IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: December 20, 2021

\+ W.P.(C) 6041/2021, CM Nos. 19109/2021 & 27059/2021

SANJAY KUMAR

..... Petitioner

Through: Mr.Vinay Garg, Sr. Adv. with Mr.Mritunjay Kr. Singh, Mr.Pawas Kulshresth, Mr.Parv Garg, Mr.Karandeep Singh Rekhi and Ms.Ranjana Tiwary, Advs.

versus

UNION OF INDIA THROUGH THE SECRETARY & ORS.

..... Respondents

Through: Mr. Asheesh Jain, CGSC with Ms. Mukula Sharma & Mr. Jatin Puniyani, GP for UOI

Mr. Raman Kapur, Sr. Adv. with Mr. Varun Kapur, Adv. for R-3 & R-5

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. This petition has been filed with the following prayers:-

> *"(i) Issue a writ of certiorari and/or any other appropriate writ, order and/or directions for quashing/setting aside the impugned letter dated 12.06.2021 issued by the Respondent No. 4 on behalf of the Respondent No. 2 and the letter dated*

23.06.2021 by the Respondent No. 3 and all consequential proceedings emanating therefrom as illegal, unconstitutional, null and void.

(ii) Issue a writ of certiorari and/or any other appropriate writ, order and/or directions and restrain the Respondent No.3 from taking or initiating any action against the Petitioner in scheduled COA Meeting dated 02.07.2021.

(iii) Award suitable compensation for causing mental and physical harassment to the petitioner.

(iv) Pass any other or further order which this Hon'ble Court may deem fit and proper in the interest of justice"

2. The petitioner in the present petition is the Executive Director-cum-Secretary ('EDCS', for short) at the Carpet Export Promotion Council ('CEPC', for short and respondent No. 3 herein) and is seeking to quash and set aside the letter dated June 12, 2021 issued by the Development Commissioner (Handicrafts), Ministry of Textiles, Government of India (respondent No. 2 herein), and the letter dated June 23, 2021 by the respondent No.3 whereby the petitioner has been issued a Show Cause Notice and suspended from the post of EDCS.

3. The petitioner applied for the post of EDCS at respondent No. 3/CEPC following advertisements dated August 30, 2017, August 31, 2017 and September 03, 2017. Thereafter, the petitioner along with other candidates was shortlisted and called for interview on January 14, 2017 by the Selection Committee. After interview, the Selection

Committee empanelled the petitioner at Serial No. 2 for further consideration. Vide letter dated November 21, 2017, the respondent No. 3 sought approval from respondent No. 2 with regard to engagement of the petitioner as EDCS on a probation of one year. Consequently, the respondent No. 2, vide letter dated November 27, 2017, conveyed to respondent No. 3 that it had been directed to communicate approval of the Competent Authority for engagement of the petitioner as EDCS in the respondent No. 3 on a probation of one year as per the Service and Recruitment Rules in pursuance of the powers conferred under Article 40(6) of the Article of Association ('AOA', for short) of the respondent No. 3. On November 28, 2017, the petitioner received a letter from the respondent No. 3 regarding his engagement as EDCS on probation for a period of one year in the 7th CPC Pay Matrix Level 12, i.e., ₹78800/- to ₹2,09,200/- plus allowances as admissible under the rules of respondent No. 3. Subsequently he was appointed to the said post of EDCS vide order December 01, 2017. The said order also entailed that during the probation period, the petitioner's work shall be assessed and that his services could be terminated at any time if his work and conduct was found unsatisfactory. Pursuant to this order of appointment, the petitioner joined his services on January 01, 2018.

4. It is stated that vide order dated February 01, 2018, the respondent No. 3 decided to re-fix the pay of the petitioner from ₹78,800/- to ₹88,700/- in the Index-5 of the 7th CPC Pay Matrix Level 12, w.e.f. January 01, 2018. Thereafter, vide letters dated December 28, 2018 and July 22, 2019, respondent No. 3 intimated the petitioner that

the Committee of Administration ('COA' for short) of CEPC had extended his probation period for six months, i.e. from January 01, 2019 to June 30, 2019 and subsequently for a further six months, i.e., from July 01, 2019 to December 31, 2019 respectively on the same terms and conditions. According to the petitioner, the COA authorised the Chairman of the respondent No. 3 to decide the matter regarding the regularisation of services of the petitioner as EDCS, in consultation with the officials of respondent No. 2 w.e.f January 01, 2018 as per the approved pay scale of EDCS at Level 13 Pay Matrix of 7th CPC plus usual allowances as admissible to the employees. Thereafter, the respondent No. 3 passed an order whereby the services of the petitioner as EDCS got confirmed w.e.f. January 01, 2018 in the said pay scale, with financial benefits extended from April 01, 2020.

5. It is stated that the tenure of the then Chairman of respondent No. 3 was due to expire on June 17, 2021, since he had taken charge on June 18, 2019 for a term of two years. Due to the outbreak of COVID-19 pandemic and the consequential lockdown, the petitioner vide letter dated May 18, 2021 requested the respondent No. 2 to grant extension of tenure to the then Chairman and postpone the elections till the situation attained normality. Further, vide letter dated May 24, 2021, the then Chairman of respondent No. 3 informed the respondent No. 2 regarding confirmation of services of the petitioner as EDCS and that the said confirmation order dated May 18, 2021 has been duly issued to the petitioner. However, vide letter dated June 12, 2021, the respondent No. 4 on behalf of the respondent No. 2, directed to discharge the petitioner from the post of EDCS with immediate effect and to initiate

fresh process to appoint a new EDCS. It is stated that the said letter was issued overlooking the Office Order bearing File No. 8/5/2017-EP issued by the respondent No. 1 in August 2020 wherein it was stated that in consonance with the vision of 'Minimum Government and Maximum Governance', all Executives Directors of Textiles Export Promotion Councils, if posted/nominated with the approval of the Government, stood withdrawn. It was further directed through the said Office Order that respective Councils may appoint their own Executive Directors, meaning thereby that the Government shall not interfere with the services of such officials of the Councils, be it in matters of appointment, removal, suspension or termination. Furthermore, vide letter dated June 14, 2021, the respondent No. 4 required the then Chairman of the respondent No. 3 to submit a compliance report on the action taken in respect of removal/discharge of the petitioner and the initiation of the process for appointing a new EDCS. The then Chairman of the respondent No.3 thought it prudent to discuss the issue in the impending meeting of the COA. In the 186^{th} meeting of the COA held on June 15, 2021, the issue relating to confirmation of services of the petitioner was discussed. Resultantly, the COA appreciated the decision and ratified the same unanimously and also deliberated upon the letter dated June 12, 2021 sent by the respondent No. 2 for discharge of the petitioner. The COA unanimously advised the then Chairman of the respondent No. 3 to reply to respondent No. 2 that the letter dated June 12, 2021 was issued in violation of law and the powers vested under the Memorandum of Association ('MOA', for short) and AOA of the respondent No. 3.

6. Accordingly, the then Chairman of the respondent no. 3 issued letter dated June 16, 2021 to the respondent No. 4 and expressed his displeasure that the letter dated June 12, 2021 was received open and copies of the same had already been circulated amongst the Press and WhatsApp group of staff members of respondent No. 3. He also stated that he has documentary evidence to show that the envelope containing the said letter was handed over to some unauthorised persons who misused the same for their ulterior motives and thereafter, passed instructions as per their whims and fancies. The relevant issues discussed in the said letter are as follows:

a) The respondent No. 4 was requested to conduct an enquiry at the earliest qua the open cover and its inappropriate delivery.

b) The respondent No 4 was informed that the powers for taking action in relation to removal/discharge of the services of the petitioner vested only with the COA of respondent No. 3. In the said letter reference was drawn towards Article 40 of the AOA that deals with Powers of the COA. It was reiterated that as per Article 40(b)(6) the AOA, the COA has been entrusted with the powers to appoint, remove or suspend employees. It was also stated that only in the case of appointment/removal of EDCS or any other officer equivalent thereto that prior approval of the respondent No. 1 was required to be obtained by the COA.

c) The respondent No. 4 was informed that the petitioner joined as EDCS on January 01, 2018 on probation till January 01. 2019, after which, his probation was extended till January 2020. Accordingly, an Office Order with respect to confirmation of services of the petitioner as EDCS was issued by the respondent No. 3.

d) With regard to action taken for discharging the petitioner from the post of EDCS, it was also submitted that AOA did not permit him to remove, dismiss or reduce in rank any employee of the respondent No. 3, unless so authorised by the COA after holding an inquiry into the allegation against such employee. During such inquiry, the employee must be informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such inquiry, to impose on such employee any such penalty, such employee has to be given a reasonable opportunity of making representation against the penalty proposed.

e) It is only when the acts of the employee are found to be in derogation to the objects (as provided in the MOA/AOA) of the respondent No. 3 that an inquiry may be initiated by COA with prior approval of the Central Government and the Ministry of Commerce/Textiles.

f) It is only in matters of public interest that the Ministry of Textiles/respondent No. 1, shall have the power to issue directives to the respondent No. 3, which it shall be bound to follow as warranted under Article 75 of the AOA. It was implicit from bare perusal of Article 75 of the AOA that respondent No. 1 has no power to issue directives to the respondent No. 3 in matters that are not connected with public at large or qua internal dispute relating to functioning of the respondent No. 3.

g) Lastly, the respondent No. 4 was requested to withdraw directions issued vide letter dated June 12, 2021.

7. On June 17, 2021, the respondent No. 4 declined the request for extension of the tenure of the then Chairman of respondent No. 3 and directed him to relinquish his charge and the respondent No. 5, who was the present Chairman of the respondent No.3, Vice Chairman at the time, was directed to take charge as the new Chairman of respondent No. 3. It is stated that the respondent No. 5 had already completed his two-year tenure as the Vice Chairman on February 15, 2019. Immediately on taking charge as the Chairman, the respondent No. 5 directed the petitioner to convene a meeting of the COA through physical-cum-virtual mode on July 02, 2021, though a recent meeting of the COA was convened on June 15, 2021. He also directed the petitioner to include the issue pertaining to appointment of a new EDCS, as an agenda in the Notice for the said meeting. It is stated that instead of waiting for the outcome of the proposed meeting of the COA scheduled to take place on July 02, 2021, the respondent No. 5 vide email dated June 23, 2021 sought permission and consent of the members of the COA to issue a show cause notice and suspend the petitioner from his post. Without waiting for any response/consent, the respondent No. 5 vide letter dated June 23, 2021, issued the show cause notice and suspended the petitioner from his post with immediate effect. It is stated that the petitioner accepted the letter under protest.

8. It is also stated that majority of the members of the COA strongly objected to the act of the respondent No. 5 and stated that the letter dated June 23, 2021 should not have been issued without waiting for their response/consent, particularly when the meeting of the COA was to convene on July 02, 2021 to discuss the same issue. Therefore,

the petitioner requested respondent No. 5 and respondent No. 3 that he be allowed to discharge his duties as the EDCS till a decision in this regard is taken by the COA in the meeting scheduled to take place on July 02, 2021. However, the respondent No. 5 has not acceded to the said request.

9. A counter affidavit has been filed on behalf of the respondent Nos. 3 and 5, wherein, at the outset, an issue of maintainability of this writ petition has been raised. It is contended that the respondent No. 3 is not a State as envisaged by Article 12 of the Constitution of India. Even if the respondent No. 3 is held to be performing public duty and is amenable to writ jurisdiction of this Court, only those decisions of the respondent No. 3 which have a public element can be judicially reviewed. It is contended that the impugned action is essentially of a private character and as such the petition is not maintainable on merits and is liable to dismissed.

10. That apart, it is stated that under Article 75 of the AOA of respondent No. 3, the Central Government in the Ministry of Commerce/Textiles has power to issue directions to the respondent No. 3 in public interest relating to its functioning. Further, under Article 40 (6) of the AOA, the COA comprising of 18 members including the Chairman and Vice Chairman, three government nominees and the Member Secretary (EDCS), has power to remove or suspend employees provided that appointment or removal of the EDCS/ Deputy Director or Assistant Director or any other officer equivalent thereto has to be with the prior approval of the Central Government. It is also stated that the prior approval so mentioned would be that of the

Secretary of the concerned Ministry, being the Administrative head. A letter dated December 26, 2008 issued by the respondent No. 1 approving the appointment of a former EDCS has been annexed to the affidavit to show that the approval of the Central Government is required under Article 40 (6) of the AOA.

11. That apart, it is stated that the petitioner was appointed on probation for a period of one year w.e.f. January 01, 2018 after interview and selection with the approval of the Central Government. Thereafter, vide letter dated December 28, 2018, the probation period was extended by 6 months up to June 30, 2019 and vide letter dated July 22, 2019, it was extended by another 6 months up to December 31, 2019 by respondent No.3. It is averred that these two extensions of six months each of probation period of the petitioner did not have any approval under Article 40(6) of the AOA from the Central Government. The petitioner neither apprised the COA of this fact nor put up the same in the agenda of the subsequent meetings and continued as EDCS without the approval envisaged under Article 40(6). It is also stated that certain members of the COA raised objections about the minutes of the 181st and 182nd meetings of the COA, to which no action was taken by the petitioner as mandated by Article 54 of the AOA.

12. A meeting of the COA was called by the petitioner on June 15, 2021 which was objected to by 9 out of 17 Committee Members, as it was being held in physical mode during the situation that was prevailing due to the pandemic and also because Article 43 of the AOA was violated by the petitioner, as he had not sent the agenda of the meeting in the specified time.

13. In response to the statement of the petitioner that the respondent No. 2 had, vide letter dated May 18, 2021 directed the then Chairman of the respondent No. 3 to confirm the services of the petitioner, it is submitted that the present Chairman/respondent No. 5 vide letter dated June 29, 2021 enquired to the respondent No. 2 whether they had issued the letter dated May 18, 2021. In reply thereto, the respondent No. 2 stated that as per official record, no such letter was issued by them. On June 12, 2021, the respondent No. 2 issued a letter to the then Chairman of the respondent No. 3 under Article 75 of the AOA for immediate discharge of the petitioner from the post of EDCS and further to initiate the process to appoint a new EDCS.

14. That apart, it is stated that various complaints against the functioning of the petitioner as EDCS were received from exporters, the staff of respondent No.3, as well as a Member of Parliament (Lok Sabha) from Bhadohi, U.P. -a major carpet producing area.

15. On June 16, 2021, i.e., the next day after the meeting of the COA, the petitioner withdrew ₹4,19,353/- from the Council and transferred the same to his personal bank account without the minutes of the meeting being approved by the COA or getting approval as per Article 40(6) from the Ministry of Textiles. All essential official mails, bank signatory etc. were in the hands of the petitioner. All these facts were placed before the respondent No. 5 who took over as Chairman w.e.f. June 18, 2021. In view of the above mentioned aspects, the conduct of the petitioner and the letter dated June 12, 2021 containing directions under Article 75, the respondent No. 5 issued show cause notice to the petitioner on June 23, 2021 and placed him under

suspension after obtaining consent of the majority members of the COA and called upon him to furnish his reply within 15 days.

16. Thereafter a meeting of the COA was called on July 02, 2021 in which 15 Committee Members including the Chairman were present. Nine Committee Members including the Chairman/respondent No. 5 re-affirmed their approval to the show cause notice and the suspension order, whereas six Committee Members said that since the matter is *sub-judice*, consequent to the filing of this petition, they would not comment on the same. After detailed discussions, the COA authorised the Chairman to take any decision in the matter as per rules and if need be, concurrence of the Committee Members may be obtained by email.

17. It is further averred that the decision of the COA taken in the meeting held on June 15, 2021, apart from being in violation of Article 43 and 40 (6) of the AOA, was based on the alleged letter dated May 18, 2021, the existence of which the respondent No. 2 has denied.

18. A counter affidavit has also been filed by the respondent Nos. 1, 2 and 4 wherein it is stated that the contentions of the petitioner that the letter dated June 12, 2021 issued by the respondent No. 4 is in violation of the AOA of respondent No. 3 and that the power to remove, suspend or terminate the petitioner lies with the COA, are misconceived. In this regard, it is stated that as per Article 75 read with Article 76 of the AOA, the respondent Nos. 1, 2 and 4 have been vested with the powers to issue directions to respondent No. 3 as to its functioning in various matters, especially in public interest and to ensure that the respondent No. 3 complies with such directions. Further, the said respondents also have the power to call for such reports,

returns and other information with respect to the property and other activities of the Council as may be required from time to time.

19. It is further stated that the power of the COA as per Article 40(6) of the AOA of respondent No. 3 to appoint or remove the EDCS/Deputy Director or Assistant Director, or any other officer equivalent thereto can be exercised only with the prior approval of the Central Government in the Ministry of Commerce/ Textiles.

20. That apart, it is submitted that the reasons which prompted the issuance of the letter dated June 12, 2021 were the various complaints being received in the office of the respondent Nos. 1, 2 and 4, pointing out certain discrepancies being carried out by the petitioner in his official capacity. Some of the complaints alleging serious irregularities, contravention of bye-laws, gross misconduct including irregularities in the expenses being incurred by the Council, tenders not being called for as per specified Rules and norms and instead making purchases from friends and acquaintances out of the expenses of the Government and the funds of carpet exporters, no permission being taken from the Committee before making cash withdrawals, irregularities in the appointment of new employees etc., warranted detailed inquiry into the affairs of the Respondent No. 3.

21. It is stated that the appointment of the petitioner as EDCS on probation for a period of one year was given effect only with the approval of the respondent Nos. 1, 2 and 4 and likewise the extension of probation period and/or confirmation has to be approved by the said respondents under Article 40 (6) of the AOA. However the two extensions granted to the petitioner by the respondent No. 3, i.e., on

December 28, 2018 and July 22, 2019, was without any such approval, thereby rendering the extensions a nullity. It is contended that if that be so, the stand of the petitioner that his services stood confirmed by the respondent Nos. 1, 2 and 4 does not hold any ground.

22. It is further stated that since the petitioner's response to the show cause notice/charge memo dated June 23, 2021 and the proceedings initiated pursuant thereto by the respondent No. 3 are still pending, to avoid any prejudice being caused to the petitioner in any pending proceedings, some material and information in the knowledge of the respondent Nos. 1, 2 and 4, have not been filed with the affidavit. However, it is stated that the same shall be placed before this Court in a sealed cover subject to any order in that regard.

23. A rejoinder has been filed on behalf of the petitioner against the counter affidavits filed by the respondents wherein the contentions set forth in the Writ Petition have been reiterated. Additionally, it is stated that in view of the decisions of the COA, the respondent No. 2/ Development Commissioner (Handicrafts), the Chairman of the Appointment Committee of EDCS and the Chairman of the respondent No. 3 discussed the matter on May 17, 2021 and after evaluating the performance of the petitioner decided to confirm his services. Thereafter, vide letter dated May 18, 2021, respondent No. 2 set out an advisory to respondent No. 3 to issue office order in relation to confirmation of the services of the petitioner as EDCS in the respondent No. 3. The said Order dated May 18, 2021 and Note-sheet dated May 17, 2021 was sent by the respondent No. 2/Development Commissioner (Handicrafts) as attachment through his official email

adress to the then Chairman of the respondent No. 3 on his official as well as personal email IDs on May 18, 2021 at 01:30 PM. After receipt of the said email with attached Order & Note-sheet, the then Chairman of respondent No. 3 forwarded the same to the Consultant of respondent No. 3 for issuance of Order dated May 18, 2021 under his digital signature. It is stated that the records including email and the attachments are in custody of the respondent No. 3 in electronic form.

24. It is stated that the respondent No. 5 had sent emails on June 23, 2021 to the members of COA seeking their permission to issue show cause notice to the petitioner. However, he did not wait for the consent of all the members, as only six members had responded before he issued the show cause notice on the same day at 6 PM. That apart, it is stated that nine members of the COA, through their emails had advised the respondent No. 5 not to issue show cause notice to the petitioner till the meeting of the COA scheduled on July 02, 2021.

25. It is also stated that a letter dated April 09, 2021 was sent by the respondent No. 5 to the Minister of Textiles to influence the respondent No. 1 and dislodge the petitioner from his post. It is alleged that the respondent No. 5 along with some others have been meeting with some Members of Parliament to lobby and persuade the Minister of Textiles to discharge the petitioner from his post.

26. It is averred that the reply of the respondent No. 4, to the query of the respondent No. 5 dated June 29, 2021, was sent in *mala fide* and without any consultation with his superior officer, i.e., respondent No. 2. It is stated that the said reply was sent from his

personal email address, even though the query was sent by the respondent No. 5 from his official email address.

27. It is submitted that the respondent No. 3, having been set up and being provided funds by the respondent No. 1, the employees of the respondent No. 3 are entitled to the safeguards under the provisions of Articles 309, 310 and 311 of the Constitution of India. The respondents have failed to follow the procedures laid down under the AOA of the respondent No. 3 and the Service Rules where under, it was incumbent on the respondents to hold an inquiry into the the allegations against the petitioner. That apart, it is stated that the allegations made in the impugned orders do not fall within the definition of 'misconduct' as defined under Rule 17 of the Service Rules. It is stated that the major penalty of removal or dismissal from the service in terms of Rule 18 of the Service Rules can only be awarded in a case in which the charge of acceptance from any person of any gratification has been proved against the delinquent official in a Departmental Enquiry.

28. An additional affidavit has been filed on behalf of the petitioner wherein it is alleged that the respondent No. 5 had instructed the officiating EDCS to state that no order was passed on May 18, 2021, consequent to which it is stated in the counter affidavit filed on behalf of respondent Nos. 3 and 5 that no order/letter dated May 18, 2021 exists.

29. That apart, the petitioner through his counsel filed an RTI application seeking information regarding the following documents:-

i. A copy of the letter dated May 18, 2021 issued by respondent No. 2 regarding confirmation of services of the petitioner as EDCS.

ii. A copy of the email through which a copy of letter dated May 18, 2021 was sent by respondent No. 2 to the then Chairman of respondent No. 3.

iii. A copy of the email/letter issued by respondent No. 2 indicating receipt of the letter dated June 16, 2021 sent by the then Chairman of respondent No. 3.

iv. A copy of email/letter showing reply sent by respondent No. 2 to the letter dated June 16, 2021 sent by the then Chairman of respondent No. 3.

30. The respondent No. 4 provided the information sought along with a copy of the letter dated May 18, 2021 issued by the respondent No. 2 and the letter dated June 16, 2021. It is the case of the petitioner that the Noting dated May 17, 2021 and the letter dated May 18, 2021 confirming his service was in the records of respondent No. 3, when the respondent No. 5 along with the Officiating EDCS, with *mala fide*, sought information from respondent No. 4 qua the same on June 19, 2021. The respondent No. 4 acted in connivance with the respondent No. 5 and the officiating EDCS to conceal the existence of the letter dated May 18, 2021.

SUBMISSIONS

31. Mr. Vinay Garg, learned Senior Counsel appearing on behalf of the petitioner has submitted that the respondent No.3 is a non-profit making Company, set up by the respondent No.1 in 1982 under the relevant provisions of the Companies Act, 1956, and has three

Government Nominees in the COA, who regularly appear in its meetings. The primary source of funds of the respondent No. 3 is the grants received from the respondent No.1. Being a Government company, it enjoys monopoly in the activities related to trade of carpet and its promotion in India. The respondent No. 1 exercises control, actual as well as pervasive, over the affairs of the respondent No. 3 and hence, is amenable to the writ jurisdiction of this Court. Relevant provisions of the MOA and the AOA as pointed out by Mr. Garg, are reproduced as under: -

> *"3A Main objects to be pursued by the Company on its incorporation to support, protect, maintain, increase and promote the export of hand knotted carpets, woollen druggets and floor coverings by such methods as may be necessary or expedient."* ***(Pg. 54 of writ petition).***
>
> *3.A.(i) (a): To undertake market studies in foreign countries regularly as well as on ad-hoc basis.*
>
> *(b) To send out trade delegation/sales-cum-study teams to foreign countries.*
>
> *(c) To collect statistic and other information regarding the manufacture of trade in handmade carpets and floor coverings manufactured in various countries.*
>
> *(f) To act as Registering Authority, if so decided by the Government.*
>
> *(h) To lay down standards of quality and packing in respect of handmade carpets and floor coverings intended for export.* ***(Pg. 54-55 of the Writ Petition).***
>
> *3.A.(ii) To enunciate just, equitable principles to govern the trade in handmade carpet and floor coverings and to set up a code of codes of practices for the general guidance of exporters and manufactures and further to simplify transactions relating to the export of handmade carpets and floor coverings.* ***Pg. 56 of the Writ petition).***

5.3 Except with the previous approval of the Central Government, no remuneration or other benefit in money or money's worth shall be given by the Council to any of its members, whether officers or servants of the Council or not, except payment of out-of-pocket expenses, reasonable and proper interest on money lent, or reasonable and proper rent on premises let to the Council.

5.4 Except with the previous approval of the Central Government, no member shall be appointed to any office under the Company which is remuneration by salary, fees or any other manner nor accepted by sub-clause (3).

5.6 Any addition, alteration, modification or removal of any clause in these Memorandum of Association and Rules and Regulations or dissolution of the Council shall not be made except by the Council in General Meeting and shall become operative only if and after the Government of India in the Ministry of Commerce/Textiles and Regional Director, Company Law Board, approve the same in writing." ***Pg. 58-59 of writ petition).***

<u>Articles of Association (AoA):</u>

Article 14: *All Council members other than Government Nominees will have to pay w.e.f. 1st April, 2016 an Entrance Fee of Rs.2,000.00 (one time) and Annual Membership Subscription………"*

Article 22 *of the AOA prescribes for composition of COA which includes Govt. representatives shall include the following: -*

i. Chairman 1

ii. Vice-Chairman 1

iii. Elected Members 18 (Including Chairman & Vice-Chairman)

iv. Government Nominees- 3

v. Member Secretary 1 (Executive Director- cum- Secretary)

Article 40(b) (6): *to appoint and at its direction remove or suspend employees, officers, clerks, agents servants whether permanent, temporary or special as it may, from time to time, think fit and to determine their powers and duties and fix salaries or emoluments and to require securities in such instances and to such amount as it may deem fit, provided that the appointment or removal of Executive Director-cum-Secretary/Deputy Director or Assistant Director, or any other officer equivalent thereto shall be with the prior approval of the Central Government in the Ministry of Commerce/Textile.* ***(Pg. 76 of writ petition).***

Article 65: A certified true copy of the account and auditors report shall be forwarded to the Government. ***(Pg. 85 of writ petition)***

Article 75: *The Central Government in the Ministry of Commerce/Textile shall have powers to issue directives to the Council, in public interest from time to time relating to the functioning and properties of the Council. The Council shall be carrying out those directives faithfully.*

Article 76: *The Government will have the power:*

i) To give directions to the Council as to the exercise and performance of its function in matters involving national public interest and to ensure that the council gives effect to such directions.

ii) To call for such reports, return s and other information with respect to the property and other activities of the Council as may be required from time to time.

iii) To approve the council's revenue and capital budget i.e. Revised Estimates and Budget Estimates, and

iv) To approve agreements involving foreign collaboration, if any, proposed to be entered into by the Council."

To buttress his arguments, Mr. Garg has referred to the Judgments of the Supreme Court in the cases of ***Ajay Hasia v. Khalid Mujib***

Sehravardi, (1981) 1 SCC 722 and ***Pradeep Kumar Biswas v. Indian Institute of Chemical Biology, (2002) 5 SCC 111.***

32. He would submit that the COA, in its 181st meeting authorised the Chairman of the respondent No. 3 to take a call in the matter regarding regularisation of the services of the petitioner and the fixation of his salary as per approved service rules in consultation with respondent No. 2. Again in the 182nd meeting, the COA ratified the minutes of the 181st meeting and reiterated that the decision about the regularisation of the petitioner could be finalised under all circumstances by June 2020. Chairman of the respondent No. 3 held a videoconference meeting and after evaluating the performance of the Petitioner decided to confirm his services on May 17, 2021. Thereafter, respondent No. 2 set out advisory to respondent No. 3 to issue office order in relation to regularisation of the services of the petitioner through email on May 18, 2021, which included DO letter No. DC(HC)/Misc./CEPC/2021-22 and Note-Sheet dated May 17, 2021. After receipt of the said email from respondent No. 2, the respondent No. 3 passed an order whereby the services of the petitioner as EDCS got confirmed w.e.f. January 01, 2018 as per the approved Pay Scale with financial benefits extended from April 01, 2020. Vide letter dated May 24, 2021, the then Chairman of respondent No. 3 informed respondent No. 2 regarding confirmation of services of the petitioner as EDCS. Subsequently, in its 186th meeting, the COA appreciated the above said decision of confirmation of services of the petitioner and ratified the same unanimously. It is submitted by Mr. Garg that Rule 13 of the Service Rules, does not provide powers to extend probation period. It only talks about the powers of the competent authority to terminate during the probationary period. Reliance has been

placed on the Judgment of the Supreme Court in the case of ***Jaswantsingh Pratapsingh Jadeja v. Rajkot Municipal Corporation, (2007) 10 SCC 71,*** to contend that if the period of probation could not have been extended, he will be deemed to have been confirmed on expiry of the period of probation.

33. He would also submit that the directive dated June 12, 2021 of the respondent No. 4 acting on behalf of respondent No. 2, to discharge the petitioner from his post, was issued overlooking the fact that respondent No. 2 had issued advisory to respondent No. 3 to regularise the service of the petitioner vide email dated May 18, 2021. The said letter dated June 12, 2021 was issued with *mala fide*, as is evident from the fact that it was dispatched with an unauthorised person in an open envelope with 'confidential' endorsed on it. It is assured that the said letter was issued without appreciating the service Rules and recording reasons as to why such directions regarding discharge of the petitioner were being issued. Reliance has been placed on the Judgment of the Supreme Court in the case of ***Union of India v. Mohan Lal Kapoor, (1973) 2 SCC 836*** and ***Kranti Associates Pvt. Ltd. & Anr. v. Masood Ahmed Khan & Ors, (2010) 9 SCC 496*** to contend that reasons must show application of mind by authorities in arriving at a particular conclusion.

34. He would also state that on June 23, 2021, the petitioner had sought permission of the respondent No.5 to initiate action against Mr. Mahavir Pratap Sharma, former Chairman of respondent No. 3 and lodge an FIR against one Mr. Raja Sharma, as decided by the COA in the 186th meeting dated June 15, 2021. Immediately thereto, the respondent No.5 issued the show cause notice and placed the petitioner under suspension. Even though the respondent No. 5 sent emails to the members of the COA,

only six members responded to it, that too without application of mind, before the show cause notice was issued. He has placed reliance on the Judgments of the Supreme Court in the cases of ***Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia and Ors.,(2004) 2 SCC 65*** and ***Zenit Mataplast Private Limited v. State of Maharashtra and Ors., (2009) 10 SCC 388*** to contend that the hasty manner in which the petitioner was suspended would demonstrate *mala fide* on part of the respondents. It is submitted that the show cause notice and the order of suspension of the petitioner was issued in an arbitrary manner without any reasonable ground and in a vindictive abuse of power. In this regard, he has relied upon the Judgments of the Supreme Court in the cases of ***State of Orissa v. Bimal Kumar Mohanty, (1994) 4 SC 126; Union of India v. Ashok Kumar Aggarwal, (2013) 16 SCC 147*** and ***Rajneesh Khajuria v. Wockhard Ltd. (2020) 3 SCC 86.***

35. Mr. Garg further submitted that the respondent No. 5 issued the show cause notice and suspension order as a result of his grudge and personal bias against the petitioner. Reliance in this regard has been placed on the Judgments of the Supreme Court in the cases of ***S. Parthasarathi v. State of Andhra Pradesh, (1974) 3 SCC 459; Ranjit Thakur v. Union of India and Ors., (1987) 4 SCC 611; Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant and Ors., (2001) 1 SCC 182*** and ***State of Gujarat and Anr. v. Justice R. A. Mehta (Retd.) and Ors., (2013) 3 SCC 1***. That apart, the respondents have failed to follow the procedure laid down under the AOA and the Service Rules where under, it was incumbent upon the respondents to hold an inquiry into the allegations, if any, against the petitioner for committing breach of any rules. It is also stated that the

petitioner was entitled for subsistence allowance; however, no such subsistence allowance has been paid by the respondent Nos. 3 and 5 to petitioner from June 23, 2021. That apart, the salary for the period from June 01, 2021 to June 23, 2021 was also not paid to the petitioner. Reliance in this regard has been placed on the Judgment of the Supreme Court in the case of ***Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Anr., (1999) 3 SCC 679***.

36. Mr. Garg has contested the allegation of the respondent Nos. 3 and 5 that a sum of ₹4,19,353/- was wrongfully transferred to the account of the petitioner. He would submit that the amount was transferred to the account as arrears, and the same was discussed in the meeting of the COA held on July 02, 2021 in the presence of respondent No. 5. It is further stated that the respondent No. 5 had also tried to harass the petitioner in the past, by serving a legal notice dated November 18, 2020, whereby baseless and fictitious allegations were made against him. However, after the petitioner had duly responded to the said notice through his Counsel, no further action was taken by the respondent No. 5.

37. Mr. Raman Kapur, learned Senior Counsel appearing on behalf of the respondent Nos. 3 and 5 would state that the respondent No. 3 is not amenable to the Writ Jurisdiction of this Court, as:-

(i) No funds are provided by Central Government, except for projects / fairs etc, for running of the respondent No. 3; it is run from the contributions by export members and its own resources.

(ii)None of its employees are appointed by the Government and are entitled for pensionary benefits or CGHS facility.

(iii) All employees are paid salary and allowances from the resources of the respondent No. 3 and no government accommodation is provided to them.

(iv) There are no Government nominees in the Committee of Administration.

38. That apart, he has relied on the Judgment of the Supreme Court in ***K.K. Saksena v. International Commission on Irrigation and Drainage and Ors., Civil Appeal No. 11499/2014*** decided on December 18, 2014, wherein the challenge was to termination of an employee of the respondent therein to contend that even if a body performing public duty is amenable to writ jurisdiction, all its decisions are not subject to judicial review. Only those decisions which have public element therein can be judicially reviewed under writ jurisdiction. It is submitted that no mandamus could be issued in this case, as the impugned action of issuance of show cause notice and suspension order does not involve an element of public law and no public law rights have accrued in favour of the petitioner, which have been infringed. It is his contention that therefore, the petition is liable to be dismissed.

39. Mr. Kapur would also submit that no reply has been filed by the petitioner to the show cause notice, which was to be done within 15 days of its issuance and meanwhile he has been placed under suspension till such time he submits his reply for consideration of the competent authority to decide a suitable action. It is stated that the present petition is premature as it is settled law that the Court may not interfere at the stage of issuance of show cause notice and leave it to the authorities to decide the same.

40. He has also submitted that the composition of the COA is set out in Article 22 of the AOA, and there are no government nominees in the same. As per Article 24.3 of the AOA, there is no election to the office of the Chairman as he/she is appointed via the Vice Chairman route and the tenure of the Chairman is fixed for a period of two years. There is no bar to re-election, but there has to be a gap of four years. On the expiry of term of Chairman, the Vice Chairman shall automatically become the Chairman. The elections to the retiring members of the COA were postponed by the decisions taken at the 35th, 36th and 37th Annual General Meetings of the respondent No. 3 due to involvement in various export promotion events and amendments to the Election Rules which required approval of the Government of India in Ministry of Textiles and by the Registrar of Companies. It was decided in the said meetings that existing members of the COA would function and discharge their powers under Para 3A VII of the Election Rules, which provides that the members of the COA shall be deemed to continue in office until their successors are elected. However, the Central Government, vide letter dated June 18, 2019 under Article 75 of the AOA directed the then chairman Mr. Mahavir Pratap Sharma, to relinquish charge of Chairman with immediate effect as his tenure was completed in December 2018, and Mr. Siddh Nath Singh the then 1st Vice Chairman to take over charge of the Chairman. It is pointed out that earlier there were 2 Vice Chairmen but after amendments to MOA, AOA and Rules there is only one Vice Chairman in the respondent No. 3. Thereafter, since tenure of Mr. Siddh Nath Singh came to an end on June 17, 2021, the Ministry of Textiles, Government of India, vide letter dated June 17, 2021 under Article 75 of the AOA, directed Mr. Siddh Nath Singh to relinquish his charge from the post

of Chairman and Mr. Umar Hameed, respondent No. 5, being 2nd Vice Chairman was directed to take over as Chairman and after taking charge, to conduct elections for the post of Vice Chairman along with retired/retiring COA members in accordance with amended AOA and Election Rules. Elections have since been held and members elected have assumed their respective offices. It is stated that therefore, the respondent No. 5 continued as Vice Chairman under the Rules and was rightly appointed as Chairman of respondent No. 3.

41. Mr. Kapur submitted that under Article 40(6) of the AOA, the appointment or removal of EDCS/Deputy Secretary or Assistant Director or any other officer equivalent thereto by the COA shall be with the prior approval of the Central Government in the Ministry of Commerce/Textiles. Reference is made in this regard to the appointment of a previous EDCS, Mr. Shiv Kumar Gupta vide letter dated December 26, 2008 whereby the approval of the Central Government in the Ministry of Textiles was conveyed.

42. As per the Schedule to the Service Rules, composition of Departmental Promotion/Selection Committee is provided. Insofar as selection/promotion of EDCS is concerned, the specified composition of the selection committee/DPC is of 4 members, i.e.,

(i) The Chairman, CEPC, who is the Chairman of the DPC,

(ii) Joint Secretary in the Ministry of Textiles/Office of Development Commissioner (Handicrafts),

(iii) Any one of the Vice Chairmen of CEPC/ Member of the COA and

(iv) Official of Central / State Government representing SC/ ST.

It is stated that the petitioner was selected for appointment on probation in terms of the said Schedule, and approval of the Central Government under Article 40(6) of the AOA was also conveyed to the respondent No. 3 vide letter dated November 27, 2017. Pursuant to the approval so accorded by the Central Government, the petitioner was appointed as EDCS of the respondent No. 3 vide letter dated November 28, 2017 on probation for period of one year w.e.f. January 01, 2018 with a clear stipulation that his work and service will be assessed and if it is not found satisfactory, his services could be terminated at any time by the Appointing Authority. In this regard, Mr. Kapur has placed reliance on the Judgments of the Supreme Court in the cases of ***G.S. Ramaswamy and Ors. v. Inspector-General of Police, Mysore, AIR 1966 SC 175*** and ***Mohd. Salman v. Committee of Management and Ors., Civil Appeal No(s). 6601-6602 of 2020***, decided on September 08, 2011. He has also relied upon the Judgments of the Supreme Court in the cases of ***Kedar Nath Bahl v. The State of Punjab and Ors., (1974) 3 SCC 21*** and ***Head Master, Lawrence School, Lovedale v. Jayanthi Raghu and Anr., Civil Appeal No. 2868 of 2012*** decided on March 16, 2012, to contend that when a person is appointed to any post on probation, it does not follow that at the end of the probation period he obtains automatic confirmation.

43. It is submitted that the two extensions in the probationary period granted to the petitioner vide letters dated December 26, 2018 and July 22, 2019 were without the mandatory approval of the Central Government under Article 40 (6) of the AOA. The question of regularisation of the services of the petitioner was taken up in the 181st and 182nd meetings of the COA where some members raised objections to the recording of the

minutes of the meetings regarding regularisation of services of the petitioner as the same had not been recorded as per the actual discussions in the meetings and it was opined that the appointment should be as per Service Rules. It was decided in the COA meetings that 1-3 months time period be given to petitioner to improve his quality of work and that the question regarding his confirmation will be decided in the next meeting. It was further stated in the said objections that the COA never accorded any powers to the Chairman to take any decision in the matter; it was kept pending for next COA meeting. As per Article 54 of the AOA, objections on the COA minutes made by any Committee member are to be recorded and placed before the next COA meeting. However, the petitioner failed to comply with the same and the above objections were not placed before the Committee in the subsequent meetings.

44. Mr. Kapur also submitted that as the tenure of the then Chairman of the respondent No. 3 was coming to an end on June 17, 2021, the petitioner, along with the then Chairman, in a hurry, was trying to get his services regularised. On May 17, 2021, the then Chairman had a virtual meeting with the respondent No. 2 and subsequently, a self proclaimed two-member Committee namely the Appointment Committee for EDCS, CEPC was formed, wherein the respondent No. 2 was made the Chairman, with the only other member of the said Committee being the Chairman of respondent No. 3. It is stated that it is not known as to who formed/constituted the Committee, and that the composition of the said Committee was not in conformity with the Schedule specified in the Service Rules. The said Committee decided to regularise the services of the petitioner and

accordingly, respondent No. 2 directed the then Chairman of the respondent No. 3 to issue an office order in this regard.

45. It is further submitted that the respondent No. 5, after taking over as Chairman of the respondent No. 3, sent an e-mail dated June 29, 2021 to the respondent No. 4/Assistant Director, Office of Development Commissioner (Handicrafts), pointing out that the present writ petition had been filed and enquiring if such a letter regarding the confirmation of services of the petitioner had been issued and dispatched by office of the respondent No. 2. This enquiry was necessitated by the fact that the letter dated May 18, 2021 in the office of the respondent No. 3 neither had any dispatch number nor did petitioner make it part of the agenda issued on June 03, 2021 for the COA meeting of June 15, 2021. In reply to the said query, vide email of the same date, the Office of the respondent No. 2 wrote back to respondent No. 5 that as per their official record, no such letter had been issued regarding the said matter. Subsequently, respondent Nos. 1, 2 and 4 in reply to the RTI application made on behalf of the petitioner, clarified that the the letter dated May 18, 2021 was issued by the respondent No. 2 to the then Chairman of respondent No. 3 for placing the same in the upcoming meeting of the COA and was sent via the personal section of the respondent No. 2, through his Government email address. It is stated that the letter was to be put up to the Ministry of Textiles after COA recommendation. Meanwhile the file of the petitioner was called by the Ministry of Textiles and it was directed to discharge the petitioner from the post of EDCS and initiate fresh process for the appointment of a new EDCS. The same was conveyed to the respondent No. 3 vide letter dated June 12, 2021. It is the

submission of Mr. Kapur that therefore, the communication dated May 18, 2021 became null and void.

46. That apart, on June 16, 2021, i.e., after the meeting of the COA on June 15, 2021, the petitioner withdrew a sum of ₹4,19,353/- and transferred the same to his personal account. Further it is stated that on May 31, 2021, he took salary for the month of May, 2021 at higher scale at ₹1,89,645/- i.e. with excess amount of approximately ₹53,000/-. The petitioner did not inform the COA of this excess withdrawal of salary, in the meeting of June 15, 2021. It is submitted that he withdrew the above amount since tenure of then Chairman was coming to end on June 17, 2021. Various complaints were also being received against the petitioner including one from the Member of Parliament from Bhadohi, the place with the largest production of handmade carpets. Mr. Kapur would submit that keeping in view all the aspects and conduct of the petitioner and letter dated June 12, 2021 of the Central Government containing directions under Article 75 of the AOA of respondent No. 3, the respondent No. 5 issued show cause notice to petitioner dated June 23, 2021 and placed him under suspension after obtaining consent of the majority of members of COA and called upon petitioner to furnish his reply within 15 days from date of issue of the show cause notice, which, till date, the petitioner has not done. Further, the issue was placed before the COA meeting held on July 02, 2021, where, out of 15 members, 9 members who had sent their concurrence for the action proposed against the petitioner, reiterated and re-affirmed their approval to the show cause notice and suspension, whereas 6 members abstained from commenting, as the matter was *sub-judice*. After detailed discussion, the COA authorised the respondent No. 5 to take any decision in this regard. He

further submitted that the respondent No. 5 has, as the duly appointed Chairman, with the consent of the majority members of the COA, rightly issued the show cause notice dated June 23, 2021 and placed the petitioner under suspension.

47. Mr.Asheesh Jain, learned CGSC, would submit that the contention of the petitioner that the respondent Nos. 1, 2 and 4 do not have the power to remove the petitioner from service and that the issuance of the letter dated June 12, 2021 by the respondent No. 2 is in violation of the AOA, is bereft of merits. It is submitted that under Article 75 r/w Article 76 of the AOA of respondent No. 3, the respondent Nos. 1, 2 and 4 have been vested with wide powers to regulate the functioning and issue directives to the respondent No. 3 especially in public interest with further powers to ensure the implementation of such directions. Further, they also have the power to call for such reports, returns and any other information with respect to the respondent No. 3, and therefore, there is no valid ground to challenge the legality and validity of the letter dated June 12, 2021. The relevant provisions of the AOA and MOA of the respondent No. 3, along with the Service Rules, which are submitted by Mr. Jain in support of his contentions, are reproduced below:-

*"**Memorandum of Association (Ann. P-2 at pgs. 54-59):***

• Clause 3 (A)(i)(l): CEPC has to make recommendation to the government seek action against wilful or negligent acts of the manufacturer. (Pg.55)

• Clause 3 (A)(ix): CEPC cannot dispose of properties purchased with government grants. (Pg.57)

• Clause 3 (A)(xii): CEPC can invest moneys only in the banks approved by the Government. (Pg.57)

• Clause 4: The objectives of the Council would extend to whole of India and entire world subject to Government Policy in force from time to time. (Pg. 58)

• Clause 5(3): Without approval of the Government, no remuneration or other benefits in money or money's worth shall be given to any of the member whether officers or servants. (Pg. 58)

• Clause 5(4): without previous approval of the Central Government, no member shall be appointed to any office under the Company which is remuneration by salary, fees or any other manner not accepted by sub-clause (3) to Clause 5. (Pg.58)

• Clause 5(6): Any addition, alteration, modification or removal of any clause in MoA and Rules and Regulations or dissolution of Council will become operative only when approved by Ministry of Textiles in writing. (<u>MoA & AoA which is considered as the constitution of a Company cannot be altered, amended without approval of CG only shows wide ambit of powers of CG over the Council</u>) (Pg.58 & 59)

<u>Articles of Association (Ann. P-2 at pgs. 60-87):</u>

• Article 3(b): No alteration, addition of Rules and Regulations or bye-laws and no rescission, alteration or addition to MoA is permitted unless permitted by Ministry of Textiles. (Pg.61)

• Article 21: there will always be 3 nominated persons by the Central Government in COA. (Pg. 66)

*• Article 40(1)(e): **<u>The bye-laws with respect to Executive Director i.e. conditions of service, appointment, promotion and dismissal, grant of pay, allowance, pension are effective of approved by the Ministry of Textiles</u>**. (Pg.74)*

*• Article 40(6): **<u>Appointment or removal of Executive Director shall be with prior approval of Central Government in the Ministry of Textiles</u>**. (Pg. 76)*

• Article 40(9): COA can set up regional offices only with prior approval of Ministry of Textiles. (Pg. 76)

• Article 61: Accounts of the Council shall be audited every year by Auditor appointed by Council with the concurrence of the Government. Even remuneration of Auditors has to be fixed by the Council with concurrences of the Government. (Pg.84)
• Article 65: Certified true copy of the accounts shall be forwarded to the Government. (Pg. 85) ·
• Article 72: (a) Current account of council shall be kept in a bank approved by the Government for keeping the monies at the disposal of the Council. (b) Funds · not required for current expenditure may be placed in fixed deposit with bank approved by the Government. (Pg.86)
• Article 74: Any change, alteration or modification of AoA will become effective only on approval of the Ministry of Textiles. (Pg.86-87)
*• Article 75: Ministry of textiles shall have power to issue directives to the Council, relating to the functioning and properties of the Council which the Council is bound to follow. (**This Article is inclusive in nature**) (Pg. 87)*
• Article 76: Ministry of textiles shall have power to give directions to Council as to exercise and performance of its functions, call for reports, returns, approve revenue and capital budget, and approve foreign agreements. (Pg.87)
Service Rules (Ann. P3 at pgs. 88-103):
*• Clause 3(k): CoA can appoint, remove, promote Executive Director only with approval of office of DC **and** Ministry of textiles. (Pg. 89)*
• Clause 17: Instance of misconduct by-the Petitioner. (Refer to sub-Clause 1, 2, 3, 4, 5, 12, 14, 19) (Pg. 93-95)"

Mr. Jain would state that the petitioner is attempting to read a few provisions of the AOA, MOA and Service Rules in isolation, but to understand the ambit of powers of the respondent Nos. 1, 2 and 4, the aforementioned provisions are to be read together.

48. It is also submitted that numerous complaints were received against the petitioner pointing out discrepancies being carried out by him in official capacity such as irregularities, contravention of bye-laws, gross misconduct, irregularities in the expenses being incurred by the Council, tenders not being called for as per specified Rules and norms, purchases being made from friends and acquaintances out of the expenses of the Government, no permission before cash withdrawals etc. Further, the issuance of communication dated June 12, 2021 was necessitated by the fact that upon looking into the complaints/representations received by the respondents, it was discovered that the petitioner's probation was extended twice by respondent No. 3 on December 28, 2018 and July 22, 2019 without any prior approval of the Central Government, thereby rendering such extensions a nullity, being violative of Article 40(6) of the AOA. This was also contrary to the procedure being followed in the case of previous Executive Directors. In view of the aforesaid complaints being received against the petitioner, there was no alternative but to issue directions for conducting independent inquiry in the case of the petitioner in accordance with law.

CONCLUSION

49. Having heard the learned counsels for the parties, the issue which arises for consideration is whether the action of the respondent No.3 in suspending the petitioner and also issuing a show cause notice calling upon him to reply to the same for taking further action is liable to be set aside.

50. The petitioner was appointed as EDCS in the respondent No.3 Organisation. The appointment letter stipulated that he is on probation for a

period of one year. There is no dispute that the probation of the petitioner was extended for a period of six months from January 01, 2019 to June 30, 2019. The same was also further extended for the period July 1, 2019 to December 31, 2019.

51. It is the case of the petitioner that the COA has authorised the Chairman of the respondent No.3 to take a decision on the regularisation of the services of the petitioner which resulted in his confirmation with effect from January 01, 2018.

52. Mr. Kapur has taken an objection with regard to the maintainability of the writ petition on the ground that the respondent No.3 is not amenable to the writ jurisdiction under Article 226 of the Constitution of India being not an *"other authority"* within the meaning of Article 12 of the Constitution of India and also as respondent No.3 is not discharging public function. This submission of Mr. Kapur is opposed by Mr. Garg by stating that the Regulation 40(b)(6) of the AOA, which has been reproduced above clearly stipulates that appointment / removal of any EDCS/Deputy Director or Assistant Director, or any other officer equivalent thereto shall be with the prior approval of the Central Government in the Ministry of Commerce / Textile. He has also submitted that in this case even the impugned letters have been issued pursuant to the directives of the respondent No.4 on behalf of respondent No.2 / Development Commissioner (Handicrafts). In other words, if the impugned action is on the dictates of the respondent No.2, there cannot be any doubt that the present petition is maintainable.

53. On this submission of Mr. Garg, Mr. Kapur would submit that even assuming the respondent No.3 is amenable to the writ jurisdiction of this Court, surely the relief that is being prayed for by the petitioner does not

involve and is not relatable to any public duty / function and as such the writ petition shall not be maintainable. In support of his submission, he has relied upon the Judgment of the Supreme Court in ***K. K. Saksena (supra)***.

54. I am not in agreement with the submission of Mr. Kapur for the simple reason, the Regulation 40(b)(6) of the AOA is very clear inasmuch as the appointment or removal of the EDCS, i.e., the position held by the petitioner shall be only with the approval of the Central Government, in the Ministry of Commerce / Textiles. In this case the appointment of the petitioner is with the approval of the respondent No.2 in the Ministry of Textiles by giving reference to Regulation 40(b)(6) and also it is the respondent No.2 that has directed the respondent No.3 to terminate the services of the petitioner, which triggered the impugned order.

55. That apart, clauses 5.3 and 5.4 of the MOA which I have reproduced above do also reveal that the appointments of officers in respondent No.3 organisation shall take place with the approval of the Central Government.

56. If that be so, the present writ petition shall be maintainable as the respondent No.2 has to justify its directives to the respondent No.3 for taking a particular action against the petitioner herein. Reliance placed by Mr. Kapur on the case of ***K. K. Saksena (supra)*** has no applicability in the facts of this case. In the said case, the appellant therein was appointed to the post of Secretary in the respondent Organisation. Thereafter, his services were terminated on the ground that the same were no longer required. In the said case, there was no stipulation like the Regulation 40(b)(6) in the instant case, which governed the appointment of the appellant K. K. Saksena in the respondent Organisation therein.

57. Though Mr. Garg has also relied upon the Judgments of ***Ajay Hasia & Ors. (supra)*** and ***Pradeep Kumar Biswas & Ors. (supra)***, in view of my aforesaid conclusion, this Court is not required to refer to those Judgments. This I say so, for a decision on the objection raised by Mr. Kapur, Article 40(b)(6) is a complete answer. This plea of Mr. Kapur is rejected.

58. Having held that the present petition filed by the petitioner is maintainable under Article 226 of the Constitution of India, the submissions of Mr. Garg on merit are the following:

1) Rule 13 of the Service Rules does not provide the powers to extend the probation period.

2) If the period of probation cannot be extended then the petitioner's appointment is deemed to be confirmed on the expiry of probation.

3) The services of the petitioner have been regularised after the approval given by respondent No.2. The respondent No. 5 in its counter-affidavit has concealed the existence of the letter dated May 18, 2021 by which directives were issued to the respondent No.3 to regularise the services of the petitioner. It is only in an application filed under the RTI Act that such a communication has been disclosed.

4) The impugned communication dated June 12, 2021 of respondent No. 4 on behalf of respondent No. 2 to discharge the petitioner from his post is overlooking the fact that respondent No.2 has issued directive to respondent No.3 to regularise the services of the petitioner.

5) The action is *mala fide* as, on June 23, 2021, the petitioner had sought permission of respondent No.5, i.e., the new Chairman to initiate action against the former Chairman of respondent No. 3, as decided by COA in its meeting on June 15, 2021 and it is on the same day that the show-cause notice incorporating the suspension of the petitioner has been issued which shows the decision of the respondent No.5, was in a hasty and arbitrary manner.

6) That even the show-cause notice has been issued without waiting for the consent of all the members as only six members had responded to the proposal.

7) Nine members of the COA through e-mails have advised respondent No. 5 not to issue the impugned show-cause notice to the petitioner till the meeting of the COA till July 2, 2021.

8) New Chairman who was Vice-Chairman as on April 9, 2021 had sent a letter to the Minister of Textiles for discharging the petitioner. It shows that the action against the petitioner was a forgone conclusion much prior to the confirmation / suspension and issuance of show-cause notice to the petitioner.

9) Even the reply of respondent No. 4 to the query of respondent No. 5 dated June 29, 2021 was sent in a *mala fide* manner without consultation with the respondent No.2.

10) The petitioner is entitled to the safeguards akin to the provisions of Article 310 and 311 of the Constitution of India.

11) The impugned orders do not fall within the category of misconduct as defined in Rule 17 of the Service Rules to result in an extreme decision of discharge of the petitioner from the services.

59. From the above, it is clear that vide letter dated May 18, 2021, the services of the petitioner were confirmed. The letter dated May 18, 2021 reads as follows:-

> *"As per decision taken by the Appointment Committee for ED-Secretary, CEPC & D.O. letter No. DC(HC)/Misc./CEPC/2021-22 dated 18th May, 2021, received from Development Commissioner (Handicrafts), 0/o. the DC(H), New Delhi, the services of Shri Sanjay Kumar, Executive Director-cum-Secretary, CEPC is hereby confirmed w.e.f. 1st January, 2018 as per the approved Pay Scale of Executive Director-cum-Secretary, CEPC at Level 13 Pay Matrix of 7 CPC (Rs. 1 ,23,100 -3% -2, 15,900) plus usual allowances as admissible to the employees of the Council under the rules of the Council from time to time but financial benefits will be extended from 1st April 2020 onwards."*

60. At this stage, I may state, it was the stand of Mr. Kapur that in view of the letter dated June 12, 2021 the communication / order of May 18, 2021 has become null and void. I am unable to accept such a stand as, pursuant to the communication dated May 18, 2021 of respondent No.2 communicating the decision to regularise the service of the petitioner, the services of the petitioner were regularised by the respondent No.3 by issuing an order, which I have already reproduced above. A subsequent communication cannot undo an action which has attained finality. The plea of Mr. Kapur, the extension of probation of the petitioner on two occasions was without approval of the respondent No.2, would have no bearing on order regularising the services of the petitioner, being a subsequent event which has not been recalled. Further the communication dated June 12, 2021 does not even call upon the respondent No.3 to recall the order dated May 18, 2021. If that be so, the reliance placed by Mr. Kapur on the cases of ***G.S. Ramaswamy (supra), Mohd. Salman (supra), Kedar Nath Bahl***

(supra) and ***Head Master, Lawrence School, Lovedale (supra)*** to contend that, when an employee is on probation, his services can be terminated on the ground of unsatisfactory service, have no applicability as the said judgments are only applicable when the employee is on probation, which is not the case here.

61. Mr. Garg is justified in stating that the petitioner being a confirmed regular employee, any action for any misconduct (as seen from show cause notice) shall have to be taken in terms of the Rules governing the service conditions of the employees.

62. The case of ***Jaswantsingh Pratapsingh Jadeja (supra)*** on which reliance has been placed by Mr. Garg to contend that the Rule 13 of the Service Rules does not provide for extension of probation period and as such, the petitioner's appointment is deemed to be confirmed, would be inconsequential in view of my above conclusion.

63. In the facts of this case, the plea of Mr. Garg is that the impugned action of the respondents is *mala fide*. In this regard he would submit that the consent of all the members of the COA has not been taken inasmuch as only consent of six members has been taken and other nine members have advised the respondent No.5 not to issue the impugned show cause notice to the petitioner till the meeting of COA on July 02, 2021. That apart, the new Chairman had on April 09, 2021 while holding the post of Vice Chairman of the respondent No.3 had written letter to Minister of Textiles seeking discharge of the petitioner.

64. Mr. Garg, may be within his right to allege *mala fide* with regard to the impugned action, but the fact remains that the impugned communication dated June 23, 2021 which is a show cause notice, by which

the petitioner has been called upon to reply to the same to enable the respondent No.3 to take further action in the matter is not a final decision. In fact, the petitioner has not even submitted his reply to the show-cause notice. Based on the reply of the petitioner, the respondent No.3 may revoke the suspension and withdraw the allegations or it can be, the respondents may take action in accordance with the rules.

65. Mr. Kapur is justified in stating that the present petition, at least to the extent of further action (not suspension) is premature, as no final decision has been taken by respondent No.3. Appropriate shall be that the petitioner should reply to the show cause for the consideration of the concerned authority. He can take all pleas available to him, both on facts and in law including the plea of *mala fide* in his reply to the show cause notice. On a consideration of the reply submitted by the petitioner if the competent authority intends to take any action, the same has to be necessarily in accordance with law/Service Rules being a confirmed employee who gets the protection of the Service Rules governing the organisation. In this regard, I may refer to the judgment in ***Kamal Nayan Mishra v. State of Madhya Pradesh and Ors., (2010) 2 SCC 169*** wherein in paragraph 17 it is stated as under:

> *"xxx…….. But once a probationer is confirmed in the post, his position and status become different as he gets the protection of Article 311. ……. xxx"*

66. Now coming to the decision of the respondent No.3 to suspend the petitioner, it is not the case of the petitioner that no such power exists under the Rules to suspend the petitioner. In fact, Rule 19 of the Service Rules state as under:

"An employee of the Council under suspension or deemed to have been placed under suspension by an order of the appointing authority shall be entitled to the following payments. ...xxx "

The above Rule clearly contemplates the power of the appointing Authority to place an employee under suspension.

67. The related plea of Mr.Garg with regard to suspension, is that the petitioner is not being paid the subsistence allowance. Mr.Kapur sought to justify the non-payment of the subsistence allowance on the ground that the petitioner has transferred an amount of ₹4,19,353/- to his account without permission from respondent Nos.1, 2 and 4. He has also stated, an excess amount of approximately ₹53,000/- has been received by the petitioner which need to be adjusted against the subsistence allowance.

68. Since an issue has been raised by the parties whether the amounts of ₹4,19,353/- and ₹53,000/- can be adjusted against the subsistence allowance, appropriate shall be, the petitioner shall justify the transfer of the said amounts to his account in his representation to be submitted within a period of two weeks from today on which the respondents shall take a decision. If it is held that the amounts transferred by the petitioner to his account was justified, then the arrears of subsistence allowance shall be computed by the respondent No. 3 within one week thereafter and be paid to the petitioner immediately. It shall be continued to be paid to the petitioner as long as he is under suspension.

69. If the amounts could not have been transferred by the petitioner to his account then the amounts be treated to have been rightly adjusted against the subsistence allowance. The respondent No.3, after complete adjustment of ₹4,19,353/- and ₹53,000/-, shall continue to pay the

subsistence allowance to the petitioner, under the rules till such time he is under suspension.

70. The Judgments relied upon by Mr.Garg in the cases of ***Bahadursinh Lakhubhai Gohli (supra), Zenit Mataplast Private Ltd. (supra), State of Orissa (supra), Union of India v. Ashok Kumar Aggarwal (supra) Rajneesh Khajuria (supra), S. Parthasarathi (supra), Ranjit Thakur (supra), Kumaon Mandal Vikas Nigam Ltd. (supra)*** and ***State of Gujarat and Anr. (supra)*** to demonstrate *mala fide* and bias on part of the respondents need not be gone into in view of above. With the aforesaid, the petition is disposed of. No costs.

CM No. 27059/2021

71. This application is filed by the petitioner under Section 340 r/w Sections 195 and 197 of the Cr.P.C. for taking action against the respondent No.3. In the facts of this case, this Court is not inclined to consider the application. The same is closed.

CM No. 19109/2021

72. In view of my decision above, the application has become infructuous and is dismissed as such.

V. KAMESWAR RAO, J

DECEMBER 20, 2021/*aky/jg*