

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11915 of 2016

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M/s Sadhavna HP Gas, locate near Nawada More, Janipur Road, Balmi, Dist : Patna - 801506 through its Proprietor, Smt. Nupur Srivastava W/o Ajeet Kumar Sinha, D/o Sushil Bhushan R/o Resident of Road No. 39, Gardanibagh, Anishabad, Patna.

.... Petitioner/s

Versus

1. Hindustan Petroleum Corporation Ltd. through Senior Regional Manager, Patna L.P.G. Region Office, 6th Floor, Lok Nayak Jaiprakash Bhawan, Dak Bunglow Chowk, District - Patna - 800001.
2. Raj Kumar Chaudhary son of unknown Resident of C/O Chotan Singh, B.N.R. Pathrighat, Gulzarbagh, Patna - 800007.
3. Sandeep Kumar son of Shyam Balak Sinha Resident of Flat no. 205/B Jyotipuram Apartment, Thana - Shastrinagar, Patna.
4. Bihar School Examination Board through Secretary, B.S.E.B. Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	: Mr. Binod Kr. Kanth, Sr. Adv. Ms. Shama sinha, Adv.
For the HPCL	: Mr. Chitranjan Sinha, Sr. Adv. Dr. Pankaj, Adv.
For the BSEB	: Mr. Ranjit Sinha, Adv.
For the Resp. 2 & 3	: Mr. Kumar Manvendra, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
CAV JUDGMENT

Date: 19-07-2017

Heard Mr. Binod Kumar Kanth, learned senior counsel for the petitioner, Mr. Chittaranjan Sinha, learned senior counsel for the Hindustan Petroleum Corporation Limited, Mr. Ranjit Sinha, learned counsel for the Bihar School Examination Board and Mr. Kumar Manvendra, learned counsel for the respondent nos. 2 & 3 respectively.

2. In the present case, the petitioner has approached this Court for quashing the show-cause vide letter no. PLRO/BK/LPG dated 13th June, 2016 issued by the Hindustan Petroleum Corporation



through its Regional Manager by which the respondents have held the petitioner is liable for action as per undertaking dated 03.10.2000 and has further held that the petitioner has violated Clause 28B(l) and 28B(n) of the Distribution Shop Agreement.

3. During pendency of this writ application, the L.P.G. Distributorship, which was given to the petitioner, vide letter dated 29.8.2016 (Annexure 16 Series), has been terminated by the Senior General Manager, Hindustan Petroleum Corporation by issuing a letter on the same date informing the petitioner that on account of termination of distributorship, the supply and sale of LPG refills to/from the LPG Distributorship has been discontinued with immediate effect and the petitioner was directed not to carry out any specific HP Gas distributorship activity.

4. This Court, recording the submission of the petitioner vide interim order dated 07.09.2016 stayed the operation of the termination of the agreement.

5. The Hindustan Petroleum had issued an advertisement on 28.8.2000 for the appointment of L.P.G. Distributors for different areas including at Janipur in the district of Patna, Bihar. The advertisement shows the vacancy was reserved for woman candidate. The petitioner, Nupur Srivastava, the proprietor of M/s Sadbhavna HP Gas (hereinafter to be referred to as “Nupur



Srivastava”) having found herself suitable, applied for the dealership under the women category. As per guideline, she attached all the requisite documents including the mark-sheet of Matriculation bearing Roll No. 0352 and Roll Code 2119 year 1987. Nupur Srivastava also submitted, with the application form, an undertaking dated 3.10.2000 duly signed by her on the stamp paper in which she has extended an undertaking that if any information in the application or in any other documents attached with her application for award of LPG Distributorship, would be found to be incorrect or false, the Hindustan Petroleum Limited would be within its right to withdraw the Letter of Intent and terminate the dealership. The Selection Committee comprising one of the retired High Court Judges found the petitioner to have secured highest marks and, accordingly, she was declared selected for the distributorship of L.P.G. at Janipur, Letter of Intent was issued to the petitioner on 19.10.2001 in favour of the petitioner, whereafter, the LPG Dealership “Domestic and Commercial” Agreement dated 4.4.2003 was executed in between the petitioner and Hindustan Petroleum to carry out the business under the name and style of the firm, namely, M/s Sadbhavna HP Gas Agency for sale of LPG Cylinder for household and commercial consumer as per the terms and conditions of the said agreement. The said agreement dated 4.4.2003 was valid for ten years, on its expiry, a fresh agreement i.e.



H.P. Gas Dealership “Domestic and Commercial” Agreement on 4.4.2013 was executed by and between the parties for five years on the identical terms and conditions. In both the agreements, the conditions mentioned therein are identical. In both agreements, two conditions on which reliance has been placed from the parties are Clause 28B(l) and 28B(n).

6. The Hindustan Petroleum Corporation received a complaint dated 10.2.2016 by one Raj Kumar Chaudhary, son of Chotan Singh, Resident of B.N.R. Road, Pathrighat, Gulzarbagh, Patna making an allegation that Smt. Nupur Srivastava (proprietor of Sadbhavna HP Gas Agency) on the strength of false Marks-sheet of Matriculation obtained the allotment of dealership. The Marks-sheet which was attached with the application bears the Matriculation Roll No. 0352 and Roll Code 2119 year 1987 does not belong to Smt. Nupur Srivastava but, the same is standing in the name of Surendra Karmali which is said to have been verified from the Bihar School Examination Board. On receipt of the complaint, the Corporation requested the Chairman, Bihar School Examination Board, Patna vide letter no. 15.3.2016 to confirm the authenticity of the Matriculation Certificate issued by the Board to Kumari Noopur Srivastava which was attached at the time of filing of the application for selection of the distributorship. Again the Corporation received a complaint/reminder



dated 25.3.2016 (Annexure-5 to the writ application) along with attached documents submitted earlier as well as the letter of the Bihar School Examination Board, Patna issued vide letter no. Pat. 7592 dated 8.3.2016 issued as an information under the RTI. On receipt of the same, the Hindustan Petroleum Corporation vide letter dated 16.4.2016 enclosing the letter dated 16.2.2016 received from the PMO Office to HPCL in which complaint was attached along with Matriculation Certificate of Nupur Srivastava, petitioner, she was asked to submit her explanation within seven days from the date of receipt of the letter, requested to treat the same to be most urgent. In pursuance of the letter of the Corporation dated 15.3.2016, the Assistant Secretary (Vigilance), Bihar School Examination Board, Patna vide letter dated 26.04.2016 gave information to the Corporation with respect to Roll Code and Roll Number mentioned in the marks-sheet attached by Smt. Noopur Shrivastava, the petitioner, wherein, it was found, the Roll No. 0352 and Roll Code 2119 Year 1987 (A) does not belong to Kumari Noopur Srivasava but the same is standing in the name of another student, namely, Surendra Karmali, arrived to a finding that the mark-sheet attached by Nupur Shrivastava is a fabricated document. The Corporation through its lawyer has sought information in detail with respect to Roll Number 0352, Roll Code 2119, name of the candidate, his date of birth, registration



number marks obtained and name of the school, whereafter, after perusal of the record, it was informed that the information furnished vide letter dated 18.5.2016 by the Bihar School Examination Board wherein the name of the candidate was shown Surendra Karmali, father name has been Jeet Ram Karmali and the name of the school has been mentioned as M.G. H/S Deoaria Bhurkunda having attached the mark-sheet obtained by Surendra Karmali. After collecting the information with respect to details of the Roll Number and Roll Code with respect to marks-sheet given by the petitioner, a show-cause notice was issued by the Hindustan Petroleum Corporation vide PLRO/BK/LPG dated 13.6.2016 (Annexure-H of the counter affidavit filed by respondent no.1) wherein it has been mentioned, the petitioner for obtaining the LPG Distributorship has attached the Matriculation Certificate having been found to be false and fabricated document, misled the Corporation in getting LPG Distributorship and drew attention towards the undertaking given by the petitioner dated 3.10.2000 and the petitioner was called upon to show-cause as to why an action including termination of the Dealership Agreement should not be taken against her in accordance with the terms and conditions of the Dealership Agreement and the Policy Guidelines of the Corporation. The petitioner was given seven days time from the date of receipt of the aforesaid letter to file reply, if no reply is received,



action would be taken as it is deemed fit and proper under the provisions of the Dealership Agreement, whereafter, the petitioner has filed her show-cause dated 15.6.2016 mentioning therein that the Matriculation Certificate attached with the application submitted by her against the advertisement was not in any way knowingly or intentionally, she never had an occasion to verify the veracity of the Matriculation Certificate as the Matriculation Certificate was submitted by her elder brother, namely, Sri Prabhat Kumar, son of Late Sushil Bhushan and the same mark-sheet was attested by her elder brother-in-law Shri Arun Kumar Srivastava, she further stated that as a minor girl candidate, she had not fabricated the mark-sheet or had never been informed by her late father during his life time and her elder brother with regard to mark-sheet of Matriculation, she stated that it is beyond doubt that she had never knowingly or unknowingly given false/fabricated documents and never tried to mislead the Corporation into granting the LPG Distributorship. In the show-cause, she nowhere asserted the genuineness of her Matriculation Certificate attached by her.

7. The Corporation respondent supplied the letter of Bihar School Examination Board dated 15.3.2016 and letter dated 26.4.2016 along with the show-cause to Nupur Srivastava (petitioner). It appears that the Hindustan Petroleum Corporation issued letter



dated 16.4.2016 (Annexure-E to the counter affidavit of the Hindustan Petroleum Corporation) whereby the petitioner has been given 7 days time from the date of receipt of the letter to give explanation in view of the complaint received from the PMO Office about the attachment of the fabricated Matriculation Certificate and the petitioner vide letter dated 15.6.2016, has submitted her explanation wherein it has been mentioned that she was appointed after following the complete procedure by the Selection Committee as on 4.4.2003 in accordance with law and, thereafter, the petitioner has been distributing L.P.G. Gas amongst the customers, never any complaint was made against her on any before issuance of the letter dated 16.4.2016. It has further been mentioned that the said show-cause was issued contrary to the guideline for selection of H.P.C.L. as in view of guideline 13.1, the complainants must be accompanied with fee of Rs. 1,000/- but without satisfying the condition of the guideline, the complaint filed by Raj Kumar Choudhary has been taken into consideration. It has further been said that the complaint has been filed after lapse of several years i.e. after lapse of about 15 years with ulterior motive to harass the petitioner, requested to drop the proceeding further but, after considering the entire materials, the Hindustan Petroleum Corporation, vide letter dated 29.8.2016, terminated the Dealership Agreement dated 4.4.2013 and, on the same day, another letter was



issued preventing carrying out the HP Gas distributorship activity.

8. Learned counsel for the petitioner has first challenged the locus-standi of the petitioner submitted that as the complainant is not a social activist nor contends having filed such complaint against the others but, he has filed a complaint only against the petitioner selectively on malicious consideration. It has further been stated that the complainant should not have been taken into account as he has not deposited Rs. 1,000/- as per the brochure, if any person intends to file a complaint, he/she will have to pay the fee of Rs. 1,000/- but, such event has not been taken place in the present case. During argument, he has also submitted that the Corporation should not have entertained the complaint filed by the complainant and straightway it should have been treated trash. It has further been submitted that the petitioner had no occasion to verify the Matriculation Certificate as she appeared as a private candidate in the Matriculation and, at the relevant time, she was minor, everything was handed over either by her father or her elder brother and she never intended to commit fraud upon the Corporation. It has further been submitted that the Hindustan Petroleum Corporation Limited while discharging the quasi judicial function never conducted enquiry following natural justice at all. In support of the submission, he has further placed reliance on the Principles of Administrative Law by Dr



Sakil Ahmad Khan, Vol-I, Page 338 wherein it has been held that before inflicting such punishment, it requires a full fledged enquiry which has not been carried out in the present case, inasmuch as, the enquiry was not conducted with respect to the petitioner as to whether she as a private candidate had appeared in the matriculation examination as she has taken a plea that the entire family, on personal ground, had shifted to Hazaribagh where she appeared as a private candidate through S.S. High School, Gola and has not committed fraud. It has further been argued that the application and her credentials were scrutinized at different level and having found to be proper, the petitioner was selected as L.P.G. Distributor, was issued the Letter of Intent in her favour. It has further been submitted that the Corporation has/had in its command the entire machinery and wherewithal to hold an enquiry to be satisfied with genuineness from every corner in detail but, after lapse of 15 years, they cannot be allowed to turn around and cancel the Dealership. They have verified the record with the open eye and open mind, if they fail to identify, then the genuineness of the educational certificate cannot be a basis for cancellation of the Dealership. In the brochure, the time has been prescribed for every stage, scanning of documents have to be done at different levels and stages for scrutiny and satisfaction. He has placed reliance on the two judgments in the case of *Shri Krishan Vs. The*



Kurukshetra University, Kurukshetra reported in 1976 SC 376, Para-6 & 7 and in the case of *Amresh Kumar Vs. Principal, Bhagalpur Medical College, Bhagalpur* reported in 1982 BBCJ 302, Para-3. It has further been submitted that complete procedure has been provided in what manner the complaint or grievance would be entertained and redressed and, in violation to observe the same, it cannot be said that action has been taken in proper manner. He has further submitted that if a particular act has to be done in a particular manner then that act has to be done in that particular manner alone, not in any other manner. In this respect, he has placed reliance in the case of *Ramchandra Keshav Adke (Dead) by Lrs. Vs. Govind Joti Chavare & Ors.* reported in AIR 1975 SC 915, Para-25. He has further submitted that the undertaking, which has been obtained by the Corporation, is neither a part of the agreement nor it has been mentioned in the brochure and, on the basis of an undertaking, the Corporation has terminated the Dealership which is per se illegal in view of the fact that she has given an undertaking on the dotted line which has been drafted by the Corporation and the petitioner, being a dwarf before the giant Corporation, did not have a bargaining capacity to challenge the dictate of the Corporation to submit the undertaking and, in such view of the matter, if any such undertaking is obtained, the same cannot be a basis for cancelling the dealership. At one stage, learned counsel for the petitioner has



submitted that documents were with the Corporation, how, someone who is stranger would lay his hand on certificates and made complaint against her, requires detailed enquiry but, then, it was pointed out that the Complainant has obtained the document under the R.T.I. from the Corporation. It has further been submitted that the basic and elementary concern is to run the business properly and without complaint, the qualification mentioned for selection in the brochure of the N.I.T. cannot be said to be essential element in the matter of selection of dealership. It has further been submitted that even if a person does not have educational qualification but have business skill would run the business properly without any hindrance. He has further submitted, the documents filed by the petitioner were open for proper scrutiny and verification and if they failed to identify the discrepancy when it had all means and machinery to discover the truthfulness of the document and, if they failed to trace, it is not permissible after such a long delay to terminate dealership on the basis of tampered matriculation document. He has further submitted that the certificate filed by the petitioner could have easily been verified by the authority, in such circumstances, she cannot be said to have committed any fraud merely alleging or showing certain acts have been committed fraudulently unless the alleged fraudulent act is proved beyond reasonable doubt, has placed reliance in the case of *Mohammed Ibrahim*



& Ors. Vs. State of Bihar & Anr. reported in 2009 (8) SCC 751.

9. Learned counsel for the Corporation has submitted that in terms of the undertaking on affidavit as well as Clause 28B(1)(n), the petitioner was to furnish correct information and testimonials, submits that after receipt of the complaint, an explanation was asked from the petitioner mentioning therein that a complaint has been received from Raj Kumar Chaudhary, wherein, it has been mentioned that the petitioner had/has attached the fabricated Matriculation Certificate for obtaining the Dealership, must file her explanation. After receipt of the same, the Corporation has not directly taken action against the petitioner rather, vide letter dated 15.3.2016, the Corporation sent a letter to the Bihar School Examination Board mentioning that received a complaint through PMO Office, attaching therein the Matriculation Certificate issued in favour of Kumari Nupur Srivastava and requested for verification of the same, whereafter, the Bihar School Examination Board sent letter dated 26.4.2016 wherein it has been mentioned that after proper verification, it was found that the Roll No. 352 and Roll Code 2119 does not belong to Kumari Nupur (noopur) Srivastava rather the same is of Surendra Karmali, S/o Jeet Ram Karmali, whereafter, through an advocate, an information was obtained under the RTI with respect to Roll No. 352 and Roll Code 2119 and it has been informed vide letter



dated 18.5.2016 that the said roll number and roll code is standing in the name of Surendra Karmali whose date of birth is 30.01.1971 and passed the examination with 3rd Division, attaching the mark-sheet and, thereafter, a show-cause notice was issued vide letter dated 13.6.2016 (Annexure-H), whereby, the petitioner was called upon to show-cause as to why action, including termination of the Dealership Agreement, be taken against her and she was given 7 days time to file explanation, whereafter, the petitioner filed her explanation wherein she has not claimed that the certificate of Matriculation which was attached by her is a genuine document rather she has given an evasive reply that at the relevant time, she was minor and all the actions were taken by her father and her elder brother, she was never informed by them in any manner about the fabrication of the Matriculation Certificate. It has further been argued, during entire period of argument, the petitioner has not claimed the Matriculation Certificate is genuine one, if she has committed fraud, there cannot be any hesitation for the Corporation to terminate the Agreement as dealership of LPG Distributorship has been obtained on the strength of the fraudulent document cannot claim protection to save dealership. It has further been submitted that if she would have lost 20% marks, there was all likelihood she would not have been selected, inasmuch as, she has committed a fraud with the Corporation, now she cannot



claim that the action of the respondent is illegal in any manner and not in accordance with law. It has further been submitted that the observance of the natural justice cannot be followed in routine and fixed manner nor would be allowed to act as an unruly horse, but its applicability is always dependent on the fact and attending circumstances of each case. It has further been submitted that the petitioner is the only person who knows the status of her certificate, can authenticate her Matriculate Mark-Sheet. It is within her personal knowledge about passing of the Matriculation Examination.

10. Learned counsel for the Respondent No.2 & 3 has submitted that the Matriculation qualification is an essential qualification for selection to the Distributorship of LPG, submits that Clause 1.3 (iii) says that the if the person does not have proper essential qualification, he will be treated disqualified for selection of Distributorship. He has further submitted that the educational qualification and General level of intelligence carries 20 points. He has further submitted that eligibility and suitability are two different concepts, if a person does not have minimum qualification, he/she cannot claim his/her consideration for selection, if a person possesses minimum eligible qualification, would stand in the row but, he may not be suitable for that job. When a person does not possesses the essential qualification, she would not come under the zone of



consideration and for assessing the person to be suitable, the person must first have the eligibility qualification, in absence of the same, the question of screening his/her suitability does not arise. He has also submitted that the petitioner may be minor at the time of Matriculation but, when she has applied for the Dealership, she was knowing the status of her qualification, Matriculation Certificate and knowingly all she has suppressed the information, attached the same, so she cannot take the advantage of her fraudulent act and she cannot be allowed to take the plea of her ignorance with respect to the Matriculation Certificate. It has been submitted that it is completely a case of fraud. She used to write "Nupur Srivastava" but, her certificate attached shows her name as "Kumari Noopur Srivastava" in order to cover her misdeed, she put her signature Noopur Srivastava and below she has written Kumari Noopur Srivastava itself depicts the acts of fraud committed by her. It has further been submitted that in the affidavit also, the word Kumari has not been used but, only Nupur Srivastava has been mentioned. So, she was knowing that she has filed a fraudulent certificate, now she cannot make prayer of escape from the action taken by the Corporation.

11. Earlier this Court passed the order dated 17.2.2017, whereby, a direction was given to the Bihar School Examination Board to produce original record with respect to the maintenance of



mark-sheet of the candidates appearing as a regular student as well as private student, it has been informed to this Court that the B.S.E.B. maintains single register comprising regular and private candidate, maintains roll code and roll number in singular pattern uniformly. This Court directed if any separate record is maintained by the B.S.E.B. for private candidate, the original of the same must also be produced for perusal of this Court. In pursuance thereof, on 27.2.2017, the BSEB produced the original record and filed an affidavit made a statement that there is no separate register for the private student. The records were produced in the sealed cover, was opened in presence of the parties and this Court directed that whosoever are interested to examine the record are at liberty to examine the same in presence of the counsel for the B.S.E.B. and directed the counsel for the B.S.E.B. to keep the record with himself till disposal of the case. It is also made clear that as the parties have examined the record and the petitioner failed to identify any anomaly, any irregularity or discrepancy in maintaining the record. The counsel for the petitioner has submitted out from the record, it shows the entries with respect to regular students or ex-regular students but, nowhere in the register there is any separate column for private student. Learned counsel for the B.S.E.B. has explained that the ex-regular students includes the private students also. Counsel for the



Board has also submitted that Annexure-5B is the mark-sheet of Kumari Noopur Shrivastava, wherein the name of school is mentioned as S S High School, Gola, the Roll Code 2119 and Roll No. 0352. From the record he has shown and explained that the aforesaid Roll Code runs from page 443 to 470, the Examination Center is Public H.S. Kuju, Page 443 to 444 is related to School Naya Nagar and from Page 455 to 459 is related to High School, Chitarpur and page no. 456 to 460 is related to M/s Dewaria Bhurkunda. He has further submitted that Roll Code 2119 is not related to S.S. Gola High School. He has submitted that it is completely a false and fabricated document which has been produced by Nupur (Noopur) Srivastava.

12. In reply, learned counsel for the petitioner has submitted that there is no clause in the covenant which prescribes to give an undertaking about the educational qualification. Merely the petitioner has attached the Matriculation Certificate, it cannot be said that the petitioner has knowledge of the authenticity, placed reliance on the judgment in the case of *Manoj Kumar Vs. Government of NCT of Delhi & Ors.* reported in (2010) 11 SCC 702. It has been said that giving an undertaking is not part of NIT, it cannot be said to be mandatory, undertaking on affidavit has been obtained from the petitioner under the terroram. It has further been submitted that the Dealership is going to end by April, 2018, even it is found that a fraud has been played, it



requires that at least the petitioner should be allowed to continue to run the dealership up to April, 2018. He has further placed reliance on Section 17 of the Contract Act on the issue of fraud making submission, screening of record has been made at different levels by its own agency, now the dealership cannot be terminated on the basis of matriculation certificate. In support of his submission, he has placed reliance in the case of *Shri Krishan Vs. The Kurukshetra University, Kurukshetra* reported in *1976 SC 376*, in the case of *Guru Nanak Dev University Vs. Sanjay Kumar Katwal & Anr.* reported in *(2009) 1 SCC 610* and in the case of *Union of India Vs. M/s Chaturbhai M. Patel & Co.* reported in *AIR 1976 SC 712*, Para-7. He has further submitted that the suspicion howsoever strong may be but, cannot take the shape of proof, placed reliance in the case of *Sajeesh Babu K. v. N.K. Santhosh* reported in *2012 (12) SCC 106*, para-18 does not apply to this present case, also placed reliance in the case of *Alva Aluminum Limited, Bangkok Vs. Gabriel India Limited* reported in *(2011) 1 SCC 167*. He has further submitted that the Corporation has not acted fairly and reasonably and the action of the Corporation is completely arbitrary and not sustainable in law. It has further been submitted that the certificate which was secured by the petitioner was not meant for the purpose of obtaining contract but was for the purpose of educational pursuit and, as such, it cannot be said that the petitioner has obtained certificate for



this contract and has acted fraudulently for obtaining the dealership.

13. Parties have placed reliance on following judgments in the case of *Chairman-cum-Managing Director, Coal India Limited & Ors. Vs. Ananta Saha & Ors.* reported in (2011) 5 SCC 142, in the case of *Shri Krishan Vs. The Kurukshetra University, Kurukshetra* reported in AIR 1976 SC 376, in the case of *M/s Fedco (P) Ltd. & Anr. Vs. S.N. Bilgrami & Ors.* reported AIR 1960 SC 415, in the case of *Ram Chandra Singh Vs. Savitri & Ors.* reported in 2003 (8) SCC 319, in the case of *Lillykutty Vs. Scrutiny Committee, SC & ST & Ors.* reported in 2005 (8) SCC 283 para-24, in the case of *Union of India & Anr. Vs Chaya Ghoshal & Anr.* reported in AIR 2005 SC 429, para-8, in the case of *Kerala Solvent Extractions Ltd. Vs. A. Unnikrishnan and Anr.* reported in (2006) 13 SCC 619, in the case of *M/S Prestige Lights Ltd Vs State Bank Of India* reported in 2007 (8) SCC 449, Para-33, in the case of *Ramana Dayaram Shetty Vs. The Internatinal Airport Authority of India & Ors.* reported in AIR 1979 SC 1628, Para-9. Learned counsel for the Corporation has also placed reliance in the case of *Central Airmen Selection Board & Anr. Vs. Surendeer Kumar Das* reported in AIR 2003 SC 240, Para-7 and in the case of *Kerala Solvent Extractions Ltd. Vs. A. Unnikrishnan & Anr.* reported in (2006) 13 SCC 619, Para-10.

14. In the present case, considering the rival contentions of the parties, following major issues including incidental issues are to



be decided.

15. The 1st issue has been raised by the petitioner that the respondent nos. 2 and 3 maliciously, with an ulterior motive, have made a complaint though they are not the public figure having any past history to espouse such nature of issues of public domain with respect to any private individual.

16. The 2nd point is required to be gone into as has been claimed that the Corporation has not followed fair and proper procedure, maintained transparency, failed to observe principle of natural justice while taking decision against the petitioner.

17. The 3rd point has been raised that the credentials of the petitioner attached with the application were examined by the Corporation at several stages by different agencies and only, thereafter, the dealership was awarded to the petitioner, after long lapse of time, scrapping the agreement, on the basis of having filed a forged and fabricated matriculation certificate, is not sustainable in law in view of the fact that the Corporation is backed by strong batteries of employee, having all wherewithal to have made scrutiny of credentials, failure to identify defect in the certificate cannot be a basis to scrap the agreement and deprive the petitioner in the right of business.

18. The 4th point is that the undertaking on affidavit



which has been obtained from the petitioner with respect to having found any wrong, the Corporation will be at liberty to terminate the agreement has been taken in terrorem, is not part of brochure, cannot be a basis for termination of the agreement.

19. The 5th point is that the Corporation has not tried to find out about passing of the matriculation examination by the petitioner as a private candidate rather an enquiry has been conducted in a peculiar strange manner with respect to Surendra Karmali and never any effort was made to find out about the petitioner to have passed the matriculation as a private candidate. The matriculation certificate was not obtained for the purpose of getting the dealership but, it is an incidental, the main purpose was the educational pursuit and thus the petitioner cannot be said to have obtained certificate by fraud or misrepresented the Corporation. The fraud is deliberate action, is a serious matter, has to be proved beyond reasonable doubt either in the criminal case or civil proceeding. As the petitioner was a minor girl, she has not played any fraud in obtaining the matriculation certificate.

20. The last but not the least, it has been claimed that on equitable consideration, the period of agreement is going to expire in the month of April, 2018, even if the findings recorded against the petitioner on equitable consideration, she should be allowed to run her



business till completion of the period.

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21. The present writ application, which has been filed by the petitioner, is against an order of the Corporation, thereby, the dealership of the petitioner has been terminated by the letter dated 29.9.2016 (Annexure-16) and, on the same day, another letter was issued, thereby the petitioner has been prevented to deliver the LPG gas to the consumer.

22. The present petition has not been filed by the respondent nos. 2 & 3 but, what they have done it that they have filed a complaint before the Corporation and copy was given to the Ministry of Petroleum attaching the mark-sheet of Kumari Noopur (Nupur) Srivastava having roll code 2119 and Roll no. 0352 and also attaching an undertaking which was given by her on affidavit in which a statement was made if any document was found to be untrue or incorrect or false, the Hindustan Petroleum Corporation Limited would be within its right to withdraw the Letter of Intent or terminate the dealership/distributorship. There is no dispute on this score the Hindustan Petroleum is a State within the meaning of Article 12 of the Constitution of India, granting a contract or distributorship is the State largess and the Corporation has to deal with the mater of dealership fairly and properly apply uniform and reasonable guideline showing



non-partisanship, reflects non-discrimination. It is also a well known principle that Article 14 of the Constitution of India equally applies to the instrumentality of State which falls within the meaning of Article 12 of the Constitution, which strike at arbitrariness in the State action, ensure fairness and equality in treatment. It requires that the State action must not arbitrary but, must be based on some rational and relevant principle which is non-discriminatory, it must not be guided by any extraneous or irrelevant consideration because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is projected by Art. 14 and it must characterize every State action, whether it be under authority of law or in exercise of executive power without making of law. The State cannot, therefore, act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm which is rational and non-discriminatory.

23. In the case of the International Airport Authority of India (supra), in paragraph no.11, it has been held that to-day the Government, is a welfare State, is the regulator and dispenser of special services and provider of a large number of benefits, including jobs contracts, licences, quotas, mineral rights etc. The Government



pours forth wealth, money, benefits, services, contracts, quotas and licences. The valuables dispensed by Government take many forms, but they all share one characteristic. They are steadily taking the place of traditional forms of wealth. These valuables which derive from relationship to Government are of many kinds. They comprise social security benefits, cash grants for political sufferers and the whole scheme of State and local welfare. Number of activities have been mentioned and it would be difficult for the Government to take action through its executive machinery and to cope with this problem, the Government has created the agency to deal with large number of problems and its action must be conforming to the fairness and not discriminatory and has given its view in the following words. It has also been held that that Government action be based on standards that are not arbitrary or unauthorized. The Government cannot be permitted to say that it will give jobs or enter into contracts or issue quotas or licences only in favour of those having grey hair or belonging to a particular political party or professing a particular religions faith. The Government is still the Government when it acts in the matter of granting largess and it cannot act arbitrarily. It does not stand in the same position as a private individual. Unfairness is the antithesis of Article 14 of the Constitution of India. It would be relevant to quote paragraph no.21 of the aforesaid judgment which



reads as follows:-

"21. This rule also flows directly from the doctrine of equality embodied in Art. 14. It is now well settled as a result of the decisions of this Court in *E. P. Rayappa v. State of Tamil Nadu* (1974) 2 SCR 348 : (AIR 1974 SC 555) and *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 : (AIR 1978 SC 597) that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory: it must not be guided by any extraneous or irrelevant considerations, because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is protected by Article 14 and it must characterise every State action, whether it be under authority of law or in exercise of executive power without making of law. The State cannot, therefore act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm which is rational and non-discriminatory. This principle was recognised and applied by a Bench of this Court presided over by Ray, C.J., in *Erusian Equipment and Chemicals v. State of West Bengal* (AIR 1975 SC 266) (*supra*) where the learned Chief Justice pointed out that "the State can carry on executive function by making a law or without making a law. The



exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. The order of black-listing has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of blacklisting - A citizen has a right to claim equal treatment to enter into a contract which may be proper, necessary and essential to his lawful calling - It is true that neither the petitioner nor the respondent has any right to enter into a contract but they are entitled to equal treatment with others who offer tender or quotations for the purchase of the goods." It must, therefore follow as a necessary corollary from the principle of equality enshrined in Article 14 that though the State is entitled to refuse to enter into relationship with any one, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principle which meets the test of reasonableness and non-discrimination and any



departure from such standard or principle would be invalid unless it can be supported or justified on some rational and non-discriminatory ground."

24. From analysis of the aforesaid judgment, it appears that grant of dealership is a State largess and it must be given in a fair manner and must keep transparency in the action, arbitrariness has to be avoided, otherwise, it will lead to violation of Article 14 of the Constitution of India and will make the action to be illegal and would not be allowed to sustain.

25. In the present case, undoubtedly the dealership is a State largess, if any complaint has been made by a third party, even though he has no interest in the matter or having no past records to deal with such type of adventure, that could not have been thrown to the dustbin as has been claimed by the petitioner that in terms of brochure, any complaint must be attached with a fee of Rs. 1,000/- which was not deposited by the complainant. There is no material to show that petition was not attached with the fee of Rs. 1,000/- with the complaint, even though, the complaint was not attached with fee of Rs. 1,000/- will not alter the situation as the Corporation received the complaint also from the Prime Minister Office, whereupon, the Corporation has started making enquiry. If the person has, by playing fraud obtained the State largess, it cannot be denied that in public interest, would not correct the action.



26. Just for an example, if any person has entered into the service by producing a forge certificate or in impersonation, it cannot deprive a general person to bring this fact to the notice of the authority that the person, who is working with the department, is not the same person whom the State or Corporation has selected and any action on that complaint cannot be said to have sustained in law. Allegation of malafide loses its value in the event of charge is proved. In the present case, the main issue is not with regard to complaint made by the respondent nos. 2 & 3 but, the main question in the present case is as to whether the petitioner has obtained the grant of State largess by playing fraud and misrepresentation and whether the action of the Corporation in canceling the dealership is proper, legal and sustainable in law.

27. This Court is of the view that mainly because he is a third party, having no interest, but, on certain domestic dispute, as having been claimed with respect to holding the office of treasuryship of Co-operative Society by his friend with the husband of the petitioner led to lodging of the complaint, on enquiry, merit was found in the complaint attached with certain clinching evidence indicating that the certificate, which was attached by the petitioner, was not a proper certificate. In that view of the matter, the issue of raising an allegation that the complaint of respondent no.3 was malafide cannot



be a basis to allow the writ application by the petitioner when the Corporation has found the certificate submitted by the petitioner was factually a fabricated document.

28. In the present case, learned counsel for the petitioner has submitted that as the complainant has not deposited Rs. 1,000/- as a fee is pre-condition, it should not have been entertained as has been held in the brochure in Clause 13 deals with Grievance/Complaint Redressal System. Clause 13.1 provides that a complainants will have to deposit Rs. 1,000/- as complaint fees through demand draft in favour of concerned OMC along with the complaint which are not accompanied with the deposit of Rs. 1,000/- will not be investigated and on the strength of Clause-13, it has been argued that when an action should be taken in a particular manner after deposit of the particular amount of money, action would be taken only on satisfaction of that payment i.e. deposit of Rs. 1,000/- and, in event of non-accomplishment, the complaint will not be entertained. He has placed reliance on the judgment in the case of Ramchandra (supra) wherein the Hon'ble Supreme Court has said that a particular thing has to be done in a particular manner and that thing has to be done in that manner only not otherwise. It is relevant to quote paragraph no.25 of the aforesaid judgment which reads as follows:-

"25. A century ago, in Taylor v. Taylor, (1875) 1 Ch D 426, Jassel M. R. adopted the rule that



where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. This rule has stood the test of time. It was applied by the Privy Council, in Nazir Ahmed v. Emperor, 63 Ind App 372 = (AIR 1936 PC 253 (2)) and later by this Court in several cases, Shiv Bahadur Singh v. State of V.P., (1954) SCR 1098 = (AIR 1954 SC 322 = 1954 Cri LJ 9100; Deep Chand v. State of Rajasthan, (1962) SCR 662 = (AIR 1961 SC 1527 = 1961 (2) Cri LJ 705) to a Magistrate making a record under ss. 164 and 364 of the Code of Criminal Procedure, 1898. This rule squarely applies "where, indeed, the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other. Maxwell's Interpretation of Statutes, 11th Edn., pp. 362-363." The rule will be attracted with full force in the present case because non-verification of the surrender in the requisite manner would frustrate the very purpose of this provision. Intention of the legislature to prohibit the verification of the surrender in a manner other than the one prescribed, is implied in these provisions. Failure to comply with these mandatory provisions, therefore, had vitiated



the surrender and rendered it non-est for the purpose of s. 5 (3) (b)."

29. But in the present case, the complaint has not only received from the individual but, the complaint was forwarded from the Prime Minister Office and there is nothing wrong to deal with the situation when the complaint was forwarded by the PMO was incumbent to deal the complaint forwarded by the office of the Prime Minister. In such view of the matter, this point does not cut much ice in this matter.

When the documents of the petitioner was put to strict scrutiny at different stages wheather it will be justified to take action after lapse of so many years – Application of Estoppel

30. In the present case, the petitioner has raised a grievance that the documents filed by the petitioner put to scrutiny at different stages and different levels. The Corporation was in command of entire machinery having strong wherewithal to make an enquiry of her certificates whereafter the certificate was found proper and after being satisfied, the petitioner was granted the benefit of dealership, after fifteen years, the Corporation cannot be allowed to turn around and cancel the same on the ground that credential filed by the petitioner was defective. Learned counsel for the petitioner has placed reliance on Clause 3.12 of the Guidelines mentions verification



of the empanelled candidates. Clause 3.11.2. stipulates that immediately after completion of the interviews, result will be displayed on the notice board giving three names included in the merit panel in the alphabetic order. Clause 3.12.1 provides that after receipt of the merit panel, the Executive Director / General Manager of the zone will get a field investigation report completed within 10 days and issue the LOI within 15 days of the merit panel. Clause 3.13.1 prescribes time period for each step was to be taken. After advertisement, it provides scrutiny and verification of the application within thirty days, so this time opportunity was conferred to the Corporation to make verification of the records. After the stage of scrutiny by Departmental Selection Board, fifteen days have been provided, during that period also, the document was required to be looked into and at the stage of field verification report, ten days time was given, so this time also, opportunity was there to the Corporation to make scrutiny of the records filed by the petitioner, total 145 days have been provided to the Corporation to hold enquiry and make scrutiny of the record. On that score, learned counsel for the petitioner submits that when the opportunity was there to make enquiry about the credentials of the petitioner, if the Corporation failed to find any wrong with the document, now after lapse of long period of time, they cannot be allowed to turn around and terminate the dealership holding



that the certificate attached by the petitioner was forged certificate but, while dealing with these issues, relevant to take into consideration Clause 28B (l & n) which reads as follows:-

Clause 28B(l) - If any information given by the dealer, in his application for appointment as a dealership shall be found to be untrue or incorrect in any material particular;

Clause 28B(n) – If the Dealer shall either by himself or by his servants or agents commit or suffer to be committed any act which, in the opinion of the General Manager of the Corporation for the time being at Mumbai, whose decision in that behalf shall be final, is prejudicial to the interest or good name of the Corporation or its products, the General Manager shall not be found to give reasons for such decision.

31. On selection in terms of Clause 28(B)(l) which is part of Annexure-D as well as undertaking of the writ application. In the undertaking part, it has been stipulated in Clause-6, that "if any information/declaration given by me in my application or in any document submitted by me in support of my application for the award of LPG dealership/distributorship or in this undertaking shall be found to be untrue or incorrect or false, Hindustan Petroleum Corporation Limited, would be within its right to withdraw the letter of intent/terminate the dealership/distributorship (if already appointed) and that I would have no claim, whatsoever, against Hindustan



Petroleum Corporation Limited, for such withdrawal/termination."

32. So from perusal of Clause 28B (l)(m) and the undertaking given by the petitioner, it was presumption that the petitioner will come forward with correct information. The petitioner has attached the matriculation certificate, it was within her personal knowledge about the genuineness of the document, she should have come forward with a clean hand. If the Corporation has failed to exercise with proper and due diligence and care in scrutinizing the document does not entitle her to attach fake certificate. In the present case, the petitioner has given her own undertaking, making a specific statement that records attached are correct to her knowledge and was not expected to suppress any fact or play fraud.

33. The judgment pressed in service, Shri Krishan (supra) deals with the issue with respect to the admission in part-2 of the LL.B. as the petitioner was an employee of the Kurukshetra University, took admission in the LL.B. evening class, he appeared in the examination of Part-1 but, he could not clear three subjects but, as per the Statute, was promoted to Part-2. The question was raised that the petitioner has filed an undertaking that he will produce the approval of his department but, he failed to do so, inasmuch as, he has not complied his undertaking to produce the approval of his department. He could not produce permission from the employees and



was also of short of attendance. He was not allowed to admission in Part-III. An objection was raised with respect to admission in the examination on the ground of failure to produce the permission as well as short of attendance. The court held that the petitioner was allowed to appear in the 1st year examination after proper verification of the records, when he has already appeared in the examination, merely he failed to produce the permission of the department which is not the mandatory requirement and shortage of attendance cannot be the basis for refusal to declare the result. The court has held that when the admission was made in ignorance of the legal rights or under duress would bind the maker of the admission. Further held that if only the University authorities would have exercised proper diligence and care by scrutinizing the admission form when it was sent by the Head of the Department to the University as year back as December 1971 they could have detected the defects or infirmities from which the form suffered according to the University Statute. The Head of the Department of Law was also guilty of dereliction of duty in not scrutinizing the admission form of the appellant before he forwarded the same to the University. It will be relevant to quote paragraph no.9 of the aforesaid judgment which reads as follows:-

"9. *Mr. Nandy counsel for the respondent placed great reliance on the letter written by the appellant to the respondent wherein he*



undertook to file the requisite permission or to abide by any other order that may be passed by the University authorities. This letter was obviously written because the appellant was very anxious to appeal in Part II Examination and the letter was written in terrorem and in complete ignorance of his legal rights. The appellant did not know that there was any provision in the University Statute which required that he should obtain the permission of his superior officers. But as the respondent was bent on prohibiting him from taking the examination he had no alternative but to write a letter per force. It is well settled that any admission made in ignorance of legal rights or under duress cannot bind the maker of the admission. In these circumstances we are clearly of the opinion that the letter written by the appellant does not put him out of court. If only the University authorities would have exercised proper diligence and care by scrutinizing the admission form when it was sent by the Head of the Department to the University as far back as December 1971 they could have detected the defects or infirmities from which the form suffered according to the University Statute. The Head of the Department of Law was also guilty of dereliction of duty in not scrutinising the admission form of the appellant before he forwarded the same to the University."

34. Another judgment in the case of **Amresh Kumar Vs.**

Principal, Bhagalpur Medical College, Bhagalpur reported in 1982 **BBCJ**



302, placed reliance in the case of Shri Krishan (supra) on similar line. In this case got his admission in M.B.B.S. claiming to be member of the scheduled caste and when he arrived in final year, on enquiry it was transpired that the petitioner was member of the general caste. It has been held that once the candidate is allowed to take examination rightly or wrongly then the statute which empowers the University to withdraw the candidature of the applicant had worked itself out and the candidate could not be refused admission subsequently for any infirmity which should have been looked into before giving the candidate permission to appear. If the University authorities acquiesced in the infirmities which the admission form contained and allowed the candidate to appear in the examination, then by force of the University Statute the University had no power to withdraw the candidature of the candidate. Moreover, it was also held that where a person on whom fraud is committed is in a position to discover the truth by due diligence which is not done then fraud is not proved. It will be relevant to quote relevant portion of the aforesaid judgment which reads as follows:-

"3. ----- It was held by the Supreme Court that once the candidate is allowed to take examination rightly or wrongly then the statute which empowers the University to withdraw the candidature of the applicant had worked itself out and the candidate could not be refused admission subsequently for any infirmity which should



have been looked into before giving the candidate permission to appear. If the University authorities acquiesced in the infirmities which the admission form contained and allowed the candidate to appear in the examination, then by force of the University Statute the University had no power to withdraw the candidature of the candidate. Moreover, it was also held that where a person on whom fraud is committed is in a position to discover the truth by due diligence which is not done then fraud is not proved.-----"

35. In both the judgments, the view has been taken that the authorities have failed to apply his due diligence in scrutinizing the document, they cannot be allowed to turn around to show the door to the person but, in the case of *Lilly Kutty Vs. Scrutiny Committee, SC & ST & Ors.* reported in 2005 (8) SCC 283. In this case, the question was raised about the status of the caste and, in that case, the claim was made the person who was belonging to the scheduled castes or scheduled tribes, it has been held that the when a person claims to be a member of Scheduled Caste or Scheduled Tribe, burden of proof that he or she belongs to such caste or tribe is on him/her. While deciding the matter, Hon'ble Supreme Court placed reliance on different earlier judgments, held that the fraud committed by the Appellant for obtaining unlawful gain has been found as of fact by a statutory committee. The said finding of fact has not been interfered with by the High Court. No case has been made out for us to take a different view.



It has been held that any action by the authorities or by the people claiming a right/ privilege under the Constitution which subverts the constitutional purpose must be treated as a fraud on the Constitution. The Supreme Court has further held that once it is held that she did not belong to Scheduled Tribe, the action of cancellation of certificate could not be held illegal. Consequential actions can be taken thereafter in pursuance of cancellation of caste certificate. So even if the person has obtained certain benefit by suppression of certain fact, when it was found that it has been obtained by fraud, the benefit can be withdrawn. So the claim of the petitioner that as at the relevant time the matriculation certificate was not properly scrutinized and verified by the Hindustan Petroleum, after a long lapse of time, the Corporation cannot be allowed to turn around and terminate the dealership is bereft of substance, if a person has obtained the benefit by playing fraud, even after long lapse of time, benefit would be withdrawn, it cannot be said that the action is wrong as the fraud vitiates every thing and para 2 to 7 of the judgment. It is relevant to quote paragraph nos. 2 to 7 of the aforesaid judgment which reads as follows:-

"2. *The case of the appellant as revealed from the record is that she belongs to Hindu Pulayan Community - Scheduled Caste. Both her parents, at the time of their marriage, were Hindu Pulayan. The appellant was born in 1961 as Hindu Pulayan and she was*



never converted to Christianity and remained to be of Hindu Pulayan Scheduled Caste all throughout. She took her education and during that period, she was treated as a member of Scheduled Caste. In 1975, she got married to Kunjukutty, a member of the Scheduled Caste in accordance with the custom of the said community. A certificate to the effect that both, the appellant as well as her husband were members of the Hindu Pulayan Community was issued by the Association of the Community and was produced in the enquiry proceedings. According to the appellant, it was alleged that much later after she got married, her mother remarried to a Christian and converted to Christianity. Conversion by her mother was not proved but even if it is assumed that there was conversion on the part of her mother, the said fact in no way affected the status of the appellant who was born to Hindu Pulayan parents who were at the time of their marriage belonged to Scheduled Caste and the appellant who was born was a member of the Scheduled Caste. The appellant never converted to Christianity.

3. *It is the case of the appellant that on September 25, 2000, an election for Thannithode Gram Panchayat was held. The appellant contested from Ward No. 2 reserved for women. Though she belonged to Scheduled Caste, she contested the election by tiling a nomination paper for a seat reserved for women without filling the column in the nomination paper as "Scheduled Caste". Respondent No. 3. P.K. Gopi belongs to Scheduled Caste. He contested the election and got himself elected from the constituency reserved for Scheduled Caste in Ward No. 4. On 5th October, 2000, there was an election for office of the*



President of the Gram Panchayat. It was reserved for a member belonging to Scheduled Caste. The third respondent contested for the reserved seat. Since the appellant belonged to Scheduled Caste, she also contested for the office of the President against Respondent No. 3, and got herself elected as the President of the Gram Panchayat. According to the appellant, the 3rd Respondent did not like the act of contesting by the appellant against him and since he lost against the appellant, he filed a complaint under the Kerala (Scheduled Castes and Scheduled Tribes) Regulations of Issue of Community Certificate Act, 1996 (Act 11 of 1996) (hereinafter referred to as 'the Act'), alleging that the appellant did not belong to Hindu Pulayan Community, Scheduled Caste and hence could not have contested for the office of the President of the Gram Panchayat as a member of Scheduled Caste. Appropriate actions were, therefore, required to be taken against her. Upon receipt of the complaint, the Government referred the issue to the Vigilance Officer, KIRTADS for detailed inquiry. Notices were issued to the appellant and the third respondent by the Vigilance Officer and on finalization of the inquiry, he submitted the report to the Government. The Government referred the issue to the Scrutiny Committee. The Committee felt that detailed inquiry was necessary which was conducted by the Vigilance Officer and the final report was submitted. The Committee, on the basis of the evidence reached the conclusion that the appellant was not Hindu Pulayan and did not belong to Scheduled Caste. She never followed Hinduism nor lived in Hindu cultural milieu. The Scrutiny Committee by its order, dated September 22, 2001, held that the appellant did not belong to Scheduled



Caste.

4. *According to the Committee, the appellant was born to Christian parents and she had never been converted to Hinduism nor professed Hinduism. She was not accepted as a member of Hindu Pulayan, Scheduled Caste Community. She, therefore, could not claim the status of Hindu Pulayan, Scheduled Caste Community. A recommendation was, therefore, made by the Committee to take action for canceling the certificate granted in favour of the appellant.*
5. *It appears that against the decision of September 22, 2001 by the Scrutiny Committee rejecting the claim of the appellant, an appeal being MFA No. 1303 of 2001 was preferred by the appellant. The High Court set aside the order of the Committee on December 4, 2002 observing that the constitution of the Committee was not as per the decision of this Court in Kumari Madhuri Patil and Anr. v. Additional Commissioner, Tribal Development and Ors., MANU/SC/0022/1995 : AIR1995SC94 . The High Court observed that after the decision in Kumari Madhuri Patil, the Legislature of Kerala enacted Act 11 of 1996 and constituted a Committee on April 20, 2002 under Section 8 of the Act. Since the Committee, which considered the case of the appellant had not been constituted in accordance with law, it had no jurisdiction to pass the order or to make recommendation. The recommendation was, therefore, liable to be set aside. A direction was issued by the High Court to the Committee constituted under the Act to consider the matter after hearing the parties on the basis of the evidence and material and to pass final order. The appeal was accordingly allowed.*



6. *In the light of the directions of the High Court, the Committee constituted under the Act considered the case of the appellant. It issued notices to the parties and applied its mind on the status of the appellant as to whether she belonged to Scheduled Caste. The Scrutiny Committee considered several documents which were before it and on the basis of such evidence came to the conclusion that the appellant did not belong to Hindu Pulayan Community - Scheduled Caste. Her claim, therefore, could not be upheld. The Committee constituted under the Act went through the report, statements recorded during the course of enquiry and also documentary evidence. According to the Committee, the enquiry report 'conclusively' proved that the claimant's mother Saramma @ Ponnamma was a born Christian and died also as a Christian. The appellant was, therefore, a born Christian. It further found that the caste entries of the appellant showing to be Hindu Pulayan - Scheduled Caste have been obtained fraudulently by misrepresenting facts with a view to corner benefits as a member of Scheduled Caste. The appellant, however, was a Christian. The appellant's children were also participating actively in Baptist Church, Thannithode. The Committee found that though the appellant professed Christian religion and never followed Hinduism nor lived in Hindu culture, she declared herself to be Pulayan Hindu and styled herself as a member of Scheduled Caste falsely. It was a deliberate attempt on her part to conceal her true identity. The Committee noted that under Section 9 of the Act, the report of the Expert Agency was 'conclusive' proof for or against the claimant and under Section 10 of the Act, burden of proof that the claimant belonged to Scheduled Caste or Scheduled*



Tribe was on the person claiming the benefit of such caste or tribe. Since all materials went to show that the appellant was Christian and did not belong to Scheduled Caste Community, she was not entitled to benefits as a member of Hindu Scheduled Caste. She had been born and brought up as Christian. She continued and remained as Christian. She had never been converted to Hinduism. She was not accepted as a member of Hindu Pulayan Community of Scheduled Caste. The Committee, therefore, cancelled the certificate of the appellant as belonged to Scheduled Caste Community. The Committee also forwarded the copy of the report and proceedings to the Government for taking appropriate consequential action.

7. *In accordance with the provisions of the Act, the appellant preferred an appeal in the High Court of Kerala at Ernakulam under Section 12 of the Act. The Division Bench of the High Court again considered the relevant evidence produced before the Scrutiny Committee and the reasons recorded by the Committee and held that the Committee was justified in negating the claim of the appellant. The High Court also observed that it was satisfied that the appellant could not substantiate her claim that she belonged to Scheduled Caste. Accordingly, the appeal was dismissed."*

36. It will be relevant to place reliance in the case of ***Ram Chandra Singh Vs. Savitri Devi & Ors.*** reported in (2003) 8 SCC 319 wherein in paragraph nos. 15 to 27 the Hon'ble Supreme Court in many words has held that fraud vitiates everything. It is relevant to



quote paragraph nos. 15 to 27 of the aforesaid judgment which reads as follows:-

"15. Commission of fraud on court and suppression of material facts are the core issues involved in these matters. Fraud as is well-known vitiates every solemn act. Fraud and justice never dwells together.

16. Fraud is a conduct either by letter or words, which induces the other person, or authority to take a definite determinative stand as a response to the conduct of former either by word or letter.

17. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud.

18. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad.

19. In Derry v. Peek, (1889) 14 AC 337, it was held:

In an 'action of deceit the plaintiff must prove actual fraud. Fraud is proved when it is shown that a false representation has been made knowingly, or without belief in its truth, or recklessly, without caring whether it be true or false.

A false statement, made through carelessness and without reasonable ground for believing it to be true, may be evidence of fraud but does not necessarily amount to fraud. Such a statement, if made in the honest belief that it is true, is not fraudulent and does not render the person making it liable



to an action of deceit.

20. *In Kerr on Fraud and Mistake at page 23, it is stated:*

"The true and only sound principle to be derived from the cases represented by Slim v. Croucher is this that a representation is fraudulent not only when the person making it knows it to be false, but also when, as Jessel, M.R., pointed out, he ought to have known, or must be taken to have known, that it was false. This is a sound and intelligible principle, and is, moreover, not inconsistent with Derry v. Peek, A false statement which a person ought to have known was false, and which he must therefore be taken to have known was false, cannot be said to be honestly believed in. "A consideration of the grounds of belief", said Lord Herschell, "is no doubt an important aid in ascertaining whether the belief was really entertained. A man's mere assertion that he believed the statement he made to be true is not accepted as conclusive proof that he did so."

21. *In Bigelow on Fraudulent Conveyances at page 1, it is stated :*

"If on the facts the average man would have intended wrong, that is enough."

It was further opined:

"This conception of fraud (and since it is not the writer's, he may speak of it without diffidence), steadily kept in view, will render the administration of the law less difficult, or rather will make its administration more effective. Further, not to enlarge upon the last matter, it will do away with much of the prevalent confusion in regard to 'moral' fraud, a confusion which, in addition to other things, often causes lawyers to take refuge behind such convenient and indeed useful but often obscure language as 'fraud upon the law'. What is fraud upon the law? Fraud can



be committed only against a being capable of rights, and 'fraud, upon the law' darkens counsel. What is really aimed at in most cases by this obscure contrast between moral fraud and fraud upon the law, is a contrast between fraud in the individual's intention to commit the wrong and fraud as seen in the obvious tendency of the act in question."

22. Recently this Court by an order dated 3rd September, 2003 in Ram Preeti Yadav v. U.P. Board of High School & Intermediate Education and Ors. reported in MANU/SC/0683/2003 : AIR2003SC4268 held:

"13. Fraud is a conduct either by letter or words, which induces the other person, or authority to take a definite determinative stand as a response to the conduct of former either by words or letter. Although negligence is not fraud but it can be evidence on fraud. (See Derry v. Peek (1889) 14 AC 337

14. In Lazarus Estate v. Berly (1956) 1 All ER 341 the Court of Appeal stated the law thus: (All ER p. 345 C-D)

"I cannot accede to this argument for a moment "no Court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything". The Court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever."

15. In S.P. Chengalayaraya Naidu v. Jagannath MANU/SC/0192/1994 : AIR1994SC853 this Court stated that fraud avoids all judicial acts, ecclesiastical or temporal."



23. *An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would, render the transaction void ab initio. Fraud and deception are synonymous.*

24. *In Arlidge & Parry on Fraud, it is stated at page 21:*

"Indeed, the word sometimes appears to be virtually synonymous with "deception", as in the offence (now repealed.) of obtaining credit by fraud. It is true that in this context "fraud" included certain kinds of conduct which did not amount to false pretences, since the definition referred to an obtaining of credit "under false pretences, or by means of any other fraud". In Jones, for example, a man who ordered a meal without pointing out that he had no money was held to be guilty of obtaining credit by fraud but not of obtaining the meal by false pretences: his conduct, though fraudulent, did not amount to a false pretence. Similarly it has been suggested that a charge of conspiracy to defraud may be used where a "false front" has been presented to the public (e.g. a business appears to be reputable and creditworthy when in fact it is neither) but there has been nothing so concrete as a false pretence. However, the concept of deception (as defined in the Theft Act 1968) is broader than that of a false pretence in that (inter alia) it includes a misrepresentation as to the defendant's intentions; both Jones and the "false front" could now be treated as cases of obtaining property by deception."

25. *Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res-judicata.*

26. *In Smt. Shrisht Dhawan v. Shaw Brothers MANU/SC/0295/1992 : AIR1992SC1555 , it has been held that:*



"20. Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct,"

27. In *S.P. Chengalvaraya Naidu v. Jagannath* MANU/SC/0192/1994 : AIR1994SC853 this Court in no uncertain terms observed: (SCC p.5, paras 5-6)

"...The principle of "finality of litigation" cannot be passed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. We are constrained to say that more often than not process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.

* * *

A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage... A litigant, who approaches the Court, is bound to produce all the documents executed by him, which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party."

37. In that case of ***Prestige Lights Ltd. Vs. State Bank of India*** reported in (2007) 8 SCC 449, the court has held that the person must furnish the correct information, any suppression of fact, will vitiate



every thing. The principle is that the person must come with the clean hand. It is relevant to quote paragraph nos. 33, 34 and 35 of the aforesaid judgment which reads as follows:-

"33. *It is thus clear that though the appellant-Company had approached the High Court under [Article 226](#) of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under [Article 226](#) of the Constitution. Over and above, a Court of Law is also a Court of Equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the Writ Court may refuse to entertain the petition and dismiss it without entering into merits of the matter.*

34. *The object underlying the above principle has been succinctly stated by Scrutton, L.J., in [R v. Kensington Income Tax Commissioners](#), [(1917) 1 KB 486 : 86 LJ KB 257 : 116 LT 136], in the following words:*

"(I)t has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should made a full and fair disclosure of all the material facts_ facts, not law. He must not



misstate the law if he can help it_the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside, any action which it has taken on the faith of the imperfect statement". (emphasis supplied)

35. *It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a Writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible."*

38. In the case of **Manoj Kumar Vs. Government of NCT of Delhi & Ors.** reported in (2010) 11 SCC 702, in paragraph no.8 of the judgment, it has been held that there is no doubt that if any candidate furnishes false or incomplete information or withholds or conceals any material information in his application, he will be debarred from



securing employment. It is also true that even if such an applicant is already appointed, his services are liable to be terminated for furnishing false information.

39. The claim of the petitioner that now he is immune from any action by the Corporation is not sustainable in law and the plea that has been taken by the petitioner is rejected.

40. In the case of *Guru Nanak Dev University Vs. Sanjay Kumar Katwal & Anr.* reported in *2009 (1) SCC 610* is not applicable to this case as the petitioner had obtained degree of M.S. (English) Annamalai University through distant education, latter on, University refused to recognize the degree, in that case, the Hon'ble Supreme Court held, candidate was not guilty in suppression or misrepresentation but, on account of policy decision, he was not allowed to continue his academic career and that was the reason for the Hon'ble Supreme Court to refuse to interfere with the order of High Court, as order was passed in favour of the student. It is relevant to quote paragraph no. 16 of the aforesaid judgment which reads as follows:-

"16. However, on the peculiar facts of the case, the first respondent is entitled to relief. The first respondent was admitted through a Common Entrance Test process during 2004-2005. He was permitted to take the first semester examinations by the university. He is not guilty of any



suppression or misrepresentation of facts.----"

41. The case of **Suresh Sajeesh Babu K. Vs. N.K. Santhosh & Ors.** reported in **2012 (12) SCC 106** relates to grant of dealership and the Court said that when the selection was made by a competent expert committee, unless there is an allegation of malafide against the expert committee, the Court should restrain to interfere in the matter. This judgment has nothing to do with the merit of the present case. It is relevant to quote paragraph nos. 18 of the aforesaid judgment which reads as follows:-

"18) It is clear that in a matter of appointment/selection by an Expert Committee/Board consisting of qualified persons in the particular field, normally, the Courts should be slow to interfere with the opinions expressed by the experts, unless there is any allegation of mala fides against the experts who had constituted the Selection Committee. Admittedly, in the case on hand, there is no allegation of mala fides against the 3 experts in the Selection Committee. In such circumstances, we are of the view that it would normally be wise and safe for the courts to leave the decision of selection of this nature to the experts who are more familiar with the technicalities/nature of the work. In the case on hand, the Expert Committee evaluated the experience certificates produced by the appellant herein, interviewed him by putting specific questions as to direct sale, home delivered



products, hospitality/service industry etc. and awarded marks. In such circumstances, we hold that the High Court ought not to have sat as an appellate Court on the recommendations made by the Expert Committee."

42. In the case of ***Central Airmen Selection Board & Anr. Vs. Surender Kumar Das*** reported in ***AIR 2003 SC 240***, the matter relates to appointment of a Airman and he was selected, in the interview found his name appearing in the panel list and when he has gone to join, he was informed that his selection has been cancelled, he approached to the Court and it was found that by making a suppression of fact, he has appeared in the examination. The Court has held that a person who has himself misled the authority by making a fake statement, cannot invoke the principle of promissory estoppel, if his misrepresentation misled the authority to take into consideration which was discovered later on. It will be relevant to quote paragraph no.7 of the aforesaid judgment which reads as follows:-

"7. *The question, therefore, is whether in a case of this nature the principle of promissory estoppel should be invoked. It is well known that the principle of promissory estoppel is based on equitable principles. A person who has himself misled the authority by making a fake statement, cannot invoke this principle, if his misrepresentation misled the authority into taking a decision which on discovery of the misrepresentation is sought to be cancelled. The High Court has proceeded on the*



basis that the petitioner had not made any misrepresentation in his application to the effect that he had passed the Intermediate examination. As we have found above, this finding of the High Court is erroneous, contrary to record and therefore must be set aside. In his application, the respondent had claimed that he had passed the Secondary examination as well as the Higher Secondary +2 examination, and it is clear from the counter affidavit filed on behalf of the appellants that his candidature was considered on the basis that he had passed the Higher Secondary +2 examination, as in that case he was entitled to claim relaxation in the matter of age. However, the mark sheet annexed to the application disclosed that the respondent had failed in the subject Chemistry and therefore, his claim in the application, that he had passed the Higher Secondary +2 examination, was factually incorrect and a clear misrepresentation. In these circumstances we are satisfied that the respondent could not be permitted to invoke the principle of promissory estoppel, and the High Court was clearly erred in law in invoking the said principle in the facts of this case. The judgement and order of the High Court therefore cannot be sustained."

Whether the Corporation has followed the proper procedure and maintained transparency in holding the proceeding?

43. In the present case, the grievance has been made by



the petitioner that before arriving to a proper conclusion, the Corporation has not followed the fair and transparent procedure and did not make an inquiry regarding passing matriculation examination by the petitioner as a private candidate, but all the concentration was made by the Corporation on the matriculation certificate of Surendra Karmali inasmuch as the Bihar School Examination Board did not hold its inquiry about the petitioner to have passed the matriculation examination as a private candidate. It is an inbuilt mechanism either in the *quasi judicial* proceeding or in an administrative proceeding before taking any action it is required to follow the proper and transparent procedure before inflicting the punishment or any action which has repercussion of civil consequences. The procedure of natural justice cannot be put to straight jacket formula or in any cast iron procedure, but the procedure would formalized on its facts and circumstances, in certain cases issuance of show-cause and asking explanation would satisfy the condition of proper procedure, but in certain cases, especially in departmental proceeding, the issuance of show cause and asking explanation is not sufficient to indicate the proper procedure but would be required proving of facts through the document as well as through oral evidence by the examination of the witnesses would make the procedure to be fair and proper for arriving to a proper conclusion. It is well settled principle of law this is not an



unruly horse but, it depends upon the facts and circumstances, the nature and function will decide the degree of procedure to be followed.

44. To follow the natural justice is a part of transparency in decision making process either in administrative or *quasi judicial* proceeding, failure to follow certain procedure of natural justice, its ultimate effect to be judged on touchstone of prejudice caused to the person, who has claimed to have been affected by the action of the authorities. Right of hearing and fair treatment is engrained in constitutional mechanism. The principle of natural justice is a valuable right, denial of such right would cause serious prejudice to the person aggrieved. The fair and proper procedure is sine-qua-non before passing adverse order against the person aggrieved, failure to observe natural justice would result in arbitrary exercise of power. The natural justice is a mechanism to be followed in each and every administrative or *quasi judicial* action, unless the applicability of natural justice is excluded especially. Before taking any action, the authority is required to extend the benefit of natural justice to protect the right and interest of each person who may be visited with adverse order.

45. The speeches made by the Court in 1964 AC 40 (Ridge Vs. Baldwin) indicates how much the right of hearing is



valuable to a citizen before any adverse order is passed against him. In a situation when natural justice is not followed, itself causes the prejudice and other defects needs to be proved.

46. The principle causing prejudice and useless formality has been adumbrated by the Hon'ble Supreme Court in the case of *Aligarh Muslim University & Ors. Vs. Mansoor Ali Khan* reported in **2000 (7) SCC 529**, but in the present case, theory of prejudice and useless formality is not required to be considered, the necessity and value of following the principle of natural justice even with respect to the administrative action has been discussed by the Hon'ble Supreme Court in the case of *A.K. Kraipak and Others vs. Union of India and Others* (**AIR 1970 S.C. 150**), there the Hon'ble Supreme Court has held that dividing line between an administrative power and a *quasi judicial* power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a *quasi judicial* power one has to look into the nature of its power conferred and discharged, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. In a welfare State like India, it is regulated and controlled by rule of law. It is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule



of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously exercise of power. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision.

47. It will be relevant to quote relevant portion of paragraph No.13 and entire portion of paragraph Nos.14 and 20 of the said judgment, which read as under:-

“13. The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. In a welfare State like ours it is inevitable that the organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its validity if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and



fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power. The following observations of Lord Parker C.J. in Regina v. Criminal Injuries Compensation Board, Ex. Parte Lain 1967-2 QB 864 at p.881 are instructive...

14. The Court of Appeal of New Zealand has held that the power to make a zoning order under Dairy Factory Supply Regulation 1936 has to be exercised judicially, see New Zealand and Dairy Board v. Okita Co-operative Dairy Co. Ltd., 1953 NZLR 366. This Court in Purtabpore Co. Ltd. v. Cane Commissioner of Bihar, Civil Appeal No.1464 of 1968, D/- 21.11.1968 (SC) held that the power to alter the area reserved under the Sugar-Cane (Control) Order, 1966 is a quasi-judicial power. With the increase of the power of the administrative bodies it has become necessary to provide guidelines for the just exercise of their power. To prevent the abuse of that power and to see that it does not become a new despotism, courts are gradually evolving the principles to be observed while exercising such powers. In matters like these, public good is not advanced by a rigid adherence to precedents. New problems call for new solutions. It is neither possible nor desirable to fix the limits of a quasi-judicial power. But for the purpose of the present case we shall, assume that the power exercised by the selection board was an administrative power and test the validity of the impugned selections on that basis.



20. *The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely (1) no one shall be a judge in his own cause (Nemo debet esse judex propria causa) and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon there- after a third rule was envisaged and that is that quasi- judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is not questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi judicial in character. Arriving at a just decision is the aim of both quasi- judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in Suresh Koshy George v. University of Kerala, Civil Appeal No.990 of 1968, D/- 15.07.1968 = (AIR 1969 SC 198) the rules of natural*



justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that was necessary for a just decision on the facts of that case.”

48. In the case of ***S.L. Kapoor vs. Jagmohan and Others***, reported in ***AIR 1981 S.C. 136***, the question was raised with respect to ensuing proper procedure before passing an adverse order against the person having civil consequences. The Hon’ble Supreme Court was of the view that even in an administrative action, the following of proper procedure of natural justice cannot be denied where the affect of administrative order causes civil consequences. The latches on the part of the administrative order is a cause of action, causes a civil consequences to the affected person, so proper procedure cannot be denied before taking any action or passing any adverse order.

49. It will be relevant to quote paragraph Nos. 7, 8, 9, 17, 18 and 19 and relevant portion of paragraph No.24, which read as under:-

“7. The old distinction between a judicial act and an administrative act has withered away and we have been liberated from the psittacine incantation of



'administrative action'. Now from the time of the decision of this Court in State of Orissa v. Dr. (Miss) Binapani Devi (1967) 2 SCR 625:(AIR 1967 SC 1269), "even an administrative order which involves civil consequences....must be made consistently with the rules of natural justice". What are civil consequences? The question was posed and answered by this Court in Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi (1978) 2 SCR 272 : (AIR 1978 SC 851) Krishna Iyer J., speaking for the Constitution Bench said (at pp. 308-309):

"But what is a civil consequence, let us ask ourselves, by passing verbal booby-traps? 'Civil consequence' undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence".

The learned Judge then proceeded to quote from Black's Legal Dictionary and to consider the interest of a candidate at a Parliamentary election. He finally said:

"The appellant has a right to have the election conducted not according to humour or hubris but according to law and justice. And so natural justice cannot be stumped out on this score. In the region of public law locus standi and person aggrieved, right and interest have a broader import".

8. *In Schmidt v. Secretary of State for Home Affairs, (1969) 2 Ch D 149, Lord Denning M.R., observed : "The speeches in Ridge v. Baldwin (1964) AC 40, show that an administrative body may, in a proper case, be bound to give a person who is affected by their decision an*



opportunity of making representations. It all depends on whether he has some right or interest or, I would add, some legitimate expectation, of which it would not be fair to deprive him". It was held in that case that a foreign alien had no right to enter the country except by leave, but, if he was given leave to come for a limited period and his permit was sought to be revoked before the expiry of the time limit, he ought to be given an opportunity of making representation, for he had a legitimate expectation of being allowed to stay for the permitted time.

9. *In Alfred Thangarajah Durayappah v. W. J. Fernando, (1967) 2 AC 337, the Municipal Council of Jaffna was dissolved and superseded by the Governor-General on the ground that it appeared to him that the Council was not competent to perform the duties imposed upon it. The Mayor sought to question the dissolution and supersession of the Council in the Supreme Court of Ceylon, on the ground that there was a failure to observe the principles of natural justice. One of the questions which arose for consideration was whether, as a matter of interpretation, natural justice was not excluded from action under Section 277 of the Municipal Ordinance under which provision the dissolution and supersession had been made. The argument was that words such as "where it appears to" or "if it appears to the satisfaction of" or "if the.....considers it expedient that" or "if theis satisfied that" stood by themselves without other words or circumstances or qualifications, a duty to act judicially was excluded, and so, was natural justice. The argument was accepted by the Supreme Court of Ceylon but the Privy Council disagreed with the approach. They observed that there were three matters*



which should always be borne in mind when considering whether the principle Audi Alteram Partem should be applied or not. The three matters were:

"First, what is the nature of the property, the office held, status enjoyed or services to be performed by the complainant of injustice. Secondly, in what circumstances or upon what occasions is the person claiming to be entitled to exercise the measure of control entitled to intervene. Thirdly, when a right to intervene is proved, what sanctions in fact is the latter entitled to impose upon the other. It is only upon a consideration of all these matters that the question of the application of the principle can properly be determined".

The Privy Council then proceeded to examine the facts of the case upon those considerations and said:

"As to the first matter it cannot be doubted that the Council of Jaffna was by statute a public corporation entrusted like all other municipal councils with the administration of a large area and the discharge of important duties. No one would consider that its activities should be lightly interfered with The legislature has enacted a statute setting up municipal authorities with a considerable measure of independence from the central government within defined local areas and fields of government. No Minister should have the right to dissolve such an authority without allowing it the right to be heard upon that matter unless the statute is so clear that it is plain it has no right of self defence.

Upon the second matter it is clear that the Minister can dissolve the council on one of the three grounds: that it (a) is not competent to perform any duty or duties imposed upon it (for brevity their Lordships will refer to this head as incompetency); or (b) persistently makes default in the



performance of any duty or duties imposed upon it; or (c) persistently refuses or neglects to comply with any provision of law.....It seems clear to their Lordships that it is a most serious charge to allege that the council, entrusted with these very important duties, persistently makes default in the performance of any duty or duties imposed upon it. No authority is required to support the view that in such circumstances it is plain and obvious that the principle audi alteram partem must apply.

Equally, it is clear that if a council is alleged persistently to refuse or neglect to comply with a provision of law it must be entitled (as a matter of the most elementary justice) to be heard in its defence. Again this proposition requires no authority to support it. If, therefore, it is clear that in two of the three cases, the Minister must act judicially, then it seems to their Lordships, looking at the section as a whole, that it is not possible to single out for different treatment the third case, namely, incompetence.....

The third matter can be dealt with quite shortly. The sanction which the Minister can impose and indeed, if he is satisfied of the necessary premise, must impose upon the erring council is as complete as could be imagined; it involves the dissolution of the council and therefore the confiscation of all its properties. It was at one moment faintly argued that the council was a trustee and that it was not therefore being deprived of any of its property but this argument (soon abandoned) depended upon a complete misconception of the law of corporations.....For the purposes of the application of the principle it seems to their Lordships that this must apply equally to a statutory body having statutory powers, authorities and duties just as it does to an individual. Accordingly on this ground too the Minister should have observed the principle.



For these reasons their Lordships have no doubt that in the circumstances of this case the Minister should have observed the principle audi alteram partem. Sugathadasa v. Jayasinghe, ((1958) 59 N.L.R. 457) was wrongly decided".

Narrow as were the considerations applied by the Privy Council to determine whether the principle audi alteram partem applied or not, Alfred Thangarajah, Durayappah v. W. J. Fernando, (1967) 2 AC 337, appears to us furnish a complete answer to the submission of the learned Attorney General that, as a matter of interpretation, Sec. 238 of the Punjab Municipal Act did not contemplate and did not require that an opportunity should be given to the Committee before an order of supersession was passed. We may notice here that the language of Sec. 238(1) of the Punjab Municipal Act is very nearly the same as the language of Sec. 277(1) of the Municipal Ordinance which was interpreted by the Privy Council in Alfred Thangarajah Durayappah v. W. J. Fernando, (1097) 2 AC 337. We have already referred to some of the relevant provisions of the Punjab Municipal Act to indicate some of the rights and duties of the Committee under that Act. A Committee so soon as it is constituted, at once, assumes a certain office and status, is endowed with certain rights and burdened with certain responsibilities, all of a nature commanding respectful regard from the public. To be stripped of the office and status, to be deprived of the rights, to be removed from the responsibilities, in an unceremonious way as to suffer in public esteem, is certainly to visit the Committee with civil consequences. In our opinion the status and office and the rights and responsibilities to which we have referred and the



expectation of the Committee to serve its full term of office would certainly create sufficient interest in the Municipal Committee and their loss, if superseded, would entail civil consequences so as to justify an insistence upon the observance of the principles of natural justice before an order of supersession is passed.

17. Linked with this question is the question whether the failure to observe natural justice does at all matter if the observance of natural justice would have made no difference, the admitted or indisputable facts speaking for themselves. Where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it approves the non observance of natural justice but because Courts do not issue futile writs...

18. In Ridge v. Baldwin, (1964) AC 40, one of the arguments was that even if the appellant had been heard by the watch committee nothing that he could have said could have made any difference. The House of Lords observed (at p. 68):

"It may be convenient at this point to deal with an argument that, even if as a general rule a watch committee must hear a constable in his own defence before dismissing him, this case was so clear that nothing that the appellant could have said could have made any difference. It is at least very doubtful whether that could be accepted as an excuse. But, even if it could, the respondents would, in my view, fail on the facts. It may well be that no reasonable body of men could have reinstated the appellant. But as between the other two courses open to the watch committee the case is not so clear. Certainly on the facts, as we know



them, the watch committee could reasonably have decided to forfeit the appellant's pension rights, but I could not hold that they would have acted wrongly or wholly unreasonably if they had in the exercise of their discretion decided to take a more lenient course".

19. Megarry J. discussed the question in John v. Rees, (1970) 1 Ch 345. He said (at p. 420):

"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 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".

24.... In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or



indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal....”

50. In the case of ***Dharampal Satyapal Limited vs. Deputy Commissioner of Central Excise, Gauhati and Others***, reported in (2015) 8 SCC 519, the scope of applicability of natural justice with respect of the administrative decision has been dealt with as having been held that even in an administrative matter, the proper and fair procedure is to be followed. The action will be taken after following the principle of natural justice as the principle of natural justice is a sound jurisprudential thesis. The function of the judicial and *quasi judicial* authorities is to secure justice with fairness, these principles provide great humanising factor intended to invest law with fairness to secure justice and to prevent miscarriage of justice. The principles are extended even to those who have to take administrative decision and who are not necessarily discharging judicial or *quasi judicial* functions as well as discharging the administrative function.

51. It will be relevant to quote paragraph Nos. 20 to 36 and 38 to 42, which reads as under:-

“20. Natural justice is an expression of English Common Law. Natural justice is not a single theory – it is a family



of views. In one sense administering justice itself is treated as natural virtue and, therefore, a part of natural justice. It is also called “naturalist” approach to the phrase “natural justice” and is related to “moral naturalism”. Moral naturalism captures the essence of commonsense morality – that good and evil, right and wrong, are the real features of the natural world that human reason can comprehend. In this sense, it may comprehend virtue ethics and virtue jurisprudence in relation to justice as all these are attributes of natural justice. We are not addressing ourselves with this connotation of natural justice here.

21. In Common Law, the concept and doctrine of natural justice, particularly which is made applicable in the decision making by judicial and quasi-judicial bodies, has assumed different connotation. It is developed with this fundamental in mind that those whose duty is to decide, must act judicially. They must deal with the question referred both without bias and they must give (sic an opportunity) to each of the parties to adequately present the case made. It is perceived that the practice of aforesaid attributes in mind only would lead to doing justice. Since these attributes are treated as natural or fundamental, it is known as 'natural justice'. The principles of natural justice developed over a period of time and which is still in vogue and valid even today are: (i) rule against bias i.e. nemo debet esse iudex in propria sua causa; and (ii) opportunity of being heard to the party concerned, i.e. audi alteram partem. These are known as principles of natural justice. To these principles a third principle is added, which is of recent origin. It is the duty to give reasons in support of decision, namely, passing of



a 'reasoned order'.

22. Though the aforesaid principles of natural justice are known to have their origin in Common Law, even in India the principle is prevalent from ancient times, which was even invoked in Kautilya's 'Arthashastra'. This Court in Mohinder Singh Gill v. Chief Election Commissioner explained the Indian origin of these principles in the following words:(SCC pp.432-33, para 43)

“43. Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has many colours and shades, many forms and shapes and, save where valid law excludes, it applies when people are affected by acts of authority. It is the hone of healthy government, recognised from earliest times and not a mystic testament of judge-made law. Indeed from the legendary days of Adam – and of Kautilya's Arthashastra – the rule of law has had this stamp of natural justice which makes it social justice. We need not go into these deeps for the present except to indicate that the roots of natural justice and its foliage are noble and not new-fangled. Today its application must be sustained by current legislation, case law or other extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system”.

23. Aristotle, before the era of Christ, spoke of such principles calling it as universal law. Justinian in the fifth and sixth Centuries A.D. called it 'jura naturalia', i.e. natural law.

24. The principles have a sound jurisprudential basis. Since the function of the judicial and quasi-judicial



authorities is to secure justice with fairness, these principles provide a great humanising factor intended to invest law with fairness to secure justice and to prevent miscarriage of justice. The principles are extended even to those who have to take an administrative decision and who are not necessarily discharging judicial or quasi-judicial functions. They are a kind of code of fair administrative procedure. In this context, procedure is not a matter of secondary importance as it is only by procedural fairness shown in the decision making that a decision becomes acceptable. In its proper sense, thus, natural justice would mean the natural sense of what is right and wrong.

25. *This aspect of procedural fairness, namely, right to a fair hearing, would mandate what is literally known as 'hearing the other side'. Prof. D.J. Galligan attempts to provide what he calls 'a general theory of fair treatment' by exploring what it is that legal rules requiring procedural fairness might seek to achieve. He underlines the importance of arriving at correct decisions, which is not possible without adopting the aforesaid procedural fairness, by emphasizing that taking of correct decisions would demonstrate that the system is working well. On the other hand, if mistakes are committed leading to incorrect decisions, it would mean that the system is not working well and the social good is to that extent diminished. The rule of procedure is to see that the law is applied accurately and, as a consequence, that the social good is realised. For taking this view, Galligan took support from Bentham, who wrote at length about the need to follow such principles of natural justice in civil and criminal trials and insisted that the said theory developed by*



Bentham can be transposed to other forms of decision making as well. This jurisprudence of advancing social good by adhering to the principles of natural justice and arriving at correct decisions is explained by Galligan in the following words:

“On this approach, the value of legal procedures is judged according to their contribution to general social goals. The object is to advance certain social goals, whether through administrative processes, or through the civil or criminal trial. The law and its processes are simply instruments for achieving some social good as determined from time to time by the law makers of the society. Each case is an instance in achieving the general goal, and a mistaken decision, whether to the benefit or the detriment of a particular person, is simply a failure to achieve the general good in that case. At this level of understanding, judgments of fairness have no place, for all that matters is whether the social good, as expressed through laws, is effectively achieved.”

Galligan also takes the idea of fair treatment to a second level of understanding, namely, pursuit of common good involves the distribution of benefits and burdens, advantages and disadvantages to individuals (or groups). According to him, principles of justice are the subject-matter of fair treatment. However, that aspect need not be dilated.

26. Allan, on the other hand, justifies the procedural fairness by following the aforesaid principles of natural justice as rooted in rule of law leading to good governance. He supports Galligan in this respect and goes to the extent by saying that it is same as ensuring dignity of individuals, in respect of whom or against



whom the decision is taken, in the following words:

“The instrumental value of procedures should not be underestimated; the accurate application of authoritative standards is, as Galligan clearly explains, an important aspect of treating someone with respect. But procedures also have intrinsic value in acknowledging a person's right to understand his treatment, and thereby to determine his response as a conscientious citizen, willing to make reasonable sacrifices for the public good. If obedience to law ideally entails a recognition of its morally obligatory character, there must be suitable opportunities to test its moral credentials. Procedures may also be thought to have intrinsic value insofar as they constitute a fair balance between the demands of accuracy and other social needs: where the moral harm entailed by erroneous decisions is reasonably assessed and fairly distributed, procedures express society's commitment to equal concern and respect for all.”

27, It, thus, cannot be denied that principles of natural justice are grounded in procedural fairness which ensures taking of correct decision and procedural fairness is fundamentally an instrumental good, in the sense that procedure should be designed to ensure accurate or appropriate outcomes. In fact, procedural fairness is valuable in both instrumental and non-instrumental terms.

28. It is on the aforesaid jurisprudential premise that the fundamental principles of natural justice, including audi alteram partem, have developed. It is for this reason that the courts have consistently insisted that such procedural fairness has to be adhered to before a decision is made and infraction thereof has led to the quashing of decisions taken. In many statutes, provisions are made ensuring that



a notice is given to a person against whom an order is likely to be passed before a decision is made, but there may be instances where though an authority is vested with the powers to pass such orders, which affect the liberty or property of an individual but the statute may not contain a provision for prior hearing. But what is important to be noted is that the applicability of principles of natural justice is not dependent upon any statutory provision. The principle has to be mandatorily applied irrespective of the fact as to whether there is any such statutory provision or not.

29. *De Smith captures the essence thus :*

“Where a statute authorises interference with properties or other rights and is silent on the question of hearing, the courts would apply rule of universal application and founded on plainest principles of natural justice”.

30. *Wade also emphasizes that principles of natural justice operate as implied mandatory requirements, non-observance of which invalidates the exercise of power.*

31. *In Cooper v. Sandworth Board of Works, the Court laid down that :(ER p. 420) “...although there is no positive word in the statute requiring that the party shall be heard, yet justice of common law would supply the omission of Legislature”. (emphasis supplied)*

32. *Exhaustive commentary explaining the varied contours of this principle can be traced to the judgment of this Court in ECIL v. B. Karunakar, wherein the Court discussed plenty of previous case law in restating the aforesaid principle, a glimpse whereof can be found in the*



following passages: (SCC pp. 751-52, paras 20-22)

“20. The origins of the law can also be traced to the principles of natural justice, as developed in the following cases: In A. K. Kraipak v. Union of India, it was held that the rules of natural justice operate in areas not covered by any law. They do not supplant the law of the land but supplement it. They are not embodied rules and their aim is to secure justice or to prevent miscarriage of justice. If that is their purpose, there is no reason why they should not be made applicable to administrative proceedings also especially when it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial ones. An unjust decision in an administrative inquiry may have a more far reaching effect than a decision in a quasi-judicial inquiry. It was further observed that the concept of natural justice has undergone a great deal of change in recent years. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the inquiry is held and the constitution of the Tribunal or the body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice has been contravened, the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. The rule that inquiry must be held in good faith and without bias and not arbitrarily or unreasonably is now included among the principles of natural justice.”

21. In Board of Mining Examination v. Ramjee, the Court has observed that natural justice is not an unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential



processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. The Courts cannot look at law in the abstract or natural justice as mere artefact. Nor can they fit into a rigid mould the concept of reasonable opportunity. 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.

22. In Institute of Chartered Accountants of India v. L. K. Ratna, Charan Lal Sahu v. Union of India (Bhopal Gas Leak Disaster Case) and C. B. Gautam v. Union of India, (1993) 1 SCC 78, the doctrine that the principles of natural justice must be applied in the unoccupied interstices of the statute unless there is a clear mandate to the contrary, is reiterated.”

33. In his separate opinion, concurring on this fundamental issue, Justice K. Ramaswamy echoed the aforesaid sentiments in the following words:(ECIL case , SCC p. 773, para 61)

“61. It is now settled law that the proceedings must be just, fair and reasonable and negation thereof offends Articles 14 and 21. It is well settled law that principles of natural justice are integral part of Article 14. No decision prejudicial to a party should be taken without affording an opportunity or supplying the material which is the basis for the decision. The enquiry report constitutes fresh material which has great persuasive force or effect on the mind of the disciplinary authority. The supply of the report along



with the final order is like a post mortem certificate with putrefying odour. The failure to supply copy thereof to the delinquent would be unfair procedure offending not only Arts. 14, 21 and 311(2) of the Constitution, but also, the principles of natural justice.”

34. Likewise, in C.B. Gautam v. Union of India, this Court once again held that principle of natural justice was applicable even though it was not statutorily required. The Court took the view that even in the absence of statutory provision to this effect, the authority was liable to give notice to the affected parties while purchasing their properties under Section 269-UD of the Income Tax Act, 1961. It was further observed that:(SCC p. 104, para 30)

“30. ...the very fact that an imputation of tax evasion arises where an order for compulsory purchase is made and such an imputation casts a slur on the parties to the agreement to sell leads to the conclusion that before such an imputation can be made against the parties concerned they must be given an opportunity to show-cause that the under valuation in the agreement for sale was not with a view to evade tax.

It is, therefore, all the more necessary that an opportunity of hearing is provided.

35. From the aforesaid discussion, it becomes clear that the opportunity to provide hearing before making any decision was considered to be a basic requirement in the Court proceeding. Later on, this principle was applied to other quasi-judicial authorities and other tribunals and ultimately it is now clearly laid down that even in the administrative actions, where the decision of the authority



may result in civil consequences, a hearing before taking a decision is necessary. It was, thus, observed in A.K. Kraipak case that if the purpose of rules of natural justice is to prevent miscarriage of justice, one fails to see how these rules should not be made available to administrative inquiries. In the case of Maneka Gandhi v. Union of India also the application of principle of natural justice was extended to the administrative action of the State and its authorities. It is, thus, clear that before taking an action, service of notice and giving of hearing to the noticee is required. In Maharashtra State Financial Corporation v. Suvarna Board Mills & Anr.[14], this aspect was explained in the following manner[⊗] scc P. 568, para 3)

“3. It has been contended before us by the learned counsel for the appellant that principles of natural justice were satisfied before taking action under Section 29, assuming that it was necessary to do so. Let it be seen whether it was so. It is well settled that natural justice cannot be placed in a straight-jacket; its rules are not embodied and they do vary from case to case and from one fact-situation to another. All that has to be seen is that no adverse civil consequences are allowed to ensue before one is put on notice that the consequence would follow if he would not take care of the lapse, because of which the action as made known is contemplated. No particular form of notice is the demand of law: All will depend on facts and circumstances of the case.”

36. In the case of East India Commercial Com. Ltd. v. Collector of Customs, this Court held that whether the statute provides for notice or not, it is incumbent upon the quasi-judicial authority to issue a notice to the concerned



persons disclosing the circumstances under which proceedings are sought to be initiated against them, failing which the conclusion would be that principle of natural justice are violated. To the same effect are the following judgments:

- (a) U.O.I. & Ors. v. Madhumilan Syntex (P) Ltd.*
- b) Morarji Goculdas B&W Co. Ltd. v. Union of India*
- c) Metal Forgings & Anr. v. Union of India, and*
- d) Union of India v. Tata Yodogawa Ltd.*

38. But that is not the end of the matter. While the law on the principle of audi alteram partem has progressed in the manner mentioned above, at the same time, the Courts have also repeatedly remarked that the principles of natural justice are very flexible principles. They cannot be applied in any straight-jacket formula. It all depends upon the kind of functions performed and to the extent to which a person is likely to be affected. For this reason, certain exceptions to the aforesaid principles have been invoked under certain circumstances. For example, the Courts have held that it would be sufficient to allow a person to make a representation and oral hearing may not be necessary in all cases, though in some matters, depending upon the nature of the case, not only full-fledged oral hearing but even cross-examination of witnesses is treated as necessary concomitant of the principles of natural justice. Likewise, in service matters relating to major punishment by way of disciplinary action, the requirement is very strict and full-fledged opportunity is envisaged under the statutory rules as well. On the other hand, in those cases where there is an admission of charge, even when no such formal inquiry is held, the punishment



based on such admission is upheld. It is for this reason, in certain circumstances, even post-decisional hearing is held to be permissible. Further, the Courts have held that under certain circumstances principles of natural justice may even be excluded by reason of diverse factors like time, place, the apprehended danger and so on.

*39. We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasizing that the principles of natural justice cannot be applied in straight-jacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations wherein for some reason – perhaps because the evidence against the individual is thought to be utterly compelling – it is felt that a fair hearing 'would make no difference' – meaning that a hearing would not change the ultimate conclusion reached by the decision-maker – then no legal duty to supply a hearing arises. Such an approach was endorsed by Lord Wilberforce in *Malloch v. Aberdeen Corporation*, who said that: (ALL ER p. 1294)*

“...A breach of procedure...cannot give (rise to) a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain.”

*Relying on these comments, Brandon LJ opined in *Cinnamond v. British Airports Authority* that:(WLR p. 593: ALL ER p. 377)*



“...no one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing.”

In such situations, fair procedures appear to serve no purpose since 'right' result can be secured without according such treatment to the individual.”

40. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the Courts. Even if it is found by the Court that there is a violation of principles of natural justice, the Courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that order passed is always null and void. The validity of the order has to be decided on the touchstone of 'prejudice'. The ultimate test is always the same, viz., the test of prejudice or the test of fair hearing.

41. In ECIL, the majority opinion, penned down by Sawant, J., while summing up the discussion and answering the various questions posed, had to say as under qua the prejudice principle (SCC pp. 756-58, para 30)

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

(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"

42. So far so good. However, an important question posed by Mr. Sorabjee is as to whether it is open to the authority, which has to take a decision, to dispense with the requirement of the principles of natural justice on the ground that affording such an opportunity will not make any difference? To put it otherwise, can the administrative authority dispense with the requirement of issuing notice by itself deciding that no prejudice will be caused to the person against whom the action is contemplated? Answer



has to be in the negative. It is not permissible for the authority to jump over the compliance of the principles of natural justice on the ground that even if hearing had been provided it would have served no useful purpose. The opportunity of hearing will serve the purpose or not has to be considered at a later stage and such things cannot be presumed by the authority. This was so held by the English Court way back in the year 1943 in General Medical Council v. Spackman. This Court also spoke in the same language in Board of High School and Intermediate Education, U.P. & Ors. v. Kumari Chittra Srivastava, as is apparent from the following words:

“7. The learned counsel for the appellant, Mr. C.B. Aggarwal, contends that the facts are not in dispute and it is further clear that no useful purpose would have been served if the Board had served a show cause notice on the petitioner. He says that in view of these circumstances it was not necessary for the Board to have issued a show cause notice. We are unable to accept this contention. Whether a duty arises in a particular case to issue a show cause notice before inflicting a penalty does not depend on the authority's satisfaction that the person to be penalised has no defence but on the nature of the order proposed to be passed.”

52. In view of the aforesaid decisions and discussions, it is very much clear that transparency is a part of natural justice, ensure fair play, secure justice indicates the administrative authority to take taken action in proper and transparent manner, giving opportunity of hearing on different degrees dependent on its fact, cannot be denied to the person who has been deprived of certain benefit either of contract or of job or on an office or any nature creating civil consequences,



failure to follow the natural justice is an act of arbitrariness, which cannot be countenanced in a democracy where the fairness is an inbuilt mechanism to protect the interest of citizen.

53. In this background, it has to be seen whether the Corporation before terminating the Dealership of the petitioner has followed the proper procedure in decision making process, failure will result in arbitrary action against the petitioner and for that reason, it will be appropriate to look into the facts and circumstances of the case. As per the claim of the petitioner that on transferring of his father, the family had shifted to Hazaribagh from there she had done her matriculation as a private student, whereafter she completed I.A. Examination as a regular student from K.B. Women's College, Hazaribagh during the Sessions 1988-90 and completed her graduation thereafter.

54. It has been claimed by the petitioner that she had appeared in the Matriculation Examination as a private student through S.S. High School, Gola. The mark-sheet has been attached showing Roll Code 2119 and Roll No. 0352 indicates to have been passed the Matriculation Examination. It is not in dispute that against the advertisement the petitioner in proof of her qualification, attached her certificate showing her qualification to have passed the matriculation. An Interlocutory Application, not part of the main writ



application, has been filed bringing certain new subsequent facts to the notice of this Court, later on, vide order dated 9.9.2016, the Interlocutory Application was allowed and facts mentioned therein was treated to be part of the main writ application as has been claimed that after completion of 10 years, both the parties entered into further agreement extending the period of lease for further five years to run the agency of Domestic and Commercial Liquefied Gas.

55. As it appears from the record that one Raj Kumar Choudhary, private respondent No.2 addressed a complaint to the Senior Regional Manager, Hindustan Petroleum Corporation Limited, wherein specific allegation has been made that the mark-sheet which has been attached with the application bears the Matriculation Roll No. 0352 and Roll Code 2119 does not belong to Smt. Nupur (Noopur) Srivastava, but the same belongs to one Surenda Karmali, which has been verified from the record of the Bihar School Examination Board and after verification it was found that the Matriculation Certificate which has been attached with the application is a fake and fabricated one and requested to take cognizance of attachment of the fake Matriculation Certificate. The copy of the complaint was also sent to the Ministry of Environment including head office of the Hindustan Petroleum Corporation Limited. On receipt of the said complaint, the Senior Regional Manager vide letter



dated 15.03.2016 requested to the Chairman, Bihar School Examination Board, Patna to confirm the authenticity of the Matriculation Certificate issued by the Board to Kumari (Nupur) Noopur Srivastava as the document was produced by her to substantiate her eligibility criteria for LPG distributorship selection (Annexure-D to the counter affidavit at page 193).

56. Another complaint was received on 25.03.2015 (Annexure-5 to the writ application) from Raj Kumar Choudhary, annexing the document submitted earlier as well as the letter of Bihar School Examination Board, Patna, issued vide letter No.7592 dated 08.03.2016. The Corporation through its letter dated 16.04.2016 sent the copy of the complaint dated 10.02.2016 and 25.03.2016 along with the attached document to the petitioner and requested to submit her explanation within seven days from the date of receipt of the letter. The petitioner did not file her explanation within the stipulated period. In the meantime, the Corporation received the letter dated 26.04.2016 from the Assistant Secretary (Vigilance), Bihar School Examination Board, Patna, which indicates that the Roll Code 2119 and Roll No.0352 does not belong to Kumari (Nupur) Noopur Srivastava, but the same is standing in the name of one Surendra Karmali, where the grade and date of birth has been mentioned and having also informed the mark-sheet which was filed by Kumari



(Nupur) Noopar Srivastava was/is false. Whereafter, the Corporation through its lawyer sought information in detail regarding Roll Number 0352, Roll Code 2119, name of the candidate, his date of birth, registration number, marks obtained and name of the School. The Public Information Officer, Bihar School Examination Board, vide letter dated 18.05.2016 gave the details of candidate appeared in under the Roll No. 0352 and Roll Code 2119, giving the name of Surendra Karmali with details including the father name and the name of the School from which school he appeared and also attached his mark-sheet. Whereafter, the Corporation vide letter dated 13.06.2016 addressed a letter to Kumari Noopur Srivastave giving details of documents received from the Bihar School Examination Board, mentioning that for obtaining the L.P.G. Distributorship she has attached the false and fabricated Certificate, mislead the Corporation in grant of L.P.G. Distributorship and the petitioner was called upon to show-cause as to why an action including termination of Dealership Agreement shall not be taken against her in accordance with the terms and conditions of the Dealership Agreement and the Policy Guidelines of the Corporation. The petitioner was directed to file show-cause within seven days from the date of receipt of the aforesaid letter, if no reply would be received or reply was not found satisfactory, action would be taken under the provisions of the Dealership Agreement.



Whereafter, the petitioner filed her show-cause vide letter dated 15.6.2016, which does not indicate that the petitioner has verified her Matriculation Certificate claiming to be her genuine Certificate, her reply was completely tangent having no nexus or indicates to be a genuine document, but has taken a defence that she never had an occasion to verify the veracity of the Matriculation Certificate as the Matriculation Certificate was submitted on her behalf by her elder brother, namely, Sri Prabhat Kumar.

57. It has further been claimed that her late father, namely, Sushil Bhushan and brother namely Sri Prabhat Kumar, never informed the veracity of the Certificate. It has further been claimed that as a minor girl, she had not obtained or fabricated mark-sheet or had never been informed by her late father during his life time and her elder brother with regard to mark-sheet of Matriculation. This explanation itself indicates that she was knowing the veracity or the authenticity Matriculation Certificate, she was knowing the document attached in the application was not a correct and proper document of matriculation certificate. But she has given another twist that has nothing to do with the veracity and authenticity of the document. In the said explanation, she also claimed that her mark-sheet was attested by her elder brother-in-law Sri Arun Kumar Srivastava. It is evidently clear that neither she has claimed the Mark-sheet produced by her to



be genuine nor has brought on record her correct Certificate to substantiate her claim to have passed the Matriculation Examination.

58. Whether a candidate has passed the matriculation examination or he/she belongs to a particular caste it is the special knowledge of that person. The candidate who claim his/her qualification will have to prove her qualification, will have to produce the correct mark-sheet corroborating/substantiating his/her claim but she did not produce her correct matriculation certificate to substantiate her qualification. After considering the explanation, the Corporation has taken a decision of terminating the Dealership.

59. As the matter relates to termination of Dealership, it cannot be said that the fair chance of defence has not been given to the petitioner as the petitioner was asked to file explanation and thereafter show-cause, asking the petitioner to verify the Certificate which she has attached at the time of filing of application, but she has given tangent explanation, having neither verified her Certificate, claiming to be her genuine Certificate nor disputed the Mark-sheet and details of information with respect to the Roll Code and Roll No. was/is belonging to Surendra Karmali. If the base goes, the super structure standing on the base fall automatically.

60. In such circumstance, this Court cannot hold that the Corporation has not followed the proper procedure in decision making



process, as having been held in a judicial review the Court has to examine and ascertain as to whether the proper procedure has been followed in decision making process, the essential fact which was required to be gone into has been left out, the fact which is not required to be considered has been considered and when the finding is so unreasonable, no reasonable person can arrive to record such finding. Only on those circumstances, the Court can interfere in exercise of judicial review. So, this Court holds that the proper procedure has been followed in decision making process and finding recorded is not perverse which requires interference by this Court.

Whether the substantial materials are available to arrive to a finding that the petitioner has acted fraudulently for obtaining the L.P.G. Dealership?

61. In the case of *Union of India vs. M/s. Chaturbhai M. Patel and Co.* reported in *AIR 1976 S.C. 712*, the Hon'ble Supreme Court has held that the Fraud, like any other charge of criminal offence, whether made in civil or criminal proceedings must be established beyond reasonable doubt. However suspicious may be the circumstances, however strange the coincidences and however grave the doubts, suspicion alone can never take the place of proof.

62. It will be relevant to quote paragraph No.7 of the said judgment, which reads as under:-



“7. The High Court has carefully considered the various circumstances relied upon by the appellant and has held that they are not at all conclusive to prove the case of fraud. It is well settled that fraud like any other charge of a criminal offence whether made in civil or criminal proceedings, must be established beyond reasonable doubt; per Lord Atkin in A. L. N. Narayanan Chettyar v. Official Assignee, High Court Rangoon, AIR 1941 PC 93. However suspicious may be the circumstances, however strange the coincidences, and however grave the doubts, suspicion alone can never take the place of proof. In our normal life we are sometimes faced with unexplainable phenomenon and strange coincidences, for, as it is said, truth is stronger than fiction. In these circumstances, therefore, after going through the judgment of the High Court we are satisfied that the appellant has not been able to make out a case of fraud as found by the High Court. As such the High Court was fully justified in negating the plea of fraud and in decreeing the suit of the plaintiff.”

63. In the case of *M/s. Fedco (P) Ltd. and another vs. S.N. Bilgrami and Others*, reported in AIR 1960 S.C. 415, the Hon'ble Supreme Court has held that when the licence obtained by committing fraud or misrepresentation, having been received the opportunity of hearing, the authority arrived to a finding of committing fraud it will be absolutely unreasonable that such a licence should be allowed to operate. It has been held that licence may be cancelled after giving a reasonable opportunity to the licensee to be heard, to have been obtained by fraud or misrepresentation is a reasonable restriction in the interests of the general public on the exercise of the fundamental right of a citizen guaranteed under Art. 19(1)(f) and (g) of the



Constitution. It will not at all be necessary to examine as to whether the petitioner was at all party in obtaining the Matric Degree which has been found to be fake.

64. It will be relevant to quote paragraph No.6 of the said judgment, which reads as under:-

“6. As in the present case there is no question of the licences having been granted through inadvertence or mistake it is not necessary for us to consider whether the provision for cancellation of licences on the ground that they have been granted through mistake or inadvertence is invalid. The question in the present case is whether the provision for cancellation of licences on the ground that they have been obtained by fraud or misrepresentation is "a reasonable restriction in the interests of the general public" on the exercise of the petitioners' right under Art. 19(1)(f) and It has to be noticed first that here is no case of unbridled authority to cancel a licence nor is there any scope for arbitrary action. If a provision for giving a reasonable opportunity of being heard had not been made in the Order itself, it would have been necessary to consider whether this had still to be given, because rules of natural justice required it. No discussion about the requirements of the rule of natural justice is however called for here, as Cl. 10 of the Order provides that no action shall be taken under Cls 7, 8 or 9, unless the Licensee/Importer has been given a reasonable opportunity of being heard. It is proper to state that the learned Counsel for the petitioners does not attack the validity of the, provisions on the ground that it gives



unbridled authority to cancel a licence, or that the requirements of natural justice have not been sufficiently fulfilled by Cl 10. His argument is that though it may not be unreasonable that a licence should be cancelled if the licensee himself has practised fraud in obtaining it, cancellation is wholly unreasonable if it is made merely on the ground that it has been obtained by fraud, without it being further shown that the licensee himself has been a party to the fraud. It appears to us that in most cases, if not in all cases, where a licence is obtained by fraud or misrepresentation it would be reasonable to think that the person in whose favour the licence has been obtained cannot but be a party to the fraud or misrepresentation. The petitioners' Counsel submitted that it is possible to imagine a case where an enemy of the person in whose favour the licence is granted procures such grant by means of fraud with the deliberate motive of accusing this person later on of fraud and thereby subjecting him on the one hand to criminal prosecution and on the other hand damaging his reputation and ruining his business. It is unnecessary for us to decide in the present case whether this may ever happen. Clearly however the fact that fraud by which the grant of the licences has been induced by an enemy is wholly immaterial on the present question. The entire scheme of control and regulation of imports by licences is on the basis that the licence is granted on a correct statement of relevant facts. That basis disappears if grant of the licence is induced by fraud or misrepresentation. Whether the licensee himself or some other party is responsible for the fraud or misrepresentation, the fact remains that in such cases



the basis of the grant of licence has disappeared. It will be absolutely unreasonable that such a licence should be allowed to continue. We are therefore of opinion that the provision that licence may be cancelled, if it is found, after giving a reasonable opportunity to the licensee to be heard, to have been obtained by fraud or misrepresentation is a reasonable restriction in the interests of the general public on the exercise of the fundamental right of a citizen guaranteed under Art. 19(1)(f) and (g) of the Constitution. The cancellation being under a valid law there can be no question of any right under Art.31 of the Constitution having been infringed.”

65. Both the judgments made clear that in case of fraud and misrepresentation having been practical in obtaining the benefit of State largess, the authority was required to give a reasonable opportunity on arriving to adverse finding, can strip off the benefit which has been conferred to her. The fraud is a criminal as well as the civil act has different consequences as fraud vitiates all solemn acts, which is alleged to have been committed. In the present case, the claim has been made by the petitioner that the case of fraud is not made out against her as at the time Certificate was obtained, she was minor, she herself gave explanation about the status of Certificate and made a statement who had obtained this Certificate. May be, when certificate was obtained, she was minor, but the question is, whether she had/has knowledge about the existence of fake Certificate and



even thereafter she has applied on the strength of that document, is the question, for consideration. In the undertaking, she has given statement that all the records are correct and if it is found to be wrong in future, the Corporation will have liberty to take action against her including terminating the Dealership. Under agreement Clause - 28B(1)(n), the petitioner was required to make correct statement and also file correct testimonials, but in the present case, it cannot be said that the petitioner has had no knowledge about existence of fake and fabricated Certificate, which has rightly been pointed out by learned counsel for the private respondent that she spelt her name “Nupur Srivastava” and giving a coverage to her false Certificate in her Undertaking and affidavit she has put the signature with spelling “Nupur Srivastava” but at the bottom, she has written “Kumari Noopur Srivastava”, so, itself indicates that something wrong in her Certificate as having found that Roll Code and Roll Number does not belong to the present petitioner.

66. The falsity of the document is also proved when the Bihar School Examination Board was asked to produce the record. The same was produced, which was verified by her learned counsel and the record does not disclose her name in the check list and so much so that she had not appeared in the Examination as has been explained by the learned counsel for the Bihar School Examination



Board that name of S.S. High School, Gola, having Roll Code 2119 and Roll No. 0352 does not find place as the relevant Roll Code is in between page Nos. 443 to 470, the examination centre is Public H.S. Kuji, Page Nos.443 to 444 is related to School Naya Nagar and from page Nos. 455 to 459 is related to High School, Chitarpur and Page Nos. 456 to 460 is related to M/s. Dewaria Bhukunda and Roll Code which has been claimed to be her does not relate to S.S. High Court, Gola. So itself indicates the fake Certificate was used by the petitioner for taking the benefit of Distributorship. So there is no iota of doubt by the aforesaid discussion that it is completely a case of fraud and misrepresentation by producing the fake and false Certificate. Further, at the time of filing of application, the petitioner was not minor, but she was major and knowing well that her certificate is a fake and fabricated one even then she has dared to attach the certificate for getting the benefit of Distributorship of the L.P.G. So, this Court is of the view that it is a completely case of practicing of fraud and misrepresentation by the petitioner.

67. It has been claimed by the petitioner that the obtaining of the undertaking of having attached correct certificate is not part of brochure, but it has been obtained in terrorem. But it has to be seen what was the essential qualification for selection of granting Distributorship was. It has to be seen whether matriculation is



essential educational qualification for grant of Distributorship, whether it is essential element for judging the suitability of a person for granting the State largess for L.P.G. Distributorship. It is evidently clear from the advertisement, where there is a reservation clause for woman. In Clause 2.1.2 it has been mentioned that dealership/distributorship in the category mentioned above will be reserved for woman belonging to that category. Clause-1.2.4 provides that the candidate must possess the matriculation or recognized equivalent qualification, the proof of qualification is to be made attaching the Matriculation Certificate issued by the recognized Institution. Clause-1.3 deals with disqualification, stipulates that the person having not possessing the required qualification will be treated to have been disqualified. Sub Clause-(x) of Clause 1.3 provides guilty of willfully giving wrong information. So this Clause itself indicates that the matriculation of a candidate is must as it is an essential qualification and if she looses 20% under General level of intelligence marks which has been mentioned Clause-3.10, she would have failed to qualify in procuring dealership in view of the fact that she did not possess the essential qualification. Applying the test of propriety of selection, it completely, goes to root of case on two counts as she was/is bereft of the essential qualification of matriculation as well as, if the mark is reduces by 20%, there was



likelihood the other was to succeed inasmuch as she has committed a fraud by placing false and fabricated Certificate claiming to be her matriculation Certificate.

Whether the relief can be granted on the point of equity.

68. The next question has been raised by the petitioner that her tenure is going to be expired on April, 2018 so she should be allowed to run the business upto the aforesaid period. Actually, the petitioner is claiming equity in her favour as has been claimed that she has invested huge amount in running the business and during entire period, no customer has ever raised a grievance against the petitioner, so at least even if arriving to a finding of commission of fraud and dealership has been obtained by producing false and fabricated Certificate, she should be allowed to complete the period.

69. In the case of *Sales Tax Officer, Banaras & Others vs. Kanhaiya Lal Mukundlal Saraf* reported in *AIR 1959 (S.C.)*, **page 135** the Hon'ble Supreme Court has held that one who seeks equity must do equity.

70. It will be relevant to quote paragraph No.31 of the said judgment, which reads as under:-

"31. We do not agree with these observations of the Nagpur High Court. No such equitable considerations can be imported when the terms



of s. 72 of the Indian Contract Act are clear and unambiguous. We may, in this context, refer to the observations of their Lordships of the Privy Council in Mohori Bibee v. Dhurmodas Ghose (2) at p. 125. In dealing with the argument which was urged there in regard to the minor's contracts which were declared void, viz., that one who seeks equity must do equity and that the minor against whom the contract was declared void must refund the advantage which he had got out of the same, their Lordships observed that this argument did not require further notice except by referring to a recent decision of the Court of Appeal in Thurstan v. Nottingham Permanent Benefit Building Society, (1902) 1 Ch 1 since affirmed by the House of Lords and they quoted with approval the following passage from the judgment of Romer L. J., at p. 13 of the earlier report:

" The short answer is that a Court of Equity cannot say that it is equitable to compel a person to pay moneys in respect of a transaction which as against that person the Legislature has declared to be void."

71. It is well said, the person who is claiming equity in his/or favour must come with clean hand and claim of benefit must not be based on the foundation of fraud.

72. On foregoing discussion, it gives one and only inference to have obtained states largess by practicing fraud on the



strength of fake certificate of matriculation.

73. In view of the aforesaid discussions all the issues have gone against the petitioner. Accordingly, this writ petition is dismissed.

74. This order will take its effect on expiry of two weeks from today.

(Shivaji Pandey, J)

Rishi/Pawan

AFR/NAFR	NAFR
CAV DATE	11.04.2017
Uploading Date	24.07.2017
Transmission Date	NA

