation to run senior secondary level classes i.e. class 11th and 12th, which too was extended subsequently and the last extension of provisional affiliation was granted from 01.04.2020 till 31.03.2028, vide the affiliation letter dated 04.05.2022. Later on, vide the impugned order dated 26.02.2024, the petitioners' Institution is de-affiliated, which is under challenge.

4. The contention of learned counsel for the petitioners is that all of sudden vide order dated 26.02.2024, the affiliation granted to the institution of the petitioners, is withdrawn by CBSE while mentioning some inquiry report, but the inquiry report was never served upon the petitioners by the CBSE while issuing show cause notice or prior to passing the impugned order.

5. Further contention of learned counsel for the petitioners is that, at the time of nation-wide lockdown, due to Covid-19 Pandemic, the educational activities in schools were heavily affected and the CBSE canceled the class 12th examination vide notifications dated 01.06.2021 and 17.06.2021 and for the purpose of assessment of class 12th, the result of Unit Test/Mid Term exam/pre-board examination, conducted by the respective schools in class 12th and 11th alongwith the result of performance in the best three subjects out of main five subjects in class 10th board examination, was proposed to be calculated.

6. He pointed out that the petitioners' institution also evaluated the marks of all the students of class 12th for academic year 2021 and performance of total 140 students were scrutinized out of which 11 students failed, whereas, 23 students got compartments. Thereafter, one Santosh Kumar Sonkar who was aggrieved that his son namely, Ritesh Sonkar became failed in class 12th, came into the school and started chaos, by hurling abuses upon the teachers and staff, whereafter, an information was given to the educational authorities, but he further kept on doing so in the subsequent days, while protesting in the school premises to disrupt the functioning of the school administration and

therefore, considering the future of the students, the manager of the petitioners' school by means of an e-mail requested the CBSE to re-assess and increase of the marks of the students, who were failed or is to appear in the compartment exams.

7. He further submits that Sri Sonkar also made a false complaint to the District Magistrate, whereafter, the District Magistrate i.e. opposite party no. 5 constituted a committee to conduct an inquiry in the alleged irregularities and after a sham inquiry, a report is submitted on 04.08.2021, itself, wherein, the petitioners' institution was not associated and the inquiry report was directly sent to the CBSE.

8. He argued that the impugned de-affiliation order dated 26.2.2024 has been passed in most mechanical and clandestine manner while blindly relying on the enquiry report submitted by the opposite party no. 5 based upon false and misleading facts and the petitioners were not associated in the alleged enquiry. He added that though a show cause notice is said to have been issued while sending it on the email of school website but the enquiry report on the basis of which the proceedings of de-affiliation is started, was not enclosed therewith. He has drawn attention of this Court towards Annexure No.24 of the writ petition, which is a show cause notice dated 12.10.2023 and submitted that on the second page of the notice, the report of the Enquiry Committee is allegedly observed but, in fact, the same is not the enquiry report which was submitted by the enquiry committee constituted by the CBSE and, in this regard, he pointed out the enquiry report appended as Annexure No.10 along with the writ petition, and added that from perusal of the observation of alleged enquiry report in the show cause notice, the same is verbatim the English Translation of the conclusion of the enquiry report dated 4.8.2021 and, thus, this cannot be said that the enquiry report submitted by the enquiry committee by CBSE is quoted in the show cause notice.

9. Further contented that Chapter-V of the affiliation bye laws speaks about withdrawal of the regular affiliation. Clause 18 of Chapter-V is quoted hereinunder:-

"(1) Within the general frame work of Section 17 of this chapter, the Board reserves the right to withdraw regular affiliation in the even of a school failing to observe affiliation norms and rules and/or the pass percentage in most of the subjects goes lower than the pass percentage of each subject at the examinations of the Board, continuously for three years. The Board will ask such a school to rectify the deficiencies and given adequate time (6 months to one year). If the school fails to show improvement, it will lose the status of a regular affiliation school and will revert to a provisonally affiliated school status."

10. From bare perusal of the provisions of Clause 18 of Chapter-V, it is evident that in the event, where the pass parcentage in most of the subjects goes lower than the pass percentage of each subject at the examinations of the Board, continuously for three years, the Board will ask such a school to rectify the deficiencies while affording adequate time of six months to one year and if even then such institution fails to show improvement, it will lose status of a regular affiliation school. So far as the present matter is concerned, in Covid Pandemic, in one academic session, there were only 9 students, who were failed, though repeatedly, it has wrongly been stated that out of 140, 50 students were failed. Adding his arguments, he submits that so far as the Committee constituted by the District Magistrate is concerned, without considering the actual fact and evidence, the Committee submitted its report and, thereafter also, the opposite party no.4 after receiving the letter of the District Magistrate, has constituted enquiry committee which also submitted its report but the said enquiry report was never served upon the petitioners' Institution while sending the show cause notice.

11. Along with the above, he has also shown certain other anomalies in the impugned order and submitted that the sole basis of taking decision of de-affiliation is the enquiry report though while the enquiry by the enquiry committee constituted by the opposite party no.4, the petitioners

were not associated. He also added that in compliance of the order passed by the writ court, the documents were sent, vide letter dated 8.11.2021 to the opposite party no.4 but without considering the same, the above order impugned is passed. He next added that the show cause notice dated 12.10.2023 was sent to the school on its registered email but the same could not come in the notice of the Principal or Manager of the petitioners' Institution, perhaps, due to some inadvertence of the personnel of the school but fact remains that no physical copy of the show cause notice or any reminder was served upon the petitioners while attaching the enquiry report. It has been practice of the CBSE, in past, to send notices and multiple reminders along with the telephonic information but in the instant matter, the same practice has not been followed deliberately and in fact the CBSE has blindly relied upon the report of the Committee constituted by the District Magistrate which was issued only on the complaint made by one of the guardian of the student of the Institution.

12. Lastly, it is submitted that future of the students are on stake as most of the students have been studying in the petitioners' Institution since beginning and they have been thrown to suffer and, in this event also, welfare of the students have been ignored by the CBSE in a hasty manner.

13. In support of his contention, learned counsel for the petitioners has placed reliance on the Judgment reported in **1993 (4) SCC 727, Managing Director, ECIL Hyderabad and others Vs. B. Karunakar and others** and referred paras 29 and 30 of the abovesaid Judgments which are quoted hereinunder:-

"29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial

of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.

30. Hence the incidental questions raised above may be answered as follows:

[i] Since the denial of the report of the enquiry officer is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject.

[ii] The relevant portion of Article 311(2) of the Constitution is as follows:

"(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges."

Thus the article makes it obligatory to hold an inquiry before the employee is dismissed or removed or reduced in rank. The article, however, cannot be construed to mean that it prevents or prohibits the inquiry when punishment other than that of dismissal, removal or reduction in rank is awarded. The procedure to be followed in awarding other punishments is laid down in the service rules governing the employee. What is further, Article 311(2) applies only to members of the civil services of the Union or an all-India service or a civil service of a State or to the holders of the civil posts under the Union or a State. In the matter of all punishments both Government servants and others are governed by their service rules. Whenever, therefore, the service rules contemplate an inquiry before a punishment is awarded and when the enquiry officer is not the disciplinary authority the delinquent employee will have the right to receive the enquiry officer's report notwithstanding the nature of the punishment.

[iii] Since it is the right of the employee to have the report to defend himself effectively and he would not know in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the waiver of his right. Whether, therefore, the employee asks for the report or not, the report has to be furnished to him.

[iv] In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in the enquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan case should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the enquiry officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly.

[v] The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice."

14. Referring the aforesaid, he submits that the Constitutional Bench of the Apex Court, while framing several questions has answered that

denial of supply of the enquiry report to the delinquent, is denial of reasonable opportunity and breach of principles of natural justice.

15. Further reliance is placed on a Judgment reported in **(2014) 7 SCC 340, Union of India and others Vs. R.P. Singh** and paras 12, 20, 21, 23 and 24 are referred, which are quoted hereinunder:-

"12. We will be failing in our duty if we do not take note of the submission of Mr W.A. Qadri that the decision in S.N. Narula case is not an authority because the Tribunal had set aside the order of the disciplinary authority on the ground that it was a non-speaking order. Be that as it may, when the issue was raised before this Court and there has been an advertence to the same, we are unable to accept the submission of Mr Qadri. The said decision in S.N. Narula case is an authority for the proposition that the advice of UPSC, if sought and accepted, the same, regard being had to the principles of natural justice, is to be communicated before imposition of punishment."

"20. Testing on the aforesaid principles it can safely be concluded that the judgment in T.V. Patel case is per incuriam."

21. At this juncture, we would like to give our reasons for our respectful concurrence with S.K. Kapoor. There is no cavil over the proposition that the language engrafted in Article 320(3)(c) does not make the said article mandatory. As we find, in T.V. Patel case³, the Court has based its finding on the language employed in Rule 32 of the Rules. It is not in dispute that the said Rule from the very inception is a part of the 1965 Rules. With the efflux of time, there has been a change of perception as regards the applicabilityany the principles of natural justice. An inquiry report in a disciplinary proceeding is required to be furnished to the delinquent employee so that he can make an adequate representation explaining his own stand/stance. That is precisely what has been laid down in B. Karunakar cases. We may reproduce the relevant passage with profit: (B. Karunakar case, SCC p. 756, para 29)

"29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the

charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice."

"23. We have referred to the aforesaid decision in B. Karunakar case in e extenso as we find that in the said case it has been opined by the Constitution Bench that non-supply of the enquiry report is a breach of the principle of natural justice. Advice from UPSC, needless to say, when utilised as a material against the delinquent officer, it should be supplied in advance. As it seems to us, Rule 32 provides for supply of copy of advice to the government servant at the time of making an order. The said stage was in prevalence before the decision of the Constitution Bench. After the said decision, in our considered opinion, the authority should have clarified the Rule regarding development in the service jurisprudence.

24. We have been apprised by Mr Raghavan, learned counsel for the respondent, that after the decision in S.K. Kapoor case, the Government of India, Ministry of Personnel, PG & Pensions, Department of Personnel and Training vide Office Memorandum dated 6-1-2014 has issued the following directions:

"4. Accordingly. it has been decided that in all disciplinary cases where the Commission is to be consulted, the following procedure may be adopted:

(i) On receipt of the inquiry report, the DA may examine the same and forward it to the Commission with his observations:

(ii) On receipt of the Commission's report, the DA will examine the same and forward the same to the charged officer along with the inquiry report and his tentative reasons for disagreement with the inquiry report and/or the advice of UPSC;

(iii) The charged officer shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the inquiry report/advice of UPSC is in his favour or not. (iv) The disciplinary authority shall consider the representation of the charged officer and take further action as prescribed in sub-rules (2-A) to (4) of Rule 15 of the CCS (CCA) Rules, 1965."

16. Placing reliance on the abovesaid, he submits that referring the decision in B. Karunakar's case (supra), it has been held that enquiry

report should be supplied in advance as non-supply of the enquiry report is a breach of principles of natural justice.

17. Further placing reliance on the Judgment and order reported in **2017 (1) SCC 768, Himachal Pradesh State Electricity Board Limited Vs. Mahesh Dahiya**, referred paras 23, 24 and 25, which are quoted hereinunder:-

"23. The basis of coming to the conclusion by both the learned Single Judge and the Division Bench that disciplinary authority has violated the principle of natural justice is based on the fact that although the enquiry report was sent to the writ petitioner by the letter dated 2-4-2008, the disciplinary authority-cum- whole-time members have already come to the opinion on 25-2-2008 that the writ petitioner be punished with major penalty. The Division Bench of the High Court has placed reliance on *Union of India v. R.P. Singh*.

24. In the above case the issue was as to whether non-supply of the copy of advice of UPSC to the delinquent officer at pre-decision stage violates the principle of natural justice. This Court placed reliance on the Constitution Bench judgment in *ECIL v. B. Karunakar* and laid down the following in para 21: (*R.P. Singh* case, SCC p. 349)

"21. At this juncture, we would like to give our reasons for our respectful concurrence with S.K. Kapoor. There is no cavil over the proposition that the language engrafted in Article 320(3)(c) does not make the said article mandatory. As we find, in *T.V. Patel* case, the Court has based its finding on the language employed in Rule 32 of the Rules. It is not in dispute that the said Rule from the very inception is a part of the 1965 Rules. With the efflux of time, there has been a change of perception as regards the applicability of the principles of natural justice. An enquiry report in a disciplinary proceeding is required to be furnished to the delinquent employee so that he can make an adequate representation explaining his own stand/stance. That is precisely what has been laid down in *B. Karunakar* cases. We may reproduce the relevant passage with profit: (*B. Karunakar* cases, SCC p. 756, para 29)

29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence

of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee a breach of the principles to prove his innocence and is of natural justice."

There can be no dispute to the above proposition.

25. The Constitution Bench in *ECIL v. B. Karunakar* after elaborately considering the principle of natural justice in the context of the disciplinary inquiry laid down the following in paras 29, 30(iv) and (v): (SCC pp. 756-58)

"29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.

30.... (iv) In the view that we have taken viz. that the right to make representation to the disciplinary authority against the findings recorded in the enquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in *Mohd. Ramzan* cases should apply to employees in all establishments whether Government or non-government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the enquiry officer before the disciplinary authority records its

findings on the charges levelled against him. Hence question (iv) is answered accordingly.

(v) The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice."

18. While referring the aforesaid, he submits that it is settled that if a person is charged then he shall be given the opportunity to submit reply, while furnishing the evidence relied upon.

19. Lastly, the emphasis has been placed on a case reported in **(2023) 6 SCC 1, State Bank of India and others Vs. Rajesh Agarwal and others**, and paragraphs 36, 40, 41, 42, 80, 81 and 84 are referred, which are extracted hereinunder:-

"36. We need to bear in mind that the principles of natural justice are not mere legal formalities. They constitute substantive

obligations that need to be followed by decision-making and adjudicating authorities. The principles of natural justice act as a guarantee against arbitrary action, both in terms of procedure and substance, by judicial, quasi-judicial, and administrative authorities. Two fundamental principles of natural justice are entrenched in Indian jurisprudence: (i) *nemo judex in causa sua*, which means that no person should be a Judge in their own cause; and (ii) *audi alteram partem*, which means that a person affected by administrative, judicial or quasi-judicial action must be heard before a decision is taken. The courts generally favour interpretation of a statutory provision consistent with the principles of natural justice because it is presumed that the statutory authorities do not intend to contravene fundamental rights. Application of the said principles depends on the facts and circumstances of the case, express language and basic scheme of the statute under which the administrative power is exercised, the nature and purpose for which the power is conferred, and the final effect of the exercise of that power.

40. The process of forming an informed opinion under the Master Directions on Frauds is administrative in nature. This has also been acceded to by RBI and lender banks in their written submissions. It is now a settled principle of law that the rule of *audi alteram partem* applies to administrative actions, apart from judicial and quasi-judicial functions.¹⁵ It is also a settled position in administrative law that it is mandatory to provide for an opportunity of being heard when an administrative action results in civil consequences to a person or entity.

41. In *State of Orissa v. Binapani Dei*¹⁶, a two-Judge Bench of this Court held that every authority which has the power to take punitive or damaging action has a duty to give a reasonable opportunity to be heard. This Court further held that an administrative action which involves civil consequences must be made consistent with the rules of natural justice: (AIR p. 1271, para 9)

"9.... The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would therefore arise from the very nature of the function intended to be performed: it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of

justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."

42. In *Maneka Gandhi v. Union of India*¹¹, a seven-Judge Bench of this Court held that any person prejudicially affected by a decision of the authority entailing civil consequences must be given an opportunity of being heard. This has been reiterated in a catena of decisions of this Court.

80. *Audi alteram partem* has several facets, including the service of a notice to any person against whom a prejudicial order may be passed and providing an opportunity to explain the evidence collected. In *Tulsiram Patel*³⁴, this Court explained the wide amplitude of *audi alteram partem*: (SCC p. 476, para 96)

"96. The rule of natural justice with which we are concerned in these appeals and writ petitions, namely, the audi alteram partem rule, in its fullest amplitude means that a person against whom an order to his prejudice may be passed should be informed of the allegations and charges against him, be given an opportunity of submitting his explanation thereto, have the right to know the evidence, both oral or documentary, by which the matter is proposed to be decided against him, and to inspect the documents which are relied upon for the purpose of being used against him, to have the witnesses who are to give evidence against him examined in his presence and have the right to cross-examine them, and to lead his own evidence, both oral and documentary, in his defence. The process of a fair hearing need not, however, conform to the judicial process in a court of law, because judicial adjudication of causes involves a number of technical rules of procedure and evidence which are unnecessary and not required for the purpose of a fair hearing within the meaning of audi alteram partem rule in a quasi-judicial or administrative inquiry." (emphasis supplied)

81. *Audi alteram partem*, therefore, entails that an entity against whom evidence is collected must: (i) be provided an opportunity to explain the evidence against it; (ii) be informed of the proposed action, and (iii) be allowed to represent why the proposed action should not be taken. Hence, the mere participation of the borrower during the course of the preparation of a forensic audit report would not fulfil the requirements of natural justice. The decision to classify an account as fraud involves due application of mind to the facts and law by the lender

banks. The lender banks, either individually or through a JLF, have to decide whether a borrower has breached the terms and conditions of a loan agreement, and based upon such determination the lender banks can seek appropriate remedies. Therefore, principles of natural justice demand that the borrowers must be served a notice, given an opportunity to explain the findings in the forensic audit report, and to represent before the account is classified as fraud under the Master Directions on Frauds.

84. In E.P. Royappa v. State of T.N.³⁸, this Court held that an arbitrary State action is violative of Article 14 of the Constitution. Again, in Maneka Gandhi ¹⁷ this Court reiterated that the principle of non-arbitrariness pervades Article 14. An administrative action can be tested for constitutional infirmities under Article 14 on four grounds: (i) unreasonableness or irrationality; (ii) illegality; (iii) procedural impropriety;³⁹ and (iv) proportionality. However, the scope of such judicial review is limited to ascertaining the deficiency in the decision-making process, and not the correctness of the choice made by the administrator."

20. Particularly, emphasizing on paragraph 36, he argued that Rule of **Audi Alteram Partem** is explained by the Apex Court and it is held that a person affected by **administrative**, judicial or quasi judicial action, must be heard, before taking decision.

21. Concluding his arguments, he submits that the impugned de-affiliation order dated 26.2.2024 is bad in the eyes of law as the same has been passed without providing copy of the enquiry report along with the show cause notice.

22. Refuting the aforesaid contentions of the learned counsel for the petitioners, it has been submitted by learned counsel for the opposite parties that there were 50 students reported to be failed in different subjects in the petitioners' Institution and, therefore, when it was found that the same was in utter violation of the moderation policy of the Board framed under the directions of the Apex Court, the CBSE has taken the note of the fact including the report of the District Magistrate, who constituted a committee on large number of complaints before him and a report was forwarded to the CBSE, whereafter an internal committee was

also constituted for conducting enquiry/inspection against the Institution upon the same. The internal committee submitted its report, though the Institution during the course of enquiry did not co-operate in the enquiry proceedings.

23. He further argued that in conclusion of the internal enquiry report, it has been found that there are violation of the rules and norms of the tabulation policy of the Board by the petitioners in awarding marks to its students while tempering the records of the year 2020–21. He further contended that after the internal inspection/enquiry report was received, the show cause notice was served to the school by the Board through email and this fact has not been disputed by the petitioners but the school has failed to submit its reply within the stipulated period of time as granted by the Board. He further added that the school has violated provisions of clause 13.5, 12.2.11, 12.2.12 and 17 (2) (b) of the Affiliation Bye Laws, 2018 and since the clause 17 (2) (a) (xi) provides with respect to the misconduct in connection with the admission/examination/any other area, which is in the opinion of the Board warrants deaffiliation of the schools. Since the school has violated the rules and guidelines of CBSE and, therefore, invoking the procedure for imposition of penalties prescribed under the Affiliation Bye Laws, 2018, the Institution of the petitioners have been deaffiliated by the order dated 26.2.2024.

24. Controverting the plea of the learned counsel for the petitioners, he submits that the relevant extract of the enquiry report is observed in the show cause notice dated 12.10.2023, which is evident on the second page of the show cause notice, but, since the petitioners have chosen, not to reply the aforesaid show cause notice, therefore, there is no violation of principle of natural justice on the part of the CBSE so far the allegation is with respect to non-supply of the enquiry report concerned. He also added that the petitioners' institution has manipulated the marks which is against the guidelines of the exemption given for the students of class

XII, looking to the Covid Pandemic, 2019. Adding his arguments, he submits that the ratio of the judgements which are placed by the learned counsel for the petitioners, are not applicable in the facts and circumstances of the present case and, therefore, submission of the learned counsel for the CBSE is that the petitioners are not entitled for any relief as there is no erroneousness in the order dated 26.2.2024.

25. Learned counsel appearing for the opposite party no.5 submits that when several complaints were received by the District Magistrate regarding the irregularities committed by the petitioners' Institution, the District Magistrate proceeded while constituting six members enquiry committee, which submitted a report while holding the petitioners' Institution guilty and, therefore, the District Magistrate referred the matter to the CBSE annexing the enquiry report and, thereafter, the CBSE proceeded in the matter. He added that there is no fault on the part of the District Magistrate as what the minimum requirement was after receiving the complaints, have been done by the opposite party no.5 and, ultimately, the decision was to be taken by the CBSE.

26. Having heard learned counsel for the parties and after perusal of the material placed on record, it transpires that a dispute arose when the complaints were made to the District Magistrate, wherein the enquiry committee was constituted, and after receiving the enquiry report, the same was referred to the CBSE. The CBSE after receiving the enquiry report has conducted an internal enquiry while calling the report from the petitioners' Institution and, thereafter, the enquiry was concluded and a show cause notice was issued on 12.10.2023, which admittedly could not be responded by the petitioners' Institution due to some inadvertence on the part of the personnel of the Institution and, thereafter, the CBSE passed the order while de-affiliating the Institution, which is under challenge.

27. Sheet anchor of the argument of learned counsel for the petitioners is that the impugned order is passed by the CBSE without furnishing/

supplying copy of the enquiry report, which is evident from the show cause notice that the same was taken into consideration but was not appended while sending it to the petitioners.

28. When this Court examines the instant matter on facts and law, it emerges that a punitive action has been taken by the CBSE, vide order dated 26.2.2024 where by the school of the petitioners has been de-affiliated. From perusal of the show cause notice dated 12.10.2023, it transpires that the enquiry report is allegedly quoted in the show cause notice which is as follows:-

"1. The school management could not make available the answer sheets of the children on the demand of the examination committee, due to which it was not possible to assess whether the answer sheets have been evaluated correctly or not. Prima facie it appears to be suspicious due to non-availability of answer books, as well as against the standard number of 24 subject-wise failed students against the prescribed provisions in the Moderation Policy, 50 students have been failed, which is 26 students more than the norm. No archival evidence was produced by the school management in this regard. Rationalization documents, minutes of the examination committee were not presented by the school management before the inquiry committee, for which the school management is completely guilty.

2. The facts of the statement mentioned in paragraph 5 above regarding difference in the two-mark sheets of class 11 issued by the school are not acceptable. The school management is at fault for issuing different mark sheets of the same class. 3 As far as there is a question of students being given less marks and being failed due to not taking tuition from the teachers of the school. In this regard, according to the facts given in paragraph-2, statements of some students AND WHEREAS, the District Magistrate Rae Bareli Uttar Pradesh had requested to this office that send a team for collecting all the records from the Treasury from District Administration and directed that the unbiased investigation must be ensured immediately, if the school manage is found guilty in the investigation long with ensuring strict legal action as per rules."

29. When the observations of the enquiry report are tallied with the conclusion of the enquiry report dated 4.8.2021, which was submitted by six members enquiry committee before the District Magistrate, it is the

verbatim translation in English in the show cause notice dated 12.10.2023. The conclusion/observation of the enquiry committee is quoted hereinunder:-.

“निष्कर्ष

उपर्युक्त तथ्यों से स्पष्ट है कि बी0एस0एस0 पब्लिक स्कूल अमोल बिहार रायबरेली की जांच में समिति के द्वारा निम्न तथ्य पाए गए हैं:-

1 जांच कमेटी द्वारा बच्चों के उत्तर पुस्तिका मांगने पर विद्यालय प्रबंधन द्वारा उत्तर पुस्तिका उपलब्ध नहीं करायी जा सकी, जिससे यह आंकलन कर पाना संभव नहीं हो पाया कि उत्तर पुस्तिका का सही मूल्यांकन किया गया है अथवा नहीं। उत्तर पुस्तिका उपलब्ध न कराने से प्रथम दृष्ट्या संदिग्धता प्रतीत होती है, साथ ही माडरेशन पालिसी में विहित प्रावधानों के सापेक्ष विषयवार अनुत्तीर्ण होने वाले छात्रों की मानक संख्या 24 के सापेक्ष 50 छात्रों को अनुत्तीर्ण किया गया है जो मानक से 26 छात्र अधिक है इस संबंध में विद्यालय प्रबंधन द्वारा कोई अभिलेखीय साक्ष्य प्रस्तुत नहीं किया गया है। जांच कमेटी के समक्ष विद्यालय प्रबंधक द्वारा युक्तिकरण दस्तावेज परीक्षा कमेटी का कार्यवृत्त प्रस्तुत नहीं किया गया, जिसके लिए विद्यालय प्रबंधन पूर्णतया दोषी है।

2 विद्यालय द्वारा कक्षा 11 की जारी दो अंकतालिकाओं में भिन्नता के सम्बन्ध में उपरोक्त प्रस्तर 5 में उल्लिखित बयान के तथ्य स्वीकार किये जाने योग्य नहीं है। एक ही कक्षा की भिन्न-भिन्न अंकतालिका जारी करने के लिए विद्यालय प्रबंधन सर्वथा दोषी है।

3 जहां तक विद्यालय के अध्यापकों से ट्यूशन न पढ़ने के कारण छात्रों को कम नम्बर दिए जाने व फेल कर दिए जाने का प्रश्न है। इस सम्बन्ध में प्रस्तर-2 में दिए गए तथ्यों के अनुसार कतिपय छात्रों का बयान लिया गया है जिसके अनुसार उक्त तथ्यों की पुष्टि नहीं होती है।”

30. While going into the aforesaid observations, this Court is of the considered opinion that the observation of the enquiry report, which is said to be quoted in the show cause notice dated 12.10.2023, is not the observations of the enquiry report submitted by the internal committee constituted by the CBSE, but in fact, it is the observations of the enquiry committee, which was constituted by the District Magistrate and, therefore, the plea which has been taken by the CBSE that though the copy of the enquiry report was not appended along with the show cause notice but the observation of the same was transcribed, is false and baseless.

31. The settled proposition of law is that if a person is affected by administrative/judicial/quasi-judicial action, must be heard, before the decision is taken. It is also trite law that even if the statutory rules laying down the procedure for holding the enquiry are silent on the subject, it is

incumbent upon the authority to bring the enquiry report in the notice of the person against whom the enquiry is instituted. Hon'ble Apex Court while rendering the judgement in the case of **Union of India and others Vs. Mohd. Ramzan Khan, 1991 (1) SCC 588** has held that wherever, there has been an enquiry officer and he has furnished a report to the disciplinary authority at the conclusion of the enquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and has a right to represent against it. Thereafter, in catena of judgements of the Apex Court, this view is adopted including the judgement and order reported in **(1993) 4 SCC 727, Managing Director, ECIL, Hyderabad and others Vs. B. Karunakar and others**, and subsequently, the same view is also taken in the case reported in **2023 (6) SCC 1, State Bank of India and others Vs. Rajesh Agarwal and others**.

32. This Court is also of considered opinion that the right of hearing while extending the rule of audi alteram partem, not only in case of judicial or quasi-judicial action, but if a person is affected with the administrative action, is required a copy of enquiry report so as to represent against the same. Ancillary issues are with respect to the application of the rules of the Affiliation of Bye Laws of 2018.

33. Learned counsels from both sides have tried to substantiate that the provisions have been misread. Much emphasis is laid by learned counsel for the CBSE that the CBSE has proceeded as per the procedure for imposition of penalties, while referring the clauses 13.1 and 13.2. On the contrary, learned counsel for the petitioners has placed reliance on the provisions of the clause 18 (1) of Chapter V of the Affiliation Bye Laws and has indicated that the petitioners' school was accorded regular affiliation and, therefore, prior to passing any order for de-affiliation, the procedure prescribed should have been adhered to. He has also drawn attention towards the provisions that even if in most of the subjects, the

percentage goes lower than the pass percentage of each subject at the examination of the Board, continuously for three years, the Board could have asked the school to rectify deficiencies while giving adequate time, i.e., six months to 1 year and in the event that the school fails to show any improvement, then the status of regular affiliation would be reverted to the provisionally affiliated school status.

34. In the aforesaid background, this Court, after going through the procedure, which was adopted by the CBSE thereby de-affiliating the school seems to be lacking of adhering the provisions provided in clause 18 (1) of Chapter V of the Affiliation Bye Laws, 2018. Further, in the show cause notice, 15 days time was given to the petitioners' school to reply the show cause notice whereas clause 13.4 of the affiliation bye laws, itself speaks that reply will be asked to be given in not more than 30 days and, at least, it was incumbent upon the authority which has issued the notice to accord 30 days time, and that too is violated by the CBSE.

35. In view of the abovesaid submissions and discussions, this Court is of the considered opinion that the order dated 26.2.2024 is erroneous and against the settled proposition of law. Hence, the order dated 26.2.2024 is hereby quashed.

36. The writ petition is **allowed** accordingly.

37. However, the liberty is given to the CBSE to proceed while serving/supplying the copy of the report upon the petitioners' Institution, if it so desires.

38. No order as to costs.

39. Consigned to the records.

Order Date:25.4.2024
Ram Murti