

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12134 of 2018

1. Vaidya Ajay Prakash @ Ajay Prakash @ Dr. Ajay Prakash Son of Dr. Sarvedeo Prasad Gupta resident of Village- Nechna Jalalpur, P.S.- Kuchai Kot, District- Gopalganj.
2. Vaidya Prajapatti Tirpathi Son of Lae Gangadhar Sharma resident of Village- Tabkipur, P.S.- Maharajganj, District- Siwan.
3. Vaidya Nagendra Sharma Son of Late Pradip Narayan Singh resident of Village- Guravi Sugar Mill, P.S. Guravi Sugar Mill, District- Gaya.
4. Vaidya Basant Kumar Singh Son of Late Nitishwar Prasad Singh resident of Mohalla- Raj Palace Juran Chapra, P.S. Town Muzaffarpur, District- Muzaffarpur.

... .. Petitioners

Versus

1. Union of India through its Secretary, Ministry of Ayush, Ayush Bhawan, B-Block, G.P.O. Complex, INA New Delhi- 110023.
2. Central Council of Indian Medicine 61-65 Institutional Area Janakpuri, New Delhi- 110056 through its Secretary.
3. Special Secretary-cum- Returning Officer Govt. of Bihar, Health Department, Patna, Bihar.
4. Under Secretary to Govt. of India, Secretary, Ministry of Ayush, Ayush Bhawan, B- Block, G.P.O. Complex, INA New Delhi- 110023.
5. Under Secretary-cum- Inquiry Officer Ministry of Ayush, B- Block, G.P.O. Complex, New Delhi- 110023.
6. Dr. Mantosh Kumar Jha S/o Unknown resident of Village- Anti, P.S. and District- Madhubani.
7. Ravi Nath Mishra, Advocate resident of 4-B/44, Jawahar Nagar, District Sri Ganga Nagar, Rajasthan.
8. Dr. Ram Balak, Secretary, Indian Anti Corruption Organization Station Road Gulzarbagh, Patna.
9. Vaidya Arun Kumar, Prantia Mantri Bihar State Ayurvedic Congress C/o Dr. Alakh Narayan Singh Railway Handar Road, East Lohanipur, Patna- 3.
10. Dr. Subhash Chandra Verma S/o Unknown resident of Brahampur, District- Buxar- 802112.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Advocate Mr. Prabhat Kumar Singh, Advocate
For the UOI	:	Mr. S.D. Sanjay, A.S.G. Mr. Rajesh Kumar Verma, C.G.C.
For the State	:	Mr. Upendra Kr. Singh, AC to GA-8
For the Resp. No. 2	:	Mr. J.P. Singh, Sr. Advocate Mr. Dipak Kumar, Advocate



For the Resp. No. 6 to 10 : Mr.Surendra Kr. Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
C.A.V. JUDGMENT

Date : 28-03-2019

This writ application has been preferred with a prayer to quash and cancel the order dated 7th June, 2018 issued under the signature of Under Secretary to the Government of India, Ministry of Ayush contained in No. A:11019/01/2018-EC/CCIM, whereby and whereunder in exercise of the power conferred under Section 4(2) of the Indian Medicine Central Council Act, 1970 (hereinafter referred to as 'IMCC Act') read with Rule 25 of the IMCC (Election) Rules, 1975, the election of the four petitioners as members of the Central Council of Indian Medicine ('CCIM') FROM Ayurveda the State of Bihar has been declared null and void and further directed that a fresh election of four members of CCIM Ayurveda from the State of Bihar be conducted in the State of Bihar as per the provision of IMCC Act and the Rules framed thereunder.

It appears that on 17.07.2018 when this case was taken up before this court, an interim order was made in following terms: -

"It is made clear that any fresh election of four members of CCIM, Ayurveda from the State of Bihar pursuant to the declaration of the petitioners' election on the said post to be null



and void vide order dated 07.06.2018 passed by the Ministry of Ayush, Government of India shall be subject to the outcome of the present writ petition.”

It is the case of the petitioners that in terms of Section 3 of IMCC Act, 1970, these petitioners were elected as members of Central Council representing the State of Bihar from the category of Ayurved on 08.12.2017. The Returning Officer-cum-Special Secretary, Health, Bihar, who was appointed as Returning Officer by the Central Government issued certificate declaring the petitioners elected as members of Central Council from Bihar, but in terms of Rule 21 of the IMCC (Election) Rules, 1975 names of these petitioners were not published in the official Gazette by the Central Government. The petitioners then moved this court in CWJC No. 4792/2018 for a direction to publish the names of these petitioners in the official Gazette and also allow them to participate in the election for the post of President and Vice President of CCIM. These petitioners were allowed to participate in the election for the said post, the writ application is however still pending for final adjudication before this court.

According to the petitioners certain complaints were made by various contesting candidates with the Central Government under Section 4(2) of the IMCC Act, 1970. They



alleged several irregularities and malpractices committed during the CCIM election for the State of Bihar. In terms of Rule 28 of the IMCC (Election) Rules, 1975 the Ministry of Ayush decided to inquire into the allegations. The Under Secretary, Ministry of Ayush was appointed as Inquiry Officer to inquire into the allegations and to submit an inquiry report to the Central Government for consideration and decision.

At the stage of inquiry, these petitioners were called upon to participate by submitting their respective show cause. All these petitioners filed their respective replies, copies of which are enclosed as Annexure-3 & 3/1 to the writ application.

It was the submission of the petitioners that in view of a bar contained in proviso of Sub-section (3) of Section 4 of the IMCC (Election) Rules, 1975 no authority including the Central Government shall entertain any dispute referred to it or after the election with regard to any irregularities in the State Register as made available to the Returning Officer by the Registrar of the concerned State Branch. According to the petitioners it is the State Registrar as defined in Clause 2(j) of IMCC Act, 1970 who is responsible for maintaining the State Register. Thus, the petitioners submitted in course of inquiry that the Inquiry Officer cannot make an inquiry into the alleged



irregularities in electoral roll or State Register. Those were, according to the petitioners, beyond the jurisdiction of the inquiry.

The further submission of the petitioners were that in terms of the Rule 25 of IMCC (Election) Rules, 1975 the Central Government may declare the election to be void on account of bribery, undue influence or other corrupt practices which according to the Central Government has interfered with the free and fair conduct of the election.

The petitioners claimed that without considering the reply filed by these petitioners an enquiry report was submitted whereupon the respondent authorities have passed the order dated 07.06.2018 on nonest and irrelevant grounds. Copies of the impugned order dated 07.06.2018 issued under the signature of Under Secretary to the Government of India, Ministry of Ayush, has been enclosed as Annexure- '4' to the present writ application.

In course of hearing, Mr. Y.V. Giri, learned senior counsel assisted by Mr. Prabhat Kumar Singh, learned counsel for the petitioners has centered his argument on the ground that the impugned order suffers from violation of principles of natural justice as no opportunity of hearing was given to these



petitioners before passing of the impugned order as contained in Annexure-4 to the writ application.

It is submitted that due to non-compliance of the principles of natural justice a prejudice has been caused to these petitioners inasmuch as their election has been declared null and void.

Mr. Y.V. Giri, learned senior counsel has however also submitted that the four grounds stated by the respondents in the impugned order dated 07.06.2018 are not covered by the grounds as stated in Rule 25 of the IMCC (Election) Rules, 1975 on which the election could have been declared void or set aside.

It is pointed out that the first ground that is non-updation of the State Register, as stated above, is the duty of the Registrar under Sub-Rule 2 of Clause (a) sub-Section (1) of Section 3 of IMCC (Election) Rules, 1975 and as such any defect if at all in the State Register cannot be a ground for declaring the election to be void. The Second ground, it is stated again relates to the alleged irregularities in the State Register as a result of which it is alleged that ineligible voters had participated in the election. This according to the learned senior counsel for the petitioner cannot be a ground for



declaring the election of the petitioners null and void.

The third ground i.e. sending of voting papers by speed post instead of Registered post, learned senior counsel submits that in terms of Rule 14 of IMCC (Election) Rules, 1975 ballot papers are sent in terms of Rule 14 voters are required to send their votes by registered post. In this case, some of the ballot papers were sent by speed post and some of them have been sent by registered post, but in terms of Rule 25 this irregularity even if is there, the same cannot be a ground for declaring the election to be void. The envelopes containing votes were opened in presence of the contesting candidates but no vice of objection was raised on this ground.

As regards, the fourth and last ground it is submitted that the entire election was conducted under the supervision and control of Central Government, the Returning Officer and Observers were appointed by the Central Government, the counting of votes were held on 08.12.2017 and the result was declared on the same day but during all these period of one week the alleged incident of lying ballot papers on road side was not noticed, these allegations have come after a lapse of more than one week when the election was over. This again cannot be taken as a ground for declaring the election of the



petitioners null and void.

Learned senior counsel for the petitioners has in support of his submission that the impugned orders suffers from violation of principles of natural justice relies upon the judgment of the Hon'ble Supreme Court in the case of **Swadeshi Cotton Mills Vs. Union of India** reported in **AIR 1981 SC 818**. He has also relied upon the judgment of Hon'ble Supreme Court in the case of **Gorkha Security Services Vs. Government (NCT of Delhi)** reported in **(2014) 9 SCC 105**; to submit that there is an implied principles of rule of law that wherever the order being passed has got a civil consequence, an adequate opportunity of hearing be given to a person likely to be affected by such order. Further to support his contention that the election of an elected candidate is not open to challenge on the ground that the electoral roll was defective. Learned senior counsel relied upon the judgment of the Hon'ble Apex Court in the case of **Indrajit Barua Vs. Election Commission of India** reported in **AIR (1986) SC 103**, **Laxmikant Vajpayee Vs. Haji Yaqub** reported in **(2010) 4 SCC 81** and **N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency** reported in **AIR (1952) SC 64**.

A counter affidavit has been filed on behalf of the



Union of India (Respondent No. 1). It is stated that after the declaration of result several complaints were received by the Central Government. It was alleged that the election was conducted without updated voter list and proxy voting has been done rampantly as dead voter/persons were not removed from the voter list and no proper care was taken to check such malpractice at the time of counting. Some ballot papers were delivered late from the schedule time and that some ballot papers were found lying outside the road which was not received back by the Returning Officer. In this regard it is stated that one F.I.R. has already been registered against unknown person.

It is also pointed out that the issue of irregularities and malpractices in the election is also challenged in the writ petition © No. 10520/2017 and SM Appeal No. 42048/2017 titled as Subash Chandra Verma Vs. Union of India & Ors before the Hon'ble High Court of Delhi and is still pending for adjudication.

It is further submitted that an inquiry was conducted in the alleged complaint. The Inquiry Officer had conducted the inquiry in accordance with the Rule 28 of the IMCC (Election) Rules, 1975 as amended in 2012 after granting an opportunity



of hearing to the petitioners. After completion of inquiry, an inquiry report was submitted to the Central Government. Inquiry report shows that certain irregularities and malpractices were committed. After examining the report, since the allegation leveled in the complaints were found substantiated, considering it's seriousness, the Central Government has decided to declare the election null and void by the impugned order.

It is submitted that as per Section 4(2) of the IMCC Act, 1970, the Central Government is empowered to decide any dispute arising in respect of election and the decision of the Central Government shall be final. It is submitted that the petitioners have been provided due opportunity of hearing and the inquiry has been conducted in terms of procedures as contained in Rule 28 of the IMCC (Election) Rules, 1975 vide amendment Rules 2012. It is submitted that the opportunity of hearing is to be given at the inquiry stage which has been duly complied with in the present case.

Respondent Nos. 6 & 7 as also respondent nos. 8, 9 & 10 have filed their respective counter affidavits. Respondent no. 6 & 7 have joined together, similarly respondent nos. 9 & 10 have jointly filed their counter affidavits while respondent no. 8 has filed a separate counter affidavit.



According to respondent no. 6 & 7, the Central Government in exercise of power conferred by Section 4 (mode of election) and Section 35 (powers to make Rules) of the Act made the relevant IMCC (Election) Rules, 1975. The said Rules prescribes the eligibility of the persons who are entitled to vote. It is submitted that the medical qualification of graduate in Ayurvedic Medicine and Surgery (hereinafter referred to as the 'GAMS') prescribed under serial no. 6 of the Second schedule of the Act was non-recognized as per Section 13-B and 13-C of the IMCC Act, 1970. Accordingly, the validity of the degree was restricted up to 2003 and beyond that neither the course is valid nor the degree. The non-recognition of 'GAMS' qualification was under challenge before this court and then the order of this court was challenged before the Hon'ble Supreme Court. The Hon'ble Supreme Court decided the cases vide judgment dated 01.11.2017, considered 'GAMS' qualification, awarded by the State Faculty of Ayurvedic and Unani Medicine, Patna as recognized medical qualification for registration from the year 1953-2003.

Despite the judgment of the Hon'ble Supreme Court the names of illegal entrants who managed to possess 'GAMS' qualification after amendment have been enrolled on the State



Register of Indian Medicine Practitioner of Ayurvedic and Unani Systems of Medicine. It is pointed out that various letters were issued to CCIM to the Indian Medicine of Ayurvedic and Unani Medicine regarding these illegal registration, but the State Council paying no heed to these letters of the Central Council and illegal registration of the 'GAMS' holders after 2003 have been continued till date.

It is also submitted in the counter affidavit that on account of some pressure created by the government's letter written to the respondent-Registrar intimating about the preparation of electoral roll, the respondent Registrar had forwarded the whole list of doctors on 09.03.2017, making a recommendation that 220 'GAMS' doctors should not be included in the electoral roll and the inclusion of their name will not be appropriate after the decision of the Hon'ble Supreme Court.

The counter affidavit also says that there were names of doctors who had died 35 years back and despite knowledge these defects were not removed. In paragraph-23 of the counter affidavit, name of six candidates who were not having recognized degree but had submitted nominations have been mentioned. In paragraph-29 to 31 of the counter affidavit



several examples have been given saying that some fake institutions are granting degrees in the name of doctors and the address of large number of doctors are given at one place which cannot be possible as around 300, 500 and even 700 doctors cannot be registered from one address. Citing further malpractice, the counter affidavit says that during inquiry when the police went to RMS Office, Patna it was disclosed that a large number of envelopes were booked on 18.11.2017 from RMS by outsourcing Collecting Agent Dilip Kumar who disclosed that it is all about 600 delivered ballots were given to him by one person on 18.11.2017 whose mobile number was provided by the said Collecting Agent.

Respondent no. 8 in his counter affidavit has supported the petitioners stating that the election was held in completely free and fair manner and no malpractice or irregularities were committed..

Respondent no. 9 & 10 have however contested the writ application on similar lines as have been done by respondent no. 6 & 7. They have alleged that corrupt practices have been committed by the persons of vested interest. It is submitted that under the process and procedure of the election the ballots are required to be sent to the doctors (voter) under



registered post but it was sent by speed post for simple reason that a registered cover letter is delivered to the person concerned himself but a speed post letter can be delivered to anyone. As a result of this most of the valid ballots were not received by the doctors. Similarly in the same manner the voters were also required to return back the ballot paper after indicating his choice to the Returning Officer through registered post or to deposit the same by personally but these procedures were not followed. In some of the envelopes there were no ballot papers, only a plain paper was kept inside the envelop which proves that the allegations leveled by the doctors and their Association were absolutely correct. On these grounds prayer has been made to dismissed the writ application.

Consideration

After hearing learned senior counsel for the parties and on perusal of the records this court finds that the first question which has been raised by Mr. Y.V. Giri, learned senior counsel for the petitioners is with regard to the violation of principles of natural justice, the same is required to be considered at the first instance.

A glance over the relevant provisions of the IMCC (Election) Rules, 1975 would show that this rule has been



framed by the Central Government in exercise of its power conferred by Section 4 and Section 35 of the IMCC Act, 1970. According to Rule 3 – All persons whose names are enrolled on a State Register of Indian medicine practitioners of Ayurveda, Siddha or Unani Systems of Medicine shall be entitled to vote at the election of members to represent the Ayurveda, Siddha or Unani System of Medicine, as the case may be, under Clause (a) of sub-section (1) of Section 3. Under Rule 4 - Copies of the State Register of Indian Medicine shall be posted at the office of the Returning Officer of the State concerned. Under Sub-rule (2) of Rule 4 - The Register shall be brought up-to-date before posting and for this purpose, the Returning Officer shall give one month's notice to the Registrar (by whatever name called) of the Board concerned, who maintains the Register in the State. Under Sub-Rule (3) of Rule 4 - After expiry of one month's notice as mentioned in Sub-Rule (2) the election shall be conducted as per the names enrolled on the Register available as on date. Proviso to Sub-rule (3) of Rule 4 states that “*Provided that the Central Government shall not entertain any dispute referred to it, before or after election, with regard to any irregularities in the State Register as made available to the Returning Officer by the Registrar of the concerned State Board*



who is responsible for maintaining the State Register, as defined in Clause 2(j) of Indian Medicine Central Council Act, 1970”.

Under Rule 5 - The Returning Officer shall call upon persons enrolled on the State Register of the Indian Medicine as practitioners of Ayurveda, Siddha or Unani System of Medicine to elect such number of members, as is determined by the Central Government under Clause (a) of Sub-section (1) of Section 3, to represent Ayurveda, Siddha or Unani System of Medicine, as the case may be.

Rule 7, 8, 9, 10, 11 & 12 are the provisions dealing with the nominations of candidates, the manner of nomination, rejection of nomination paper, scrutiny of nomination papers and withdrawal of candidates. Rule 13 deals with the provisions relating to polling. Rule 14 provides that every elector desirous of recording of his vote shall, after filling up the declaration paper and the voting paper according to the directions given in the letter of intimation, enclosed the voting paper in the voting paper cover, stick up the cover, enclose the cover and the declaration paper in the outer cover addressed to the Returning Officer and send the outer cover by registered post by elector's at own cost to the Returning Officer or deliver it in person in the office of the Returning Officer so as to reach him not later than



5 P.M. on the date fixed for the poll and all envelopes received after that day and hour shall be rejected. The provisions relating to scrutiny and counting of votes and declaration of result are contained in Rule 18 & 19.

The bone of contention in the present case is Rule 25 which reads as under :

“25. Power to declare any election void – (1) The Central Government may, on any election dispute referred to it under sub-section (2) of Section 4 of the Act, for an election, within a period of thirty days from the date of the elected candidate, declare the election to be void on account of bribery, undue influence or other corrupt practice which, in the opinion of the Central Government has interfered with the free and fair conduct of the election and shall conduct a fresh election.”

Rule 28 lays down the procedure for dealing with the election disputes which is quoted hereunder for a ready reference:

“28. Procedure for dealing election disputes.

(1) The Central Government, after receipt of dispute under sub-section (2) of section 4 of the Act regarding any election, shall appoint an Inquiry Officer not below the rank of Under Secretary to the Government of India to inquire into that dispute.

(2) The Inquiry officer within one week of his appointment shall send notice of hearing to the parties to the dispute asking them to submit statements in writing, if any, on the dispute within



reasonable time as may be specified by him and shall also fix the date of hearing.

(3) After the expiry of the time specified for submission of statements, the Inquiry officer shall hear the dispute on such date and at such time and place as has been specified irrespective of whether written statement have been received or not and shall give reasonable opportunity to the parties to be heard.

(4) All parties to the dispute shall have the right to appear before the Inquiry officer, only in person.

(5) Non-appearance of the parties to the dispute shall not be a ground for postponement of hearing on the date already fixed and the hearing shall proceed ex-parte until circumstances of non-appearance are beyond the control of the parties.

(6) During any stage of inquiry, the Inquiry officer shall have the right to examine such other documents and persons as deemed necessary by him for conduct of inquiry.

(7) After hearing all the concerned parties, the Inquiry officer shall prepare an inquiry report within a period of sixty days of his appointment and submit it to the Central Government for its consideration and decision.

(8) The Central Government shall endeavor to take a decision on the Inquiry report as submitted by the Inquiry officer and communicate its decision on a dispute within thirty days of receipt of the Inquiry report.”

Since Rule 25 talks of any election dispute referred to it under sub-section (2) of Section 4 of the Act, the relevant provision – Section 4 of the Act of 1970 is quoted hereunder:



“4. Mode of election – (1) An election under Clause (a) or clause (b) of sub-section (1) of section 3 shall be conducted by the Central Government in accordance with such rules as may be made by it in this behalf.

(2) Where any dispute arises regarding any election to the Central Council, it shall be referred to the Central Government whose decision shall be final.”

It is evident from a reading of sub-section (2) of Section 4 of the Act of 1970 and Rule 25 of the IMCC (Election) Rules, 1975 that the Central Government has been conferred with power to declare the election of the elected candidate void on account of (i) bribery, (ii) undue influence or (iii) other corrupt practice which in the opinion of the Central Government has interfered with the free and fair conduct of the election. The procedure for dealing with the election dispute envisage that after receipt of a dispute under sub-section (2) of Section 4 of the Act of 1970, the Central Government shall get an inquiry conducted through an Inquiry Officer not below the rank of Under Secretary to the Government of India. At the stage of inquiry, by virtue of sub-rule (2) of Rule 28, the Inquiry Officer is obliged to send notice of hearing to the parties to the dispute asking them to submit statements in writing, if any, on the dispute within a reasonable time and thereafter he shall also fix the date of hearing. The scheme of Rule 28 provides that all



parties to the dispute shall have the right to appear before the Inquiry Officer, only in person. The Inquiry Officer has been conferred with powers to examine such other documents and persons as deemed necessary by him for conduct of inquiry. After hearing all the concerned parties, in terms of sub-rule (7) of Rule 28 the Inquiry Officer shall prepare an inquiry report within a period of 60 days of his appointment and submit it to the Central Government for its consideration and decision.

It appears from a reading of sub-rule (8) of Rule 28 that the Central Government has been conferred with power to take a decision on the inquiry report as submitted by the Inquiry Officer and communicate its decision on a dispute within 30 days of the receipt of the inquiry report. Sub-rule (8) of Rule 28 nowhere talks of any opportunity of hearing to be given to the stake holders therefore it has to be considered as to whether sub-rule (8) impliedly excludes right to hearing to the parties to the dispute. It is at this stage that while learned senior counsel for the petitioners has contended that a right to hearing is implied principles of rule of law, learned Additional Solicitor General representing the official respondents has submitted that the opportunity of hearing is given to the petitioners at the stage of inquiry in terms of the rules and after the inquiry is over, no



further opportunity of hearing is required. This contention has to be examined in the light of the relevant provisions of Rule of 1975 in the light of the judicial pronouncements of the Hon'ble Apex Court on the subject.

In the case of **Swadeshi Cotton Mills (supra)** the Central Government in exercise of its power under Clause (a) of sub-section (1) of Section 18-AA of the Industries (Development and Regulation) Act, 1951 (hereinafter referred to as the "IDR Act") authorised the National Textile Corporation Limited to take over the management of the whole of the industrial undertakings of Naini units of M/s Swadeshi Cotton Mills for gratuity funding to get the benefit of Section 44A of the Income Tax Act. Prior to issuance of the notification taking over the management of the undertaking no opportunity of hearing was given to the management of Swadeshi Cotton Mills. The action of the Government of India was challenged under Article 226 of the Constitution of India in the Delhi High Court. A larger Bench was constituted in the High Court to consider the question whether a prior hearing is necessary to be given to the persons affected before the under Section 18-AA is passed. The larger Bench, by a majority judgment answered the reference by holding that *"(1) Section 18-AA(1)(a)(b) excludes giving of*



prior hearing to the party, who would be affected by the order thereunder. (2) Section 18-F expressly provides for a post decisional hearing to the owner of the industrial undertaking, the management of which is taken over under Section 18-AA to have the order made under Section 18-AA cancelled on any relevant ground. (3) As the taking over the management under Section 18-AA is not vitiated by the failure to grant prior hearing, the question of any such vice being cured by grant of a subsequent hearing does not arise.” Justice H.L. Anand and Justice N.M. Goswami the two Hon’ble Judges has however dissented as according to them, in compliance of the principles of natural justice a prior hearing to the owner of the undertaking was required to be given before passing the order under Section 18-AA.

After the decision of the reference the case was re-heard on merits by a Bench of three learned Judges who allowed the writ application in part while holding that the challenge to the validity to the impugned order fails and to that extent the petition is dismissed. The management of Swadeshi Cotton Mills was granted certificate under Article 133 of the Constitution that the case was fit for appeal to the Hon’ble Apex Court. It is in this background that the Hon’ble Supreme



Court of India considered the entire issue after framing a question as to whether, as a matter of law, it is necessary, in accordance with the rules of natural justice, to give a hearing to the owner of an undertaking before issuing a notified order, or enforcing a decision of its takeover under Section 18-AA. The Hon'ble Apex Court recorded in paragraph Nos. 23, 24, 25, 26, 27, 28, 29 & 30 as under:

“23. Before dealing with the contentions advanced on both sides, it will be useful to have a general idea of the concept of “natural justice” and the broad principles governing its application or exclusion in the construction or administration of statutes and the exercise of judicial or administrative powers by an authority or tribunal constituted thereunder.

24. Well then, what is “natural justice”? The phrase is not capable of a static and precise definition. It cannot be imprisoned in the straight-jacket of a cast-iron formula. Historically, “natural justice” has been used in a way “which implies the existence of moral principles of self-evident and unarguable truth”. [Paul Jackson : Natural Justice, 2nd Edn., p 1] In course of time, Judges nurtured in the traditions of British jurisprudence, often invoked it in conjunction with a reference to “equity and good conscience”. Legal experts of earlier generations did not draw any distinction between “natural justice” and “natural law”. “Natural justice” was considered as “that part of natural law which relates to the



administration of justice". Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules.

25. But two fundamental maxims of natural justice have now become deeply and indelibly ingrained in the common consciousness of mankind, as pre-eminently necessary to ensure that the law is applied impartially, objectively and fairly. Described in the form of Latin tags these twin principles are: (i) audi alteram partem and (ii) nemo judex in re sua. For the purpose of the question posed above, we are primarily concerned with the first. This principle was well-recognised even in the ancient world. Seneca, the philosopher, is said to have referred in Medea that it is unjust to reach a decision without a full hearing. In Maneka Gandhi case (AIR 1978 SC 597) Bhagwati, J. emphasised that audi alteram partem is a highly effective rule devised by the courts to ensure that a statutory authority arrives at a just decision and it is calculated to act as a healthy check on the abuse or misuse of power. Hence its reach should not be narrowed and its applicability circumscribed.

26. During the last two decades, the concept of natural justice has made great strides in the realm of administrative law. Before the epoch-making decision of the House of Lords in Ridge v. Baldwin, (1964 AC 40) it was generally thought that the rules of natural justice apply only to judicial or quasi-judicial proceedings; and for that purpose, whenever a breach of the



rule of natural justice was alleged, courts in England used to ascertain whether the impugned action was taken by the statutory authority or tribunal in the exercise of its administrative or quasi-judicial power. In India also, this was the position before the decision, dated February 7, 1967, of this Court in Dr Bina Pani Dei's case 9ibid) (AIR 1967 SC 1269); wherein it was held that even an administrative order or decision in matters involving civil consequences, has to be made consistently with the rules of natural justice. This supposed distinction between quasi-judicial and administrative decisions, which was perceptibly mitigated in Dr Bina Pani Dei's case, was further rubbed out to a vanishing point in A.K. Kraipak v. Union of India (ibid) (AIR 1970 SC 150) thus:

“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.... 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.”

27. In A.K. Kraipak's case, the court also quoted with approval the observations of Lord Parker from the Queen's Bench decision in In re H.K. (An Infant) (ibid) (1965 AC 201) which were to the effect, that good administration and an



honest or bona fide decision require not merely impartiality or merely bringing one's mind to bear on the problem, but acting fairly. Thus irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial, a duty to act fairly, that is, in consonance with the fundamental principles of substantive justice is generally implied, because the presumption is that in a democratic polity wedded to the rule of law, the State or the legislature does not intend that in the exercise of their statutory powers its functionaries should act unfairly or unjustly.

28. *In the language of V.R. Krishna Iyer, J. (vide Mohinder Singh Gill's case, ibid) (AIR 1978 SC 851):*

"Subject to certain necessary limitations natural justice is now a brooding omnipresence although varying in its play. Its essence is good conscience in a given situation; nothing more — but nothing less."

29. *The rules of natural justice can operate only in areas not covered by any law validly made. They can supplement the law but cannot supplant it (Per Hedge, J. in A.K. Kraipak, ibid) (AIR 1970 SC 150). If a statutory provision either specifically or by inevitable implication excludes the application of the rules of natural justice, then the court cannot ignore the mandate of the legislature. Whether or not the application of the principles of natural justice in a given case has been excluded, wholly or in part, in the exercise of statutory power, depends upon the language and basic scheme of the provision*



conferring the power; the nature of the power; the purpose for which it is conferred and the effect of the exercise of that power. (see Union of India v. Col. J.N. Sinha (AIR 1970 SC 40).

30. The maxim audi alteram partem has many facets. Two of them are: (a) notice of the case to be met; and (b) opportunity to explain. This rule is universally respected and duty to afford a fair hearing in Lord Loreburn's oft-quoted language, is "a duty lying upon everyone who decides something", in the exercise of legal power. The rule cannot be sacrificed at the altar of administrative convenience or celerity; for, "convenience and justice" — as Lord Atkin felicitously put it — "are often not on speaking terms" General Council of Medical Education v. Spackman, (1943) AC 627.

The Hon'ble Apex Court thereafter examined the two decisions of the Hon'ble Apex Court in paragraph 67, 68, 69, 70 & 71 which reads as under:

"67. At this stage, it is necessary to examine two decisions of this Court viz. Ambalal M. Shah v. Hathi Singh Manufacturing Co. Ltd. (1962) 3 SCR 171 = (AIR 1962 SC 588) and Keshav Mills Co. Ltd. v. Union of India (AIR 1973 SC 389) (ibid), because according to the High Court (as per Deshpande, C.J., who wrote the leading opinion) these two decisions— which are binding on the High Court — conclusively show that:

"The only prior hearing consisted of the investigation under Section 15 read with Rule 5



before action under Section 18-A is taken. The very object of Section 18-AA is to enable action to be taken thereunder without being preceded by the investigation under Section 15. On the authority of the two Supreme Court decisions in Ambalal M. Shah and Keshav Mills that the only hearing prior to action under Section 18-A was the investigation under Section 15, it would follow that action under Section 18-AA is to be taken without the investigation under Section 15 and, therefore, without a prior hearing.”

68. *Shri Nariman maintains that the High Court has not correctly construed these decisions. According to the learned counsel, the corollary deduced by the High Court viz. that exclusion of the investigation under Section 15 includes exclusion of the audi alteram partem rule at the pre-take-over stage, is just the contrary of what was laid down by this Court in Keshav Mills (AIR 1973 SC 389) in which Ambalal's case (AIR 1962 SC 588) was also noticed. Indeed, Shri Nariman strongly relies on this decision in support of his argument that if the application of this rule of natural justice at the pre-decisional stage is not excluded even where a full investigation has been made, there is stronger reason to hold that it is to be observed in a case where there has been no investigation at all.*

69. *We will first notice the case of Keshav Mills because that is a later decision in which Ambalal's case was referred to. In that case, the validity of an order passed by the Central Government under Section 18-A was challenged. By that impugned order the Gujarat State Textile Corporation Ltd. (hereinafter referred to as “the corporation”) was*



appointed as authorised controller of the Company for a period of five years. The Company was the owner of a cotton textile mill. Till 1965, the Company made flourishing business. After the year 1964-65, the Company fell on evil days and the textile mill of the Company was one of the 12 sick textile mills in Gujarat, which had to be closed down during 1966 and 1968. On May 31, 1969, the Central Government passed an order appointing a committee for investigation into the affairs of the Company under Section 15 of the I.D.R. Act. After completing the inquiry, the investigating committee submitted its report to the Government who thereafter on November 24, 1970, passed the impugned order under Section 18-A authorising the corporation to take over the management of the Company for a period of five years. The Company challenged the order of "take-over" by a writ petition in the High Court of Delhi. The High Court dismissed the petition. The main contention of the Company before the High Court was that the Government was not competent to proceed under Section 18-A against the Company without supplying beforehand, a copy of the report of the investigating committee to the company. It was further contended that the Government should also have given a hearing to the Company before finally deciding upon take-over under Section 18-A. This contention was pressed on behalf of the Company in spite of the fact that an opportunity had been given by the investigating committee to the management and the employees of the Company for adducing evidence and for making representation before the completion of the investigation. On the contentions raised by the Company and resisted by the



respondent, in that case, the court formulated the following questions:

(1) Is it necessary to observe the rules of natural justice before enforcing a decision under Section 18-A of the Act?

(2) What are the rules of natural justice in such a case?

(3)(a) In the present case, have the rules to be observed once during the investigation under Section 15 and then again, after the investigation is completed and action on the report of the investigating committee taken under Section 18-A?

(b) Was it necessary to furnish a copy of the investigating committee's report before passing an order of take-over?

70. Mukherjea, J. speaking for the court, answered these questions, thus:

(1) "The first of these questions does not present any difficulty. It is true that the order of the Government of India that has been challenged by the appellants was a purely executive order embodying an administrative decision. Even so, the question of natural justice does arise in this case. It is too late now to contend that the principles of natural justice need not apply to administrative order or proceedings, in the language of Lord Denning M.R. in R. v. Gaming Board for Great Britain, ex parte Benaim (1970) 2 WLR 1009, "that heresy was scotched in Ridge v. Baldwin, 1964 AC 40".

(2) "The second question, however, as to what are the principles of natural justice that should regulate an administrative act or order is a much more



*difficult one to answer. We do not think it either feasible or even desirable to lay down any fixed or rigorous yard-stick in this manner. The concept of natural justice cannot be put into a strait-jacket. It is futile, therefore, to look for definitions or standards of natural justice from various decisions and then try to apply them to the facts of any given case. The only essential point that has to be kept in mind in all cases is that the person concerned should have a reasonable opportunity of presenting his case and that the administrative authority concerned should act fairly, impartially and reasonably. Where administrative officers are concerned, the duty is not so much to act judicially as to act fairly. See, for instance, the observations of Lord Parker in *In re H.K. (an infant)*, 1965 AC 201 (HL). It only means that such measure of natural justice should be applied as was described by Lord Roid in *Ridge v. Baldwin* 1964 AC 40, as insusceptible of exact definition but what a reasonable man would regard as a fair procedure in particular circumstances. However, even the application of the concept of fair play requires real flexibility. Everything will depend on the actual facts and circumstances of a case”.*

(3)(a) “For answering that question we shall keep in mind and examine the nature and scope of the inquiry that had been carried out by the Investigating Committee set up by the Government, the scope and purpose of the Act and rules under which the investigating committee was supposed to act, the matter that was being investigated by the committee and finally the opportunity that was afforded to the appellants for presenting their case



before the investigating committee”.

(After noticing the object, purpose and content of the relevant provisions, the judgment proceeded):

“In fact, it appears from a letter addressed by Appellant 2 Navinchandra Chandulal Parikh on behalf of the Company to Shri H.K. Bansal, Deputy Secretary, Ministry of Foreign Trade and Supply on September 12, 1970 that the appellants had come to know that the Government of India was in fact considering the question of appointing an authorised controller under Section 18-A of the Act in respect of the appellants' undertaking. In that letter a detailed account of the facts and circumstances under which the mill had to be closed down was given. There is also an account of the efforts made by the Company's Directors to restore the mill. There is no attempt to minimise the financial difficulties of the Company in that letter.... The letter specifically mentions the Company's application to the Gujarat State Textile Corporation Ltd., for financial help the Corporation untimely failed to come to the succour of the Company. Parikh requested Government not to appoint an authorised controller and further prayed that the Government of India should ask the State Government and the Gujarat State Textile Corporation Ltd., to give a financial guarantee to the Company” Only a few days before this letter had been addressed, Parikh, it appears, had an interview with the Minister of Foreign Trade on August 26, 1970, when the Minister gave him, as a special case, four weeks' time with effect from August 26, 1970 to obtain the necessary financial guarantee from the State or the Gujarat State Textile



Corporation without which the Company had expressed its inability to reopen and run the mill. In a letter of September 22, 1970, Bansal informed Parikh in clear language that if the Company failed to obtain the necessary guarantee by September 26, 1970, Government was proceeding to take action under the Act. It is obvious, therefore, that the appellants were aware all long that as a result of the report of the investigating committee the Company's undertaking was going to be taken up by the Government, Parikh had not only made written representations but had also seen the Minister of Foreign Trade and Supply. He had requested the minister not to take over the undertaking and, on the contrary, to lend his good offices so that the Company could get financial support from the Gujarat State Textile Corporation or from the Gujarat State Government.”

(emphasis added)

“All these circumstances leave in no manner of doubt that the Company had full opportunities to make all possible representations before the Government against the proposed take over of its mill under Section 18-A. In this connection, it is significant that even after the writ petition had been filed before the Delhi High Court the Government of India had given the appellants at their own request one month's time to obtain the necessary funds to commence the working of the mill. Even then, they failed to do so...”

There are at least five features of the case which make it impossible for us to give any weight to the appellants' complaint that the rules of natural justice have not been observed. First, on their own



*showing they were perfectly aware of the grounds on which the Government had passed the order under Section 18-A of the Act. Secondly, they are not in a position to deny (a) that the Company has sustained such heavy losses that its mill had to be closed down indefinitely, and (b) that there was not only loss of production of textiles but at least 1200 persons had been thrown out of employment. Thirdly, it is transparently clear from the affidavits that the Company was not in a position to raise the resources to recommence the working of the mill. Fourthly, **the appellants were given a full hearing at the time of the investigation held by the Investigating Committee and were also given opportunities to adduce evidence. Finally, even after the investigating committee had submitted its report, the appellants were in constant communion with the Government** and were in fact negotiating with the Government for such help as might enable them to reopen the mill and to avoid a take over of their undertaking by the Government. Having regard to these features it is impossible for us to accept the contention that the appellants did not get any reasonable opportunity to make out a case against the take over of their undertaking or that the Government has not treated the appellants fairly. There is not the slightest justification in this case for the complaint that there has been any denial of natural justice.”*

*In our opinion, **since the appellants have received a fair treatment and also all reasonable opportunities to make out their own case before the Government they cannot be allowed to make any grievance of the fact that they were not given a***



*formal notice calling upon them to show cause why their undertaking should not be taken over or that they had not been furnished with a copy of the report. **They had made all the representations that they could possibly have made** against the proposed take over. By no stretch of imagination, can it be said that the order for take over took them by surprise. In fact, the Government gave them ample opportunity to reopen and run the mill on their own if they wanted to avoid the take over. The blunt fact is that the appellants just did not have the necessary resources to do so. **Insistence on formal hearing in such circumstances is nothing but insistence on empty formality.*** (emphasis added)

(3)(b) “In our opinion it is not possible to lay down any general principle on the question as to whether the report of an investigating body or an inspector appointed by an administrative authority should be made available to the persons concerned in any given case before the authority takes a decision upon that report. The answer to this question also must always depend on the facts and circumstances of the case. **It is not at all unlikely that there may be certain cases where unless the report is given the party concerned cannot make any effective representation about the action that Government takes or proposes to take on the basis of that report. Whether the report should be furnished or not must therefore depend in every individual case on the merits of that case.** We have no doubt that in the instant case, non-disclosure of the report of the investigating committee has not caused any prejudice whatsoever to the appellants”

(emphasis added)



71. It will be seen from what has been extracted above that in Keshav Mills case (AIR 1973 SC 389), this Court did not lay it down as an invariable rule that where a full investigation after notice to the owner of the industrial undertaking has been held under Section 15, the owner is never entitled on grounds of natural justice, to a copy of the investigation report and to an opportunity of making a representation about the action that the Government proposes to take on the basis of that report. On the contrary, it was clearly said that this rule of natural justice will apply at that stage in cases “where unless the report is given the party concerned cannot make any effective representation about the action that Government takes or proposes to take on the basis of that report”. It was held that the application or non-application of this rule depends on the facts and circumstances of the particular case. In the facts of that case, it was found that the non-disclosure of the investigation report had not caused any prejudice whatever because the Company were “aware all along that as a result of the report of the investigating committee the Company's undertaking was going to be taken (over) by the Government”, and had full opportunities, to make all possible representations before the Government against the proposed take over of the Mill.”

In the Case of Gorkha Security Services (supra), the Hon'ble Supreme Court was examining the case of the petitioner who had been debarred/blacklisted by giving a show



cause notice for his alleged failure to commence/execute the work that was awarded to him but the show cause notice did not specifically propose the action of blacklisting the appellant firm. The Hon'ble Apex Court examined the nature of the authority of the State to blacklist the person in the light of Article 298 of the Constitution of India. While dealing with "prejudice" argument , in paragraph 32 the Hon'ble Apex Court recorded as under:

"32. It was sought to be argued by Mr. Maninder Singh, learned Additional Solicitor General appearing for the respondent, that even if it is accepted that the show cause notice should have contained the proposed action of blacklisting, no prejudice was caused to the appellant inasmuch as all necessary details mentioning defaults/prejudices committed by the appellant were given in the show cause notice and the appellant had even given its reply thereto. According to him, even if the action of blacklisting was not proposed in the show cause notice, the reply of the appellant would have remained the same. On this premise, the learned Additional Solicitor General has argued that there is no prejudice caused to the appellant by non-mentioning of the proposed action of blacklisting. He argued that unless the appellant was able to show that non-mentioning of blacklisting as the proposed penalty has caused prejudice and has resulted in miscarriage of justice, the impugned action cannot be nullified. For this proposition he referred to the judgment of this Court in Haryana Financial Corpn. V. Kailash Chandra Ahuja (2008) 9 SCC 31.



“21. From the ratio laid down in B. Karunakar it is explicitly clear that the doctrine of natural justice requires supply of a copy of the inquiry officer’s report to the delinquent if such inquiry officer is other than the disciplinary authority. It is also clear that non-supply of report of the inquiry officer is in the breach of natural justice. But it is equally clear that failure to supply a report of the inquiry officer to the delinquent employee would not ipso facto result in the proceedings being declared null and void and the order of punishment non est and ineffective. It is for the delinquent employee to plead and prove that non-supply of such report had caused prejudice and resulted in miscarriage of justice. If he is unable to satisfy the court on that point, the order of punishment cannot automatically be set aside.

31. At the same time, however, effect of violation of the rule of audi alteram partem has to be considered. Even if hearing is not afforded to the person who is sought to be affected or penalised, can it not be argued that ‘notice would have served no purpose’ or ‘hearing could not have made difference’ or ‘the person could not have offered any defence whatsoever’. In this connection, it is interesting to note that non-compliance with principles of natural justice would make the order null and void and no further inquiry was necessary.

36. The recent trend, however, is of ‘prejudice’. Even in those cases where procedural requirements have not been complied with, the action has not been held ipso facto illegal, unlawful or void unless it is shown that non-observance had prejudicially affected the applicant.

[Managing Director ECIL Hyderabad v. B. Karunakar (1993) 4 SCC 727]



44. From the aforesaid decisions, it is clear that though supply of report of the inquiry officer is part and parcel of natural justice and must be furnished to the delinquent employee, failure to do so would not automatically result in quashing or setting aside of the order or the order being declared null and void. For that, the delinquent employee has to show 'prejudice'. Unless he is able to show that non-supply of report of the inquiry officer has resulted in prejudice or miscarriage of justice, an order of punishment cannot be held to be vitiated. And whether prejudice had been caused to the delinquent employee depends upon the facts and circumstances of each case and no rule of universal application can be laid down."

(emphasis in original)

In the facts of the present case, I find that after receipt of an election dispute the Central Government shall entrust an inquiry to be conducted by an officer not below the rank of Under Secretary. At the stage of inquiry, no doubt the IMCC (Election) Rule, 1975 clearly provides that the parties to the dispute shall be given opportunity of hearing, which according to me, would include a right to the parties to inspect the documents and cross examine the persons who are examined at the stage of inquiry. There would be no doubt that the right of hearing carries with it the right to have inspection and copies of all the relevant books, documents, papers etc. and it would be incumbent upon the Inquiry Officer to take all steps which are



necessary for the effective hearing in course of inquiry. But the question is whether under law, principles of natural justice is satisfied only by giving an opportunity of hearing to participate in course of inquiry.

In the opinion of this court, sub-rule (8) of Rule 28 cannot be read as excluding the right of hearing to the parties to the dispute at the stage of decision making by the Central Government after receipt of the inquiry report. Such opportunity of hearing to the parties to the disputes are neither specifically nor impliedly excluded from sub-rule (8) of Rule 28. It is to be kept in mind that the power conferred on the Central Government to declare election of the elected candidate null and void is a drastic power and it has got a civil consequence inasmuch as the election of the elected candidate may be rendered void by exercise of such power by the Central Government. In the opinion of this court, the principles of natural justice requires an effective hearing and such effective hearing, in the facts of the present case, would be complete only after the parties to the election disputes are made available a copy of the inquiry report and are given an opportunity of hearing to submit their objection if any to such inquiry report otherwise the elected candidate will have no opportunity to



know as to what transpired in the inquiry report which led to the Central Government to take a decision nullifying the election of the elected candidate.

In the present case, this court finds that in the impugned order dated 7th June, 2018 (Annexure-4 to the writ application), it is recorded that *“after the detail inquiry, Inquiry Officer concluded that certain irregularities have been committed during the course of election which includes (a) non updation of the State Register of practitioners (voter list) which is in violation of the Bihar Development of Ayurvedic and Unani Medicine Act, 1951, (b) Participation of non recognized qualification namely GAMS degree holder in the election which is in violation of the IMCC Act, 1970, (c) sending of voting papers by speed post instead of registered post and (d) ballot papers found on the roadside for which police complaint has been filed and investigation is being conducted by the police.”*

Having said so, the impugned order further states that *“the Central Government, on consideration of the facts and circumstances of case in totality as brought out in the inquiry report is of the view that serious irregularities have been committed during the election process for Central Council of Indian Medicine*



Members in Bihar. The Central Government has accordingly found that the entire process of the said selection is vitiated and the election of four members of Ayurveda as members of CCIM from the State of Bihar held on 08.12.2017 is liable to be set aside as the election was not held in free and fair manner ”

It is apparent from the impugned order dated 7th June, 2018 that the parties to the election dispute particularly the elected candidates had no opportunity to go through the inquiry report and to raise a contention thereon. Before this court one of the arguments of the learned senior counsel for the petitioners is that non-updation of the State Register of practitioners cannot be a ground of election dispute and in fact his submission is that even the other grounds mentioned in the impugned order would not be covered under any of the three grounds i.e. bribery, undue influence or other corrupt practice as envisaged under Rule 25 of the IMCC (Election) Rules, 1975 available for declaring the election of the elected candidates null and void.

This court is of the considered opinion that had a copy of inquiry report been forwarded to the petitioners with proposed grounds for declaring their election null and void and an opportunity would have been granted to them to come with



their stand by way of a reply, the Central Government would have been in a position to consider the stand of the petitioner and take a decision thereon. This would have been in conformity with the principles of natural justice.

At this stage, it would be appropriate to take note of paragraph 34 of the judgment of the Hon'ble Apex Court in the case of **Swadeshi Cotton Mills (supra)** as under:

“34. In Mohinder Singh Gill's case (AIR 1978 SC 851) the appellant and the third respondent were candidates for election in a Parliamentary Constituency. The appellant alleged that when at the last hour of counting it appeared that he had all but won the election, at the instance of the respondent, violence broke out and the Returning Officer was forced to postpone declaration of the result. The returning Officer reported the happening to the Chief Election commissioner. An officer of the Election Commission who was an observer at the counting, reported about the incidents to the Commission. The appellant met the Chief Election Commissioner and requested him to declare the result. Eventually, the Chief Election Commissioner issued a notification which stated that taking all circumstances into consideration the Commission was satisfied that the poll had been vitiated, and therefore in exercise of the powers under Article 324 of the Constitution, the poll already held was cancelled and a repoll was being ordered in the constituency. The appellant contended that before making the impugned order, the Election Commission had not given him a full and fair



hearing and all that he had was a vacuous meeting where nothing was disclosed. The Election commission contended that a prior hearing has, in fact, been given to the appellant. In addition, on the question of application of the principles of natural justice, it was urged by the respondents that the tardy process of notice and hearing would thwart the conducting of elections with speed, that unless civil consequences ensued, hearing was not necessary and that the right accrues to a candidate only when he is declared elected. This contention, which has found favour with the High Court, was negatived by this Court. Delivering the judgment of the Court, V.R. Krishna Iyer, J., lucidly explained the meaning and scope of the concept of natural justice and its role in a case where there is a competition between the necessity of taking speedy action and the duty to act fairly. It will be useful to extract those illuminating observations, in extenso:

“Once we understand the soul of the rule as fair play in action – and it is so – we must hold that it extends to both the fields. After all, administrative power in a democratic set-up is not allergic to fairness in action and discretionary executive justice cannot degenerate into unilateral injustice. Nor is there ground to be frightened of delay, inconvenience and expense, if natural justice gains access. For fairness itself is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction. It is not a bull in a china shop, nor a bee in one’s bonnet. Its essence is good conscience in a given situation; nothing more – but nothing less. The ‘exceptions’ to the rules of natural justice are a misnomer or rather are but a shorthand form of expressing the idea that in those



exclusionary cases nothing unfair can be inferred by not affording an opportunity to present or meet a case.”

Following the aforesaid principles enunciated by the Hon’ble Apex Court which has got crystalized in the case of B. Karunakar (supra) as relied by Hon’ble Apex Court in the case of Gorkha Security Services (supra), I would reach to a conclusion that the impugned order as contained in Annexure-‘4’ to the writ application has been passed in violation of the principles of natural justice without giving an effective hearing to the petitioners by the Central Government, hence, it is liable to be set aside on this ground alone.

The impugned order dated 7th June, 2018 as contained in Annexure-‘4’ to the writ application is, thus, quashed.

The matter is remitted back to the respondent no. 1 for taking an appropriate decision afresh after making available a copy of the inquiry report to the petitioners with grounds if the Central Government proposes to proceed against them, giving them an opportunity to submit their stand. The Central Government shall pass an appropriate reasoned order within a period of four months from the date of receipt/production of a copy of this order. As the matter is being remanded, this court is not going into the merit of other contentions. The competent authority in Central Government shall apply it’s independent



mind to the contentions of the petitioner. It will be open for the petitioners to raise all such pleas which may be available to them in response to the proposed action.

This Writ Application is, thus, allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	12.03.2019
Uploading Date	28.03.2019
Transmission Date	

