

ORISSA HIGH COURT: CUTTACK

AFR

W.P(C) NO. 14396 OF 2018

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Pradyumna Pattnaik Petitioner

-Versus-

State of Odisha and others Opp. Parties

For Petitioner : M/s. Pami Rath and
Guman Singh, Advocates,

For Opp. Parties : Mr. H.M. Dhal,
Addl. Government Advocate
[O.Ps. No.1 to 3]

M/s. Niranjan Lenka,
H.K. Mohanta, L. Sahu,
N. Lenka and P.K. Barik,
Advocates [O.P.No.4]

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HONOURABLE MR JUSTICE B.P. SATAPATHY**

Date of hearing: 10.11.2022 :: Date of judgment : 18.11.2022

DR. B.R.SARANGI,J. The petitioner, who was working as Additional Public Prosecutor in the Court of Additional Chief Judicial Magistrate, Bhubaneswar, has filed this

writ petition seeking to quash the inquiry proceeding and the consequential notification dated 26.07.2018 passed by opposite party no.1, by which he has been terminated from service with immediate effect on the ground of allegation. The petitioner has further prayed to offer complete relief in the peculiar facts of the present case.

2 The factual matrix of the case, in a nutshell, is that the petitioner, after completion of his LL.B. degree, enrolled himself as an Advocate in the year 1991 and started his practice. Following due process of selection, in the year 1995 he was appointed as Assistant Public Prosecutor. While he was continuing as such, he was given appointment as Associate Lawyer in Government Pleader Panel for the period from 1997 to 2001. Thereafter, he was appointed as Additional Public Prosecutor, Bhubaneswar in the year 2010. His appointment was renewed from time to time. Vide Notification dated 23.06.2017 the petitioner was appointed as Additional Public Prosecutor in the Court

of Additional Chief Judicial Magistrate, Bhubaneswar, until further orders, and his name figured at Sl. No.7 under the heading of Additional Public Prosecutor. Apart from being a public prosecutor, the petitioner was also having a substantial private practice.

2.1 The petitioner in his private capacity was engaged as a counsel for the respondent-wife in C.P. No. 49 of 2018, which was filed at the instance of the opposite party no.4-husband before the learned Judge, Family Court, Bhubaneswar under Section 13 of the Hindu Marriage Act, 1955 seeking a decree of divorce. The said C.P. case was posted to 07.05.2018 for appearance of the respondent. On 07.05.2018, the petitioner entered appearance on behalf of the respondent-wife and sought for an adjournment for her appearance as she could not appear due to illness of her father. During course of hearing, the petitioner apprised the Court below as to the mischief played by the applicant-husband, opposite party no.4 herein, regarding improper description of respondent's name to

avoid service of notice and deprive her of participating in the proceeding itself. On the request of the petitioner, the said C.P. case was adjourned to 16.05.2018 for appearance of the parties. On being unsuccessful in getting an ex-parte order, opposite party no.4 misbehaved with the petitioner and abused him in obscene language, which was pacified at the intervention of other bar association members. Even though the aforesaid incident was in no way connected to the discharge of duty of the petitioner as Addl. Public Prosecutor, but opposite party no.4, on 08.05.2018, made a complaint to the Chief Minister, Odisha against the present petitioner seeking his removal from the post of Addl. Public Prosecutor alleging assault and humiliation. On being instructed by the Law Department, Govt. of Odisha took up enquiry.

2.2 The petitioner, being unaware of the aforesaid complaint at the instance of opposite party no.4, continued with the proceedings in the C.P. No.49 of 2018, as is evident from the order sheets of the

proceedings. The petitioner received a notice on 31.05.2018 calling upon him to appear before opposite party no.2 in connection with alleged inhuman humiliation in the court premises on 17.05.2018 meted out to opposite party no.4. Pursuant to such notice, the petitioner appeared before the opposite party no.2 by filing his preliminary objection specifically indicating therein his inability to put forth his defence due to non-supply of the allegation petition. The petitioner also raised objection as to the initiation of the enquiry proceeding, being out of the purview of the enquiring officer, as the allegation made in the notice prima facie seems to be not in connection with his discharge of duty as "Additional Public Prosecutor". Instead of serving copy of allegation petition to the petitioner, the enquiring officer recorded his statement on oath and issued notice to Sri Dev Das, learned counsel for opposite party no.4-complainant, to apprise the enquiring officer regarding the actual incident under enquiry. In pursuance thereof, Sri Dev Das appeared in the proceeding but declined to

make any statement in that regard. Without affording an opportunity of hearing and instead of looking for any evidence, opposite party no.2 closed the proceeding and submitted a report on 13.06.2018, holding that the petitioner has undermined his position as “Addl. Public Prosecutor” and his conduct was blameworthy and never be countenanced with any reason. With such remark opposite party no.2 reported the matter to opposite party no.1 for just and proper action. Basing upon such enquiry report dated 13.06.2018, opposite party no.1, vide notification dated 26.07.2018, terminated the petitioner-Additional Public Prosecutor in the Court of ACJM, Bhubaneswar with immediate effect on the “ground of allegation”. Hence, this writ petition.

3. Mrs. Pami Rath, learned counsel appearing for the petitioner vehemently contended that termination of the petitioner from the post of Additional Public Prosecutor in the Court of ACJM, Bhubaneswar on the ground of allegation with a stigma, having been made without affording him an opportunity of hearing, violates

the principle of natural justice, therefore, the same cannot sustain in the eye of law. She further contended that the so called inquiry conducted by opposite party no.2 on 13.06.2018 is just an erroneous appreciation of the factual matrix of the case in hand and in absence of any cogent evidence, documentary or oral, jumping to a conclusion that the petitioner has undermined his position as Additional Public Prosecutor in the Court of ACJM, Bhubaneswar itself suffers from non-application of mind and more so, the copy of such inquiry report has not been served on the petitioner to afford him an opportunity of hearing in compliance of principle of natural justice. Therefore, the order passed on 26.07.2018 terminating the services of the petitioner cannot sustain in the eye of law and is liable to be quashed. It is further contended that the so called allegation, which has been made against the petitioner and copy of which was not provided to him, which he obtained on 02.08.2018 pursuant to the application filed under the Right to Information Act, 2005 dated

01.08.2018 and have been placed on record as Annexure-6 series, if scrutinized on its letter and spirit, there is no dereliction of duty or misconduct on the part of the petitioner as Additional Public Prosecutor. As such, the matter under inquiry does not come under the purview of opposite party no.2 inasmuch as the act/omission as alleged is not connected with the discharge of duty as Additional Public Prosecutor. On the other hand, the petitioner was terminated with a stigma on the basis of a perfunctory enquiry and the petitioner has no other alternative than to approach this Court by filing the present writ petition. On the basis of the documents supplied under the Right to Information Act, 2005 on 02.08.2018, the very initiation of enquiry by the opposite party no.2 is untenable in as much as the allegation made in the complaint dated 08.05.2018 is no way connected with the discharge of duty of the petitioner as "Addl. Public Prosecutor". The opposite party no.2, while conducting enquiry failed to appreciate that he lacks inherent jurisdiction to hold such enquiry and, as such,

his report is nonest in the eye of law. It is further contended that the petitioner, being Additional Public Prosecutor, is governed by the Odisha Law Officers' Rules, 1971 (for short "Rules, 1971"). Rule-13 of the Rules, 1971 deals with duties of the Law officers like the petitioner and Rule-14 thereof outlines limitations of the officer. Whereas Rule-34 (Part-V) under the heading "Miscellaneous" deals with control over Law Officers. On perusal of the same, administrative control in terms of the Rules, 1971 vests in the District Magistrate and Collector and, as such, opposite party no.2 has no jurisdiction even otherwise to initiate an enquiry and make the recommendation. Thereby, the initiation of the proceeding, the recommendation in the enquiry report and the consequential action terminating the service of the petitioner is without jurisdiction and, as such, the same is arbitrary, *mala fide* and as a consequence thereof, the same is liable to be quashed.

3.1 The further contention made by learned counsel for the petitioner is that the impugned order

dated 26.07.2018 has tasted an indelible stigma affecting the career of the petitioner. As such, the petitioner was never given a reasonable opportunity of hearing to put forth his defence nor the statements on the basis of which impugned order dated 26.07.2018 was passed. Thereby, basing on such inquiry report, the decision taken by opposite party no.1 is not only arbitrary and unreasonable but also in contravention of the Rules, 1971 and Orissa State Prosecution Service Rules, 1997 (for short "Rules, 1997"), apart from breach of principles of natural justice and fair play.

3.2 She further contended that initiation of the proceeding by opposite party no.2 amounts to usurpation of power not vested on him and, as such, the enquiry and consequential report submitted by him, being ex-facie without jurisdiction and being an outcome of abuse of power, the consequential termination order dated 26.07.2018 issued by the opposite party no.1 is liable to be set aside. It is further contended that opposite party no.2 has not taken note of the conduct of

the complainant-opposite party no.4 in not participating in the subsequent hearing of the enquiry proceedings and also not adducing CCTV footage or any other evidence in support of his case, especially when his counsel Sri Dev Das refused to make statement in that regard, thereby, any action taken pursuant to such perfunctory inquiry report by passing order impugned dated 26.07.2018 cannot sustain. It is also contended that on the basis of the complaint of the opposite party no.4 alleging inhuman humiliation and assault, it should come exclusively within the domain of the disciplinary powers conferred on Bar Council of India by virtue of Section 36 of the Advocates Act, 1961. More so, the alleged conduct, if any, of the petitioner, does not come within the purview of the Rules, 1997 dealing with the functions of Additional Public Prosecutor. As such, there is no nexus of the allegation made by opposite party no.4 against the petitioner under the Rules, 1997. Thereby, the order impugned so passed is without

jurisdiction, consequentially, the same is liable to be quashed.

To substantiate her contention, though a plethora of judgments were referred to by learned counsel for the petitioner, but in course of hearing she relied upon the decisions of the apex Court in the cases of State of **Uttar Pradesh v. Saroj Kumar Sinha**, 2010 (2) SCC 772, **Oryx Fisheries Private Limited v. Union of India**, 2010 (13) SCC 427, **Dharampal Satyapal Limited v. Deputy Commissioner of Central Excise, Gauhati**, 2015 (8) SCC 519 and **Managing Director, ECIL, Hyderabad v B. Karunakar**, 1993 (4) SCC 727, as well as the judgment of this Court in the case of **R. Ramachandra Rao v. State of Orissa**, Manu/ OR/ 0129/ 2022.

4. Mr. H.M. Dhal, learned Additional Government Advocate appearing for the State-opposite party no.1 has tried to justify the order passed on 26.07.2018 and contended that the petitioner has admitted that apart

from being a Public Prosecutor, he was also doing substantial private practice, which violates Rule-14 of the Rules, 1971. He also contended that one Jay Krushna Saha-opposite party no.4 addressing to the Chief Minister of Odisha submitted a petition on 08.05.2018. On receipt of the same, opposite party no. 2 was requested on 16.05.2018 to enquire into the matter and furnish a report to the Law Department. In compliance of the same, opposite party no.2, vide letter dated 13.06.2018, submitted a report that the conduct of the petitioner, as Additional Public Prosecutor, was blame-worthy and can never be countenanced with any reason and, as such, he has undermined his position, and accordingly the matter was reported to the Government for just and proper action. On receipt of such inquiry report, the matter was placed before the Government for decision and the Government was pleased to terminate the service of the petitioner and, as a consequence thereof, the notification dated 26.07.2018 was issued. Thereby, no illegality or irregularity has been

committed by the authority in passing such order. Thus, he contended that the petitioner is not entitled to get any relief, as prayed in the writ petition, and seeks for dismissal of the writ petition.

5. Mr. N. Lenka, learned counsel appearing for opposite party no.4 contended that the petitioner, who was appointed as the Additional Public Prosecutor in the Court of ACJM, Bhubaneswar, involved himself in unethical activities and even did not spare his opponent client and assaulted him ruthlessly and in inhuman manner in the Court premises, particularly in the corridor of the learned Judge, Family Court, Bhubaneswar, that too in front of the Judge. Thereby, the authority, having satisfied that the petitioner was involved in unethical and dishonest activities, terminated his service and, as a consequence thereof, no illegality or irregularity has been committed in the passing the impugned order. He further contended that opposite party no.4, who is a B. Tech qualified person, represented through his counsel Mr. Dev Das, filed C.P.

No. 49 of 2018 in the Court of Family Judge, Bhubaneswar under Section 13 of the Hindu Marriage Act against his wife Smt. Priyadarsini Mahajan seeking for divorce, whereas the petitioner representing the wife appeared in the case. Unexpectedly, the petitioner abused opposite party no.4 and on being influenced by the petitioner, some of the Advocates came inside the Court and started intimidating and threatening opposite party no.4 and also assaulted him. Thereby, opposite party no.4 lodged a complaint before the Chief Minister of Odisha. The complaint was enquired into by opposite party no.2 and on the basis of the report submitted by him, the petitioner was terminated from the post of Additional Public Prosecutor. Thereby, no illegality or irregularity has been committed so as to interfere with the order impugned passed by the authority concerned. Accordingly, he prays for dismissal of the writ petition.

6. This Court heard Mrs. Pami Rath, learned counsel appearing for the petitioner, Mr. H.M. Dhal, learned Addl. Government Advocate appearing for the

State-opposite parties and Mr. N. Lenka, learned counsel appearing for opposite party no.4 in hybrid mode and perused the record. Pleadings have been exchanged between the parties and with the consent of learned Counsel for the parties the writ petition is being disposed of finally at the stage of admission.

7. On the basis of factual matrix, as delineated above, the following issues are formulated for adjudication by this Court:-

“(1) Whether the ground of allegation on which the petitioner has been terminated from the post of Additional Public Prosecutor comes within the purview of due discharge of function as Public Prosecutor and, if so, whether the initiation of proceeding will come within the purview of the provisions contained in the Orissa Law Officers’ Rules, 1971 read with the Orissa State Prosecution Service Rules, 1997?”

“(2) Whether the allegation basing on which the order dated 26.07.2018 terminating the petitioner from service has been passed is in due discharge of his function as an Advocate in a private capacity, which comes under the purview of the Advocate’s Act and, if so, whether the order

impugned shall sustain or not ?

(3) Whether the statements taken behind the back of the petitioner are to be treated as the evidence, when the witnesses are not subjected to cross-examination or whether in absence of the statute with regard to the same, principle of natural justice has to be followed or not ?

(4) Whether the decision dated 26.07.2018 taken on the ground of allegation amounts to post decisional hearing or not?

(5) Whether the inquiry report, on the basis of which the action has been taken, is a fresh material and, if so, whether against the same show cause notice should have been given or not?"

8. **Issue Nos. 1 and 2:**

There is no dispute that the petitioner was discharging the duties and responsibility of Additional Public Prosecutor in the Court of ACJM, Bhubaneswar. The procedure of appointment and terms of office of Public Prosecutor are regulated by the rules framed by the Government called "The Odisha Law Officers' Rules, 1971" which had been published in Orissa Gazette in Ext. No. 399/1-4-1971. "Public Prosecutor" has been

defined under Rule 3(a) as follows:-

“3. Definitions-

(a) Public Prosecutor- “Public Prosecutor” means any person appointed under Sub-section (1) of Section 492 of the Code of Criminal Procedure, 1898 (Act 5 of 1898).”

8.1 The reference made to Sub-section (1) of Section 492 of the Code of Criminal Procedure, 1898 (Act 5 of 1898) was amended and the Code of Criminal Procedure, 1973 came into force by Act 2 of 1974 by publishing the notification on 25th January, 1974. Section 492 (1) of the Code of Criminal Procedure, 1898 was substituted by Act 14 of 1978 as Section 24 of the Code of Criminal Procedure, 1973 with effect from 18.12.1978. Section 24 of the Code of Criminal Procedure 1973 reads as follows:-

“24. Public Prosecutors.—(1) For every High Court, the Central Government or the State Government shall, after consultation with the High Court, appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors, for conducting in such Court, any prosecution, appeal or other proceeding on behalf of the Central Government or State Government, as the case may be.

(2) The Central Government may appoint one or more Public Prosecutors for the purpose of conducting any case or class of cases in any district or local area.

(3) For every district, the State Government shall appoint a Public Prosecutor and may also appoint one or more Additional Public Prosecutors for the district: Provided that the Public Prosecutor or Additional Public Prosecutor appointed for one district may be appointed also to be a Public Prosecutor or an Additional Public Prosecutor, as the case may be, for another district.

(4) The District Magistrate shall, in consultation with the Sessions Judge, prepare a panel of names of persons, who are, in his opinion fit to be appointed as Public Prosecutors or Additional Public Prosecutors for the district.

(5) No person shall be appointed by the State Government as the Public Prosecutor or Additional Public Prosecutor for the district unless his name appears in the panel of names prepared by the District Magistrate under sub-section (4).

(6) Notwithstanding anything contained in sub-section (5), where in a State there exists a regular Cadre of Prosecuting Officers, the State Government shall appoint a Public Prosecutor or an Additional Public Prosecutor only from among the persons constituting such Cadre:

Provided that where, in the opinion of the State Government, no suitable person is available in such Cadre for such appointment that Government may appoint a person as Public Prosecutor or Additional Public Prosecutor, as the case may be, from the panel of names prepared by the District Magistrate under sub-section (4).

[Explanation.—For the purposes of this sub-section,—

a) “regular Cadre of Prosecuting Officers” means a Cadre of Prosecuting Officers which includes therein the post of a Public Prosecutor, by

whatever name called, and which provides for promotion of Assistant Public Prosecutors, by whatever name called, to that post;

(b) "Prosecuting Officer" means a person, by whatever name called, appointed to perform the functions of a Public Prosecutor, an Additional Public Prosecutor or an Assistant Public Prosecutor under this Code.]

(7) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (6), only if he has been in practice as an Advocate for not less than seven years.

(8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an Advocate for not less than ten years as a Special Public Prosecutor:

(9) For the purposes of sub-section (7) and sub-section (8), the period during which a person has been in practice as a pleader, or has rendered (whether before or after the commencement of this Code) service as a Public Prosecutor or as an Additional Public Prosecutor or Assistant Public Prosecutor or other Prosecuting Officer, by whatever name called, shall be deemed to be the period during which such person has been in practice as an Advocate."

8.2 Similarly, Section 25 of the Code of Criminal Procedure 1973 deals with Assistant Public Prosecutors.

The said Section 25 reads thus:-

"25. Assistant Public prosecutors.—(1) The State Government shall appoint in every district one or more Assistant Public Prosecutors for conducting

prosecutions in the Courts of Magistrates.

[(1A) The Central Government may appoint one or more Assistant Public Prosecutors for the purpose of conducting any case or class of cases in the Courts of Magistrates.]

(2) Save as otherwise provided in sub-section (3), no police officer shall be eligible to be appointed as an Assistant Public Prosecutor.

(3) Where no Assistant Public Prosecutor is available for the purposes of any particular case, the District Magistrate may appoint any other person to be the Assistant Public Prosecutor in charge of that case:

Provided that a police officer shall not be so appointed—

(a) if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted; or

(b) if he is below the rank of Inspector.

State Amendment (Orissa)-In its application to the State of Orissa, in section 25, sub-section (2) insert the following proviso, namely:-

“provided that nothing in this sub-section shall be construed to prohibit the State Government from exercising its control over Assistant Public Prosecutor through police officers”- Orissa Act 6 of 1995, section 2 (w.e.f 10-3-1995)”

8.3 Section 25-A of the Code of Criminal Procedure 1973, which deals with Directorate of Prosecution, reads as follows:-

“25A. Directorate of Prosecution.—(1) The State Government may establish a Directorate of

Prosecution consisting of a Director of Prosecution and as many Deputy Directors of Prosecution as it thinks fit.

(2) A person shall be eligible to be appointed as a Director of Prosecution or a Deputy Director of Prosecution, only if he has been in practice as an Advocate for not less than ten years and such appointment shall be made with the concurrence of the Chief Justice of the High Court.

(3) The Head of the Directorate of Prosecution shall be the Director of Prosecution, who shall function under the administrative control of the Head of the Home Department in the State.

(4) Every Deputy Director of Prosecution shall be subordinate to the Director of Prosecution.

(5) Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under sub-section (1), or as the case may be, sub-section (8) of section 24 to conduct cases in the High Court shall be subordinate to the Director of Prosecution.

(6) Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under sub-section (3), or as the case may be, sub-section (8) of section 24 to conduct cases in District Courts and every Assistant Public Prosecutor appointed under sub-section (1) of section 25 shall be subordinate to the Deputy Director of Prosecution.

(7) The powers and functions of the Director of Prosecution and the Deputy Directors of Prosecution and the areas for which each of the Deputy Directors of Prosecution have been appointed shall be such as the State Government may, by notification, specify.

(8) The provisions of this section shall not apply to the Advocate General for the State while performing the functions of a Public Prosecutor."

8.4 Rules-4, 6, 13 and 14 of the Odisha Law Officers' Rules, 1971, which are relevant for the purpose of the case, are extracted hereunder:-

"4. General-(1) Government Pleader and Public Prosecutor-There shall be a Government Pleader and Public Prosecutor for each district. The State Government may appoint a Government Pleader and Public Prosecutor for any sub-division and/or local area within a district in addition to the Government Pleader and Public Prosecutor for the district.

The headquarters of the Government Pleader and Public Prosecutor for the district shall be District Headquarters. The headquarters of the Government Pleader and Public Prosecutor for the sub-division shall be the sub-divisional headquarters and the headquarters of the Government Pleader and Public Prosecutor for any other local area within the district shall be at such place as may be determined by the State Government.

(2) The Government Pleader and Public Prosecutor for the district shall ordinarily work as such and conduct cases at the District Headquarters and in all Courts in the district within the local limits of which there is no other Public Prosecutor. The Government Pleader and Public Prosecutor at the Sub-divisional Headquarters or for any other local area shall work as such in all matters and conduct cases within the sub-division or the local area for which he has been appointed subject to any direction which the District Government Pleader and Public Prosecutor or the State Government may issue in the matter".

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"6. Term of Office- The Law Officer shall

ordinarily hold office for a term of three years, subject to any other direction by the State Government. He shall be eligible for re-appointment on expiry of such term."

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"13. Duties of Law Officers- It is the duty of a Law Officer-

(a) to appear on behalf of Government in any suit, appeal or other civil proceeding, and to appear in any suit or civil proceeding which involves interest of the Government wherein any Government Officer or any other person is a party when so directed by the Legal Remembrancer;

(b) to advise the Government, the Board of Revenue, the Heads of Departments, the District Collectors and other District Officers, not only in respect of any proceedings, whether civil or criminal, which he has to conduct on behalf of the Government or on behalf Of any Government Officer, but also on all legal matters concerning Government business of any kind which may be referred to him;

(c) to receive processes issued by a Civil Court against the Slate Government;

(d) to conduct the prosecution in every trial before the Court of Session For that purpose he shall, at the earliest, examine the record and see that any defect such as the omission to summon a necessary witness is, if possible, remedied before the date fixed for trial in the Court of Session;

(e) to appear for the prosecution that the hearing before the Sessions Court of any appeal against any conviction or application for revision of a sentence, or order (not being one of discharge or acquittal) against which no appeal lies, when notice of such appeal is given to the Officer appointed by the State Government under Section 422 of the Code of Criminal Procedure, 1898 (Act 5 of 1898) or when he is directed by the Sessions

Judge or the District Magistrate to so appear;

(f) when so required by the Legal Remembrancer to conduct prosecution in any trial before a Magistrate;

(g) to defend public officers against criminal prosecutions, when so directed by the Legal Remembrancer;

(h) to appear, when so directed by a District Judge, in support of an order imposing a fine on or directing the arrest of a witness under the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and appealed against to the District Court;

(i) to appear, when so directed by any Court in any proceeding under Section 476 or 478 of the Code of Criminal Procedure, 1898 (Act 5 of 1898);

(j) to appear, when so directed by the District Collector, in applications made under Section 10 of the Guardians and Wards Act, 1890 (Act 8 of 1890);

(k) to advise Government as to the expediency of appealing against any adverse judgment or order of the Court, in a case in which he had appeared;

(l) to appear in and inquire into applications by parties to use in forma pauperis or to prefer pauper appeals;

(m) to report to the District Collector the result of civil suits, appeals and other civil proceedings conducted by him in any Court,

(n) in criminal cases, where the accused person is a Government servant, to intimate the Head of the Department to whom the said Government servant is subordinate about the final order passed by the Court immediately after the said order is passed;

(o) to assist the Advocate-General or the Government Advocate or the Standing Counsel in

the High Court whenever required by any of them in respect of any case which he has conducted in the lower Court;

(p) to appear on behalf of the State Government in all revenue cases and in appeals arising there from;

(q) to perform on behalf of other State Governments such duties of a legal character as they may be directed to perform by the State Government;

(r) to ensure that there is no delay on his part either in giving opinion on matters referred to him or in sending to the State Government or to any Officer of the State Government the drafts of pleadings and counter-affidavits prepared by him for approval;

(s) to submit statements and returns as required under the rules for the time being in force;

(t) to maintain registers and accounts as required under the rules for the time being in force;

(u) to take back from the Court all exhibits filed on behalf of Government and forward the same to the Collector or other officer concerned;

(v) to prepare and revise tenders, conveyances, leases, security and indemnity bonds, contracts, etc., for the several departments of the State Government and to draw up complaints, written statements, memoranda of appeal, petitions and affidavits in civil suits and appeals in which the State Government is concerned;

(w) to appear in appeals preferred against Municipal assessment of Government buildings and in cases referred to the Court by the Collector under Section 18 of the Land Acquisition Act, 1894 (Act 1 of 1894);

(x) to give advice on the notices under Section 80 of the Code of Civil Procedure, 1908 (5 of 1908);

(y) to maintain accounts of all receipts and disbursements in connection with his duties in the form of a day-book, with such subsidiary ledgers as would make it possible to ascertain without difficulty the whole of the charges connected with each case.

14. Limitations of the officer-A Law Officer shall not-

(a) hold any brief against Government, or advise, appear or act in any case against Government or give advice to private parties in cases in which he is likely to be called upon to advise Government or any Government Officer ;

(b) act or appear on behalf of a plaintiff in any suit in which the plaintiff has applied for permission to sue in forma pauperis until the application for permission to sue in forma pauperis has been decided by the Court ;

(c) undertake the defence of any person or appear against the Government in any criminal proceeding except in the criminal cases outside his jurisdiction where the Legal Remembrancer may grant him permission to appear against Government on the specific condition that the work relating to the Government cases in the Courts in the district which may be within his jurisdiction does not suffer;

(d) appear for the defence in cases in which he might have accepted briefs prior to his appointment unless permission is obtained from the Collector;

(e) accept any engagement or fee from private parties in which he appears on behalf of the Government;

(f) communicate directly or indirectly to any person any document or information which has come to his possession in the course of his duties, unless permission is obtained from the Legal Remembrancer.”

8.5. On perusal of the aforementioned provisions, it is made clear that Rule 3(a) defines "Public Prosecutor" and, as such, the said Public Prosecutor is appointed under Section 24 of the Code of Criminal Procedure 1973. Similarly, Assistant Public Prosecutor is appointed under Section 25 of the Code of Criminal Procedure, 1973. They are coming under the control of Director of Public Prosecutor under Section 25-A of the Code of Criminal Procedure, 1973. There is no iota of doubt that this provision is applicable so far as appointment of the petitioner is concerned. With reference to Rule 6 of the Odisha Law Officers' Rules, 1971, his term ordinarily for a period three years, subject to any other direction by the State Government and he shall be eligible for re-appointment on expiry of such term. More so, Rule 13 deals with duties of Law Officer, whereas limitation has been prescribed under Rule-14 as quoted above. Thereby, as an Assistant Public Prosecutor, the petitioner is bound by the aforementioned provisions, which is applicable to him.

Any contravention thereof, he has to be prosecuted under the provisions of Odisha Law Officers' Rules, 1971. Being an Additional Public Prosecutor, the provisions, which have been enumerated above, are fully applicable to the petitioner.

8.6 In exercise of powers conferred by proviso to Article 309 of the Constitution of India, read with Sections 24 and 25 of the Code of Criminal Procedure 1973, the Government of Odisha was pleased to make the rules to regulate the recruitment and conditions of service of the Orissa State Prosecution Service called "Orissa State Prosecution Service Rules, 1997". Rule-3 thereof deals with constitution of service and Rule 3.1(b) thereof states about Additional Public Prosecutor, Group-A service. The method of recruitment of such Additional Public Prosecutors has been prescribed under Rule-4, whereas the eligibility criteria for direct recruitment have been prescribed under Rule 5. Rule 6 deals with the vacancies of the direct recruitment and Rule 7 deals with method of recruitment by promotion.

Thereby, with regard to appointment of the Assistant Public Prosecutor, Additional Public Prosecutor and other Law Officer of the State Government the modalities of the Orissa State Prosecution Service Rules, 1997 are to be followed.

8.7 It is made clear that the Government of Odisha in Law Department, vide notification dated 23.06.2017 under Annexure-1, appointed Advocates as Special Public Prosecutor, Addl. Public Prosecutor, Associate Lawyers, Asst. Public Prosecutor, Govt. Pleader and Addl. Govt. Pleaders in the district of Khordha under the Odisha Law Officers' Rules, 1971 until further orders for the stations as mentioned against each of them with a stipulation that their fees and other allowances shall be regulated under the Odisha Law Officers' Rules, 1971. The said notification clearly indicates the name of the petitioner, who stands at sl. no.7 and has been appointed as Addl. Public Prosecutor in the Court of ACJM, Bhubaneswar, until further orders. Pursuant to such appointment, the

petitioner was discharging his duties and responsibilities as Addl. Public Prosecutor in the Court of ACJM, Bhubaneswar. At the same time, he was also appearing in private cases, where there is no conflict of interest with the State Government, to conduct the cases on behalf of the private parties. As a matter of fact, for his appearance in private cases, having no conflict of interest with the State Government in any manner, there is no bar. Admittedly, the petitioner had appeared for the respondent wife in C.P. Case No. 49 of 2018 pending before the learned Judge, Family Court, Bhubaneswar. Since C.P. Case No. 49 of 2018 was a case between husband and wife and there was no involvement of the State Government in any manner, in the private capacity as an Advocate the petitioner entered appearance for the respondent-wife. As such, there is no bar in appearing on behalf respondent-wife in the C.P. Case, since there was no conflict of interest with the State Government in any manner. Thereby, there is no dispute that the petitioner appeared in

private capacity in C.P. Case No. 49 of 2018 for respondent wife and had taken steps. His functioning in the private capacity as Advocate on behalf of respondent-wife has no nexus with his functioning as Addl. Public Prosecutor in ACJM Court at Bhubaneswar. As such, the functioning of the petitioner was absolutely distinct and separate so far as discharging his responsibility as Advocate in private capacity vis-à-vis Addl. Public Prosecutor in ACJM Court at Bhubaneswar. As there was no conflict of interest involved in due discharge of his private function vis-à-vis discharge of his responsibility as Addl. Public Prosecutor in ACJM Court at Bhubaneswar, the action taken against the petitioner terminating him from the post of Addl. Public Prosecutor vide Annexure-5 dated 26.07.2018 on the “ground of allegation” by causing an enquiry, without complying principle of natural justice, pursuant to the representation filed by the opposite party no.4 before the Chief Minister of Odisha, is to be examined whether the same has got any nexus in due discharge of his function

as Addl. Public Prosecutor.

8.8 As it appears, a notice was issued to the petitioner on 31.05.2018 vide Annexure-2 in connection with Inquiry No. 1/2018 pertaining to C.P. Case No. 49 of 2018 pending before the court of Judge, Family Court, Bhubaneswar alleging that he on 17.05.2018 had subjected to opposite party no.4 inhuman humiliation in the court premises. Therefore, he was directed to appear in person on 02.06.2018 before opposite party no.2 to put up his defence, if any, in the matter. In response to the said notice, the petitioner appeared on 02.06.2018 before opposite party no.2 and gave a reply stating that copy of the complaint has not been supplied to him and as such he is unaware of the nature and character of allegation made against him and expressed his inability to comment on the allegation at that stage. He also contended that the notice reveals that the allegation made against him, pursuant to which the inquiry has been initiated, is not in connection with any affairs relating to discharge of duty as Addl. Public Prosecutor,

Bhubaneswar, and that he as a counsel for the respondent in C.P. No. 49 of 2018 on the file of the Judge, Family Court, Bhubaneswar was discharging his professional duty, which he was obliged to do professionally and honestly to protect the interest of his client and while doing so, the opposite party no.4 as applicant in C.P. No. 49 of 2018 and his Advocate, in order to disturb him and compel him to give up the said case and for their benefit, have made some wild and baseless allegations. Therefore, he requested to drop the proceedings as not maintainable, since neither the State Prosecution was a party nor had he played any role as Addl. Public Prosecutor, Bhubaneswar in the said case and rather acted as a private counsel. He also contended that if opposite party no.2 is desirous to hold further inquiry, he may be allowed to put up his proper defence after acquainting with the allegations made against him.

8.9. On 13.06.2018, opposite party no.2 submitted his report to opposite party no.1 in connection with Government in Law Department Letter

No. I-LR-33/18, 5336/L dated 16.05.2018 stating therein that he had conducted the inquiry in connection with the allegation of physical assault brought by the petitioner Jaykrishan Saha against the petitioner, Additional Public Prosecutor, Bhubaneswar and the conduct of the petitioner Additional Public Prosecutor, Bhubaneswar was blameworthy and can never be countenanced with any reason and the Government has the pleasure to appoint Additional Public Prosecutor and the Prosecutor must behave in the well defined manner without causing embarrassment to the litigant public. Since the petitioner has undermined his position, the matter is reported to the Government as directed for just and proper action. On that basis the notification dated 26.07.2018 was passed terminating the service of the petitioner as Additional Public Prosecutor, Bhubaneswar on the "ground of allegation". Needless to say, in spite of request made by the petitioner dated 02.06.2018 neither a copy of the complaint was supplied to him nor he was aware of the nature and the character

of allegation made against him. Merely because he was directed to appear on 02.06.2018 in compliance to the order dated 31.05.2018 and on that date, he gave his reply, but without adhering the same, the so called report was submitted by the opposite party no.2 on 13.06.2018, basing upon which the Notification dated 26.07.2018 was issued.

8.10 The petitioner filed an application under the Right to Information Act, 2005 on 01.08.2018 for supply of materials and on that basis the entire order sheet was supplied to the petitioner. But, by that time, the order impugned dated 26.07.2018 had already been passed. The reason for termination was made available to the petitioner, only when he applied for under the Right to Information Act, 2005. If the same is scrutinized in proper perspective, then it will reveal that the allegation made by opposite party no.4 has no nexus with the petitioner's official functioning as Additional Public Prosecutor in ACJM Court, Bhubaneswar. Therefore, if any breach has been committed by the petitioner during

the course of discharging his duty in his private capacity as Advocate in C.P. Case No. 49 of 2018, while appearing before Judge, Family Court, Bhubaneswar on behalf of the respondent-wife, the same can be taken care of by the provisions contained in Advocates Act, 1961, if the act said to have been committed by the petitioner is construed as misconduct on the part of the Advocate. Section 4 of the Advocates Act, 1961 deals with the Bar Council of India and Section 5 thereof states that the Bar Council as a body corporate, whereas Section 6 deals with functions of the State Bar Council. Section 6(1)(c) states that the functions of a State Bar Council shall be to entertain and determine cases of misconduct against Advocates on its roll. Chapter V deals with conduct of the Advocates. Section 35 reads as follows:-

“35. Punishment of Advocates for misconduct.—(1) Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any Advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee.

[(1A) The State Bar Council may, either of its own

motion or on application made to it by any person interested, withdraw a proceeding pending before its disciplinary committee and direct the inquiry to be made by any other disciplinary committee of that State Bar Council.]

*(2) The disciplinary committee of a State Bar Council 4 *** shall fix a date for the hearing of the case and shall cause a notice thereof to be given to the Advocate concerned and to the Advocate-General of the State.*

(3) The disciplinary committee of a State Bar Council after giving the Advocate concerned and the Advocate-General an opportunity of being heard, may make any of the following orders, namely:—

(a) dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed;

b) reprimand the Advocate;

(c) suspend the Advocate from practice for such period as it may deem fit;

(d) remove the name of the Advocate from the State roll of Advocates.

(4) Where an Advocate is suspended from practice under clause (c) of sub-section (3), he shall, during the period of suspension, be debarred from practising in any court or before any authority or person in India.

(5) Where any notice is issued to the Advocate-General under sub-section (2), the Advocate-General may appear before the disciplinary committee of the State Bar Council either in person or through any Advocate appearing on his behalf.

Explanation.—In this section, 3 [section 37 and section 38], the expressions “Advocate-General” and “Advocate-General of the State” shall, in relation to the Union territory of Delhi, mean the

Additional Solicitor General of India.”

8.11 It is of relevance to mention here that the members of legal profession occupy a very high status and this carries with equally high responsibilities. From the members of the bar, the Courts expect a much higher standard of conduct and caution. The members of the legal profession owe duties to their clients and also to the Courts. After passing of the Advocates Act, 1961, the Bar Council has been given the jurisdiction to take disciplinary action against the Advocates, if they are found to be remiss about their performance or duties in a manner, which is worthy of their profession. Therefore, except the Bar Council, no other authority has been invested with any jurisdiction to control the action of an Advocate. There is a clear distinction between the cases where the misconduct is one in relation to the petitioner's duty to his client and other cases where it is not so. Therefore, a member of the bar undoubtedly owes a duty to his client and must place

before the Court all that can be fairly or reasonably be submitted on behalf of his client. Therefore, a distinction should be done between the misconduct of purely professional career and misconduct which also lies within the ambit of criminal law. In the former case, the Bar Council Act is a proper one to deal with purely professional misconduct and it cannot usurp the functions of a criminal or civil Court, merely because the person complains against the Advocate and the complaint being a matter connected with his professional practice. There are two tests for considering whether an Advocate should be stock of the role of Advocates on the ground of misconduct. The misconduct must be such as to show that he is unworthy of remaining in the profession or he must appear to be unfit to perform the duties of an Advocate. The two tests are to be read disjointedly and applicable to both suspension and reprimand of Advocate. Therefore, taking into consideration the complaint made by opposite party no.4 in due discharge of the function of

the petitioner as Advocate in private capacity, the remedy is available under the Advocates Act, 1961 and that can be through Bar Council. Therefore, the petitioner's case should not have been enquired into by opposite party no.2 in a perfunctory manner, without affording any opportunity of hearing and even without supplying the complaint made by opposite party no.4 in spite of the request made by the petitioner on 02.06.2018 and, as such, termination of the service of the petitioner, without following due process of law, vide Annexure-5 dated 26.07.2018 by opposite party no.1, relying on such inquiry report dated 13.06.2018, also cannot sustain in the eye of law. Therefore, the initiation of the so called proceeding in connection with Inquiry No. 1 of 2018 cannot come within the purview of the provisions contained in Orissa Law Officers' Rules 1971, read with Orissa State Prosecution Service Rules, 1997. Rather, the petitioner having performed his duty as an Advocate in his private capacity, the same comes under the purview of the Advocates' Act, 1961. Thus, the order

impugned passed by opposite party no.1 is without jurisdiction.

8.12 **Butterworths'** Words and Phrases Legally Defined, Vol.3 at page-113, states succinctly "by jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision".

8.13 In **Black's Law** Dictionary, 6th Ed., the word 'jurisdiction' is defined as 'a term of comprehensive import embracing every kind of judicial action'.

8.14 In **Halsbury's Laws of England**, 4th Ed. Vol.1(1) pp.113-122, it is stated as follows;

"The inferior Court or tribunal lacks jurisdiction if it has no power to enter upon an enquiry into a matter at all; and it exceeds jurisdiction if it nevertheless enters upon such an enquiry or, having jurisdiction in the first place, it proceeds to arrogate an authority withheld from it by perpetrating a major error of substance, form or procedure, or by making an order or taking action outside its limited area of competence. Not every error committed by an inferior Court or tribunal or other body, however, goes to jurisdiction. Jurisdiction to decide a matter

imports a limited power to decide that matter incorrectly.

A tribunal lacks jurisdiction if (1) it is improperly constituted, or (2) the proceedings have been improperly instituted, or (3) authority to decide has been delegated to it unlawfully, or (4) it is without competence to deal with a matter by reason of the parties, the area in which the issue arose, the nature of the subject-matter, the value of that subject-matter, or the non-existence of any other pre-requisite of a valid adjudication. Excess of jurisdiction is not materially distinguishable from lack of jurisdiction and the expressions may be used interchangeably.

Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of, the issue, or as jurisdictional.

There is a presumption in construing statutes which confer jurisdiction or discretionary powers on a body, that if that body makes an error of law while purporting to act within that jurisdiction or in exercising those powers, its decision or action will exceed the jurisdiction conferred and will be quashed. The error must be one on which the decision or action depends. An error of law going to jurisdiction may be committed by a body which fails to follow the proper procedure required by law, which takes legally irrelevant considerations into account, or which fails to take relevant considerations into account, or which asks itself and answers the wrong question.

The presumption that error of law goes to jurisdiction may be rebutted on the construction of a particular statute, so that the relevant body will not exceed its jurisdiction by going wrong in law. Previously, the courts were more likely to find that errors of law were within jurisdiction; but with the modern approach errors of law will be held to fall within a body's jurisdiction only in exceptional cases. The Court will generally assume that their expertise in determining the principles of law applicable in any case has not been excluded by Parliament.

Errors of law include misinterpretation of a statute or any other legal document or a rule of common law; asking oneself and answering the wrong question, taking irrelevant considerations into account or failing to take relevant considerations into account when purporting to apply the law to the facts; admitting inadmissible evidence or rejecting admissible and relevant evidence; exercising a discretion on the basis of incorrect legal principles; giving reasons which disclose faulty legal reasoning or which are inadequate to fulfil an express duty to give reasons, and misdirecting oneself as to the burden of proof”.

The same has been referred in **Reliance Airport Development Authorities v. Airport Authority**, (2006)

10 SCC 1.

8.15 **Wade’s Administrative Law** 7th Ed. (1994)

Chapter 9, states as follows:

“The Court will quash for any decisive error, because all errors of law are now jurisdictional”.

The same has been taken note by the apex Court in **Mafatlal Industries Ltd. v. Union of India**, (1997) 5 SCC 536.

8.16 In **Smt. Ujjam Bai v. State of U.P.** (Constitution Bench), AIR 1962 SC 1621, the apex Court held that ‘jurisdiction’ is the power to hear and

determine, it does not depend upon the regularity of the exercise of that power or upon correctness of the decision pronounced, for the power to decide necessarily carries with it the power to decide wrongly as well as rightly.

8.17 In ***Official Trustee West Bengal v. Sachindranath Chatterji & Ors.***, AIR 1969 SC 823, the apex Court, while considering Section-9 of the Code of Civil Procedure, held that 'jurisdiction' means the legal authority to administer justice according to the means which the law has provided and subject to the limitations imposed by that law upon the judicial authority.

8.18 In ***Raja Soap Factory v. S.P. Shantharaj***, AIR 1965 SC 1449, the apex Court held that by "jurisdiction" is meant the extent of the power which is conferred upon the Court by its Constitution to try a proceeding.

8.19 In ***Hari Prasad Mulshankar Trivedi v. V.B. Raju***, AIR 1973 SC 2602, the apex Court held that the

word “jurisdiction” is an expression which is used in a variety of senses and takes its colour from its context. Whereas the ‘pure’ theory of jurisdiction would reduce jurisdictional control, to a vanishing point, the adoption of a narrower meaning might result in a more useful legal concept even though the formal structure of law may lose something of its logical symmetry.

8.20 In **A.R. Antulay v. R.S. Nayak**, AIR 1988 SC 1531, the apex Court held that jurisdiction is the authority or power of the Court to deal with a matter and make an order carrying binding force in the facts.

8.21 In **Harpal Singh v. State of Punjab**, (2007) 13 SCC 387, the apex Court held that ‘jurisdiction’ means the authority or power to entertain, hear and decide a case and to do justice in the case and determine the controversy. In absence of jurisdiction the Court has no power to hear and decide the matter and the order passed by it would be a nullity.

8.22 In ***CIT v. Pearl Mech. Engg. & Foundry Works (P.) Ltd.***, (2004) SCCF 597, the apex Court held that the word 'jurisdiction' implies the Court or tribunal with juridical power to hear and determine a cause, and such tribunal cannot exist except by authority of law.

8.23 The sum total of above meaning attached to the word 'jurisdiction' is normally understood as the authority to decide a matter or dispute. Therefore, the Court will quash if (a) erroneous and decisive of fact was jurisdictional (b) found on the basis of no evidence (c) wrong or misdeed or ignored.

8.24 Taking into consideration the meaning of jurisdiction, as prescribed in various Dictionaries as well as decisions of the apex Court, there is no iota of doubt that opposite party no.2 has caused an enquiry without affording an opportunity of hearing and submitted his report, basing upon which opposite party no.1 passed the order impugned terminating the services of the petitioner under the Rules, 1971, as if he has committed error or illegality in due discharge of his function as an

Additional Public Prosecutor, rather, if the factual matrix of the case is taken into consideration, as the petitioner has appeared in private capacity as an Advocate, if any illegality or irregularity is said to be committed by him, he should have been dealt with under the provisions of Advocate's Act 1961 by referring the matter to the Bar Council of Odisha. Without doing so, the order so passed is without jurisdiction and the same cannot be sustained in the eye of law. Therefore, issue nos. 1 and 2 are answered accordingly.

9. **Issue No.3.**

The order impugned, i.e. notification dated 26.07.2018, by which the petitioner has been terminated from service on the ground of allegation cannot sustain in the eye of law, in view of the fact that what is the ground of allegation that was not supplied nor the complaint, basing upon which the Inquiry No.1 of 2018 was conducted, was provided, in spite of request made by the petitioner, vide his letter dated 02.06.2018. Not only that, the opposite party no.2 has shown an

undue haste to conclude the proceeding without considering the ground reality of the case in hand. Though, he has referred to the petition filed by opposite party no.4 and submitted with allegation in his inquiry report, but in spite of request made by the petitioner, that allegation of opposite party no.4 was not provided to the petitioner and, as such, the reliance has been placed on certain statements made in the complaint petition filed by opposite party no.4 and relying upon some allegation and statement of the brother of opposite party no.4, the opposite party no.2 has come to a conclusion that the conduct of the petitioner as Additional Public Prosecutor, Bhubaneswar threatening opposite party no.4 with assault and instigating other Advocates to assault is unbecoming on the part of Additional Public Prosecutor. These materials were never supplied to the petitioner and opposite party no.2 taking cognizance of the same submitted the inquiry report, basing upon which the order of termination was issued on 26.07.2018. Without providing any material and

without giving opportunity to the petitioner to cross examine the opposite party no.4 and his brother in any manner, the opposite party no.2 has come to a conclusion, abruptly relying on the statement of P.Ws.1 and 2, that the petitioner and his associate lawyer S.K. Khuntia had used threatening tricks to opposite party no.4. The same should not have been done and the petitioner should have acted as a champion of civil liberty and not as a person resorting to threatening tricks without any regard for law. Such conclusion itself cannot sustain and as such, the presumption drawn that the Additional Public Prosecutor is supposed to maintain dignity and gesture conducive for advancement of justice delivery system, that finding itself cannot sustain because of non-compliance of principle of natural justice. Therefore, without affording any opportunity of hearing to the petitioner, any recommendation made by opposite party no.2 to the Government cannot sustain in the eye of law.

9.1 More so, the reliance having been placed on

the statement made by opposite party no.4 and his brother, the same should not have been treated as evidence, since the petitioner was not given any opportunity to cross-examine them and, as such, the same should not have been taken into consideration by opposite party no.2 for recommending to take any action against him. To substantiate such stand, the decision in the case of **Saroj Kumar Sinha** (supra) has been referred to. In the said judgment, the apex Court observed the fact that, it was not disputed before the High court nor before the apex Court that the documents were not supplied to the party. If the same was taken into consideration in that case, the petitioner's case is squarely covered by the said case, as he was not supplied with the documents sought for by him. The relevant paragraphs of the said judgment are referred to below:-

"32. The affect of non disclosure of relevant documents has been stated in Judicial Review of Administrative Action by De Smith, Woolf and Jowell, Fifth Edition, Pg.442 as follows:

"If relevant evidential material is not disclosed at all to a party who is potentially prejudiced by it, there is prima facie unfairness, irrespective of whether the material in question arose before, during or after the hearing. This proposition can be illustrated by a large number of modern cases involving the use of undisclosed reports by administrative tribunals and other adjudicating bodies. If the deciding body is or has the trappings of a judicial tribunal and receives or appears to receive evidence ex parte which is not fully disclosed, or holds ex parte inspections during the course or after the conclusion of the hearing, the case for setting the decision aside is obviously very strong; the maxim that justice must be seen to be done can readily be invoked."

In our opinion the aforesaid maxim is fully applicable in the facts and circumstances of this case.

33. As noticed earlier in the present case not only the respondent has been denied access to documents sought to be relied upon against him, but he has been condemned unheard as the enquiry officer failed to fix any date for conduct of the enquiry. In other words, not a single witness has been examined in support of the charges levelled against the respondent. The High Court, therefore, has rightly observed that the entire proceedings are vitiated having been conducted in complete violation of principles natural justice and total disregard of fair play. The respondent never had any opportunity at any stage of the proceedings to offer an explanation against the allegations made in the charge sheet.

34. This Court in the case of *Kashinath Dikshita vs. Union of India*, (1986) 3 SCC page 229, had clearly stated the rationale for the rule requiring supply of copies of the documents, sought to be relied upon by the authorities to prove the charges levelled against a Government servant.

In that case the enquiry proceedings had been challenged on the ground that non supply of the statements of the witnesses and copies of the documents had resulted in the breach of rules of natural justice. The appellant therein had requested for supply of the copies of the documents as well as the statements of the witnesses at a preliminary enquiry. The request made by the appellant was in terms turned down by the disciplinary authority.

35. *In considering the importance of access to documents in statements of witnesses to meet the charges in an effective manner this Court observed as follows:*

"10.....when a government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies, how can the concerned employee prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible? It is difficult to comprehend why the disciplinary authority assumed an intransigent posture and refused to furnish the copies notwithstanding the specific request made by the appellant in this behalf. Perhaps the disciplinary authority made it a prestige issue. If only the disciplinary authority had asked itself the question: "What is the harm in making available the material?" and weighed the pros and cons, the disciplinary authority could not reasonably have adopted such a rigid and adamant attitude. On the one hand there was the risk of the time and effort invested in the departmental enquiry being wasted if the

courts came to the conclusion that failure to supply these materials would be tantamount to denial of reasonable opportunity to the appellant to defend himself. On the other hand by making available the copies of the documents and statements the disciplinary authority was not running any risk. There was nothing confidential or privileged in it."

36. On an examination of the facts in that case, the submission on the behalf of the authority that no prejudice had been caused to the appellant, was rejected, with the following observations:

"12. Be that as it may, even without going into minute details it is evident that the appellant was entitled to have an access to the documents and statements throughout the course of the inquiry. He would have needed these documents and statements in order to cross-examine the 38 witnesses who were produced at the inquiry to establish the charges against him. So also at the time of arguments, he would have needed the copies of the documents. So also he would have needed the copies of the documents to enable him to effectively cross-examine the witnesses with reference to the contents of the documents. It is obvious that he could not have done so if copies had not been made available to him. Taking an overall view of the matter we have no doubt in our mind that the appellant has been denied a reasonable opportunity of exonerating himself."

37. We are of the considered opinion that the aforesaid observations are fully applicable in the facts and circumstances of this case. Non-disclosure of documents having a potential to cause prejudice to a government servant in the enquiry proceedings would clearly be denial of a reasonable opportunity to submit a plausible and effective rebuttal to the charges being enquired into against the government servant.

38. The aforesaid proposition of law has been reiterated in the case of *Trilok Nath vs. Union of India* 1967 SLR 759 (SC) wherein it was held that non-supply of the documents amounted to denial of reasonable opportunity. It was held as follows:

".....Had he decided to do so, the document would have been useful to the appellant for cross-examining the witnesses who deposed against him. Again had the copies of the documents been furnished to the appellant he might, after perusing them, have exercised his right under the rule and asked for an oral inquiry to be held. Therefore, in our view the failure of the Inquiry Officer to furnish the appellant with copies of the documents such as the FIR and the statements recorded at Shidipura house and during the investigation must be held to have caused prejudice to the appellant in making his defence at the inquiry."

In Paragraph-39 of the above judgment, the apex Court referred to the judgment in the case of ***State of Punjab v. Bhagat Ram***, (1975) 1 SCC 155, wherein at Paragraphs 7 and 8, it was observed as follows:-

"7. The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against the charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant.

Unless the statements are given to the government servant he will not be able to have an effective and useful cross-examination.

8. It is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the government servant. A synopsis does not satisfy the requirements of giving the government servant a reasonable opportunity of showing cause against the action proposed to be taken."

Finally, the apex Court taking into consideration the fact that the petitioner had been denied the reasonable opportunity of defending himself in the inquiry dismissed the appeal preferred by the State. The aforementioned principle is fully applicable to the present case.

9.2. In **Oryx Fisheries Private Limited** (supra), the apex Court at Paragraphs-23, 24, 25, 26, 27, 28, 31, 32 and 33 observed as follows:-

"23. Relying on the underlined portions in the show cause notice, learned counsel for the appellant urged that even at the stage of the show cause notice the third respondent has completely made up his mind and reached definite conclusion about the alleged guilt of the appellant. This has rendered the subsequent proceedings an empty ritual and an idle formality.

24. This Court finds that there is a lot of substance in the aforesaid contention. It is well settled that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating a show cause proceeding. A show cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice.

25. Expressions like "a reasonable opportunity of making objection" or "a reasonable opportunity of defence" have come up for consideration before this Court in the context of several statutes. A Constitution Bench of this Court in *Khem Chand v. Union of India and others*, reported in AIR 1958 SC 300, of course in the context of service jurisprudence, reiterated certain principles which are applicable in the present case also.

26. S.R. Das, C.J. speaking for the unanimous Constitution Bench in *Khem Chand (supra)* held that the concept of 'reasonable opportunity' includes various safeguards and one of them, in the words of the learned Chief Justice, is:

"(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges leveled against him are and the allegations on which such charges are based;"

27. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge- sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show cause notice gets vitiated by unfairness and bias and the subsequent proceeding become an idle ceremony.

28. Justice is rooted in confidence and justice is the goal of a quasi-judicial proceeding also. If the functioning of a quasi-judicial authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness. Its fairness is obviously to be manifested by the language in which charges are couched and conveyed to the person proceeded against.

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31. It is of course true that the show cause notice cannot be read hyper-technically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.

32. Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show cause notice.

33. The principle that justice must not only be done but it must eminently appear to be done as well is equally applicable to quasi judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subject to it."

9.3. On the basis of the RTI application submitted on 01.08.2018, basing on which the information was supplied on 02.08.2018, the Special Officer has placed a note, wherein it was indicated that "Enclosing a copy of the allegation petition dated 08.05.2018 of Sri Jay Kishan Saha, Baripada addressed to the Hon'ble Chief Minister, Odisha, the Under Secretary, Government of Odisha, Law Department has requested to enquire into the matter and furnish report to the Government." Basing upon the same, it is mentioned that from the allegation petition, it reveals that Sri Jay Kishan Saha has made allegation that Sri Pardyumna Pattnaik, Additional Public Prosecutor, Bhubaneswar and his Junior Sri Santosh Kumar Khuntia misbehaved him in the Court. Thereby, it was opined that the allegation as raised by the applicant is very serious in nature. Thus, applicant Sri Jay Kishan Saha be requested to give his statement before the Director with documents and witnesses to substantiate his allegations. The said note was approved on 17.05.2018 by the opposite party no.2.

9.4. On 21.05.2018, the complainant was present and his statement was recorded as P.W.1. Sri Jayprakash Saha, who happens to be his brother was also examined as P.W.2 on the request of P.W.1. The complainant wanted for adjournment for submitting CCTV footage regarding the alleged incident and for adducing further evidence in course of the inquiry. Consequentially, the matter was adjourned to 28.05.2018. On 28.05.2018, the complainant was absent and the Director presumed that the complainant closed his evidence and from the available material, he found that the petitioner appeared in the Family Court on behalf of the rival side of the complainant on the relevant date and stated as follows:-

“Since it is prima-facie found that Sri Pattnaik appeared from the rival side of the complaint and that the complainant by his averments had established that he was subjected to inhuman humiliation and derogatory situation at the instance of Sri Pattnaik, the delinquent/ Additional Public Prosecutor, thereby appears no further propriety to summon the said delinquent. However, in the interest of justice, send a notice to Sri Pattnaik to appear on 02.06.2018 at 2PM to give his statement in the matter, if any.”

The aforementioned order of opposite party no.2, which was passed while conducting the inquiry, reveals that he had already come to a conclusion that the complainant by his averments had established that he was subjected to inhuman humiliation and derogatory situation at the instance of the petitioner and, therefore, decided not to summon the petitioner to participate in the proceeding. Once he has taken such a decision, any action taken subsequent thereto is an empty formality. Even, pursuant to note sheet dated 02.06.2018, notice was issued to Sri Dev Das, learned counsel appearing on behalf of the complainant in C.P. Case No. 49 of 2018 in the Court of Judge, Family Court, Bhubaneswar to appear on 07.06.2018 at 3.00 P.M. to give his statement. He appeared on 07.06.2018 and also gave his statement in writing. The same was kept on record and, as such, Sri Das declined to make any further statement. Thereby, opposite party no.2 came to conclusion that summoning any other person in the matter appears to be redundant and submitted the

enquiry report to the Government in Law Department, as desired.

9.5. The sequence of events recorded in the order sheet itself clearly indicate that the Director of Public Prosecution, who belongs to Superior Judicial Service cadre, has acted in a perfunctory manner, as the inquiry report, which he submitted to the Government on 13.06.2018, has not been provided to the petitioner. Thereby, there is gross non-compliance of the principle of natural justice. Even though no specific provision has been prescribed under the Odisha Law Officers' Rules, 1971, read with Orissa State Prosecution Service Rules, 1997, but in absence of the same in statute, the principle of natural justice has to be complied, as has been held in **Oryx Fisheries** (supra).

9.6. In **Dharampal Satyapal** (supra), the apex Court at paragraphs-18, 19, 21, 24, 28, 29, 30, 31 observed as follows:-

“18. As a pure principle of law, we find substance and force in the aforesaid submission of Mr. Sorabjee. No doubt, the Department was seeking to recover the amount paid by virtue of Section 154 of the Act of 2003 which was enacted retrospectively and the constitutional validity of the said Section had already been upheld by this Court in R.C. Tobacco (supra) at the time of issuance of notice for recovery. Further, no doubt, the effect of the said amendment retrospectively was to take away the benefit which was granted earlier. However, the question is whether before passing such an order of recovery, whether it was necessary to comply with the requirement of show-cause notice? The appellant wanted to contend that Section 11A of the Excise Act was applicable, which requires this procedure to be followed. Even if that provision is not applicable, it is fundamental that before taking any adverse action against a person, requirement of principles of natural justice is to be fulfilled. This Court in Collector of Central Excise, Patna & Ors. v. I.T.C. Limited & Anr.[3] has held that show-cause and personal hearing is necessary before saddling an assessee with additional demand. It is also trite that when a statute is silent, with no positive words in the Act or Rules spelling out need to hear the party whose rights or interests are likely to be affected, requirement to follow fair procedure before taking a decision must be read into statute, unless the statute provides otherwise.

19. What is the genesis behind this requirement? Why it is necessary that before an adverse action is taken against a person he is to be given notice about the proposed action and be heard in the matter? Why is it treated as inseparable and inextricable part of the doctrine of principles of natural justice?

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21. In Common Law, the concept and doctrine of natural justice, particularly which is made applicable in the decision making by judicial and

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

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

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28. It is on the aforesaid jurisprudential premise that the fundamental principles of natural justice, including *audi alteram partem*,

have developed. It is for this reason that the courts have consistently insisted that such procedural fairness has to be adhered to before a decision is made and infraction thereof has led to the quashing of decisions taken. In many statutes, provisions are made ensuring that a notice is given to a person against whom an order is likely to be passed before a decision is made, but there may be instances where though an authority is vested with the powers to pass such orders, which affect the liberty or property of an individual but the statute may not contain a provision for prior hearing. But what is important to be noted is that the applicability of principles of natural justice is not dependent upon any statutory provision. The principle has to be mandatorily applied irrespective of the fact as to whether there is any such statutory provision or not.

29. De Smith captures the essence thus - "Where a statute authorises interference with properties or other rights and is silent on the question of hearing, the courts would apply rule of universal application and founded on plainest principles of natural justice".

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

31 In *Cooper v. Sandworth Board of Works*[10] the Court laid down that: '...although there is no positive word in the statute requiring that the party shall be heard, yet justice of common law would supply the omission of Legislature".

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35. From the aforesaid discussion, it becomes clear that the opportunity to provide hearing before making any decision was considered to be a basic requirement in the Court proceeding. Later on, this principle was applied to other quasi-judicial authorities and other tribunals and

ultimately it is now clearly laid down that even in the administrative actions, where the decision of the authority may result in civil consequences, a hearing before taking a decision is necessary.”

9.7 In the case of **East India Commercial Company Ltd., Calcutta & Anr. v. The Collector of Customs, Calcutta**, AIR 1962 SC 1893, the apex Court held that whether the statute provides for notice or not, it is incumbent upon the quasi-judicial authority to issue a notice to the concerned persons disclosing the circumstances under which proceedings are sought to be initiated against them, failing which the conclusion would be that principle of natural justice are violated. The said principle has also been followed in the case of **Union of India v. Madhumilan Syntex Pvt. Ltd.** (1988) 3 SCC 348; **Morarji Goculdas B&W Co. Ltd. v. Union of India**, 1995 Supp (3) SCC 588; **Metal Forgings v. Union of India** (2003) 2 SCC 36; and **Union of India v. Tata Yodogawa Ltd.**, (2015) 9 SCC 102. Therefore, there is no iota of doubt that even if the statute does not provide for notice, but it is incumbent upon the quasi-judicial authority to issue a notice to the

concerned persons disclosing the circumstances under which proceedings are sought to be initiated against them and non-adherence to the same amounts to violation of the principle of natural justice. Applying the same analogy to the present case, this Court has no hesitation to hold that while imposing penalty of terminating the petitioner, vide notification dated 26.07.2018, the principle of natural justice has been violated. Accordingly, issue no.3 is answered in favour of the petitioner.

10. **Issue No.4.**

In view of the information received under the RTI, vide letter dated 02.08.2018, which has been placed on record as Annexure-6 series, it is evident that by order dated 28.05.2018 opposite party no.2 decided not to summon the petitioner and thus, without affording any opportunity of hearing, concluded the inquiry on 07.06.2018 and submitted the enquiry report on 13.06.2018. On the basis of such inquiry report, copy of which was not supplied to the petitioner, the order

impugned was passed on 26.07.2018 terminating the petitioner. That itself amounts to post decisional hearing and reliance has been placed on the judgment of this Court in **R. Ramachandra Rao** (supra), of which one of us (Dr. Justice B.R. Sarangi) is the author. In the said judgment at Paragraphs-8, 9, 28, 29 and 30 this Court observed as follows:-

“8. In **K.I. Shephard** (supra), the apex Court held that fair play in actions is a facet of natural justice. The principles of natural justice are also applicable to administrative actions. Even in emergent situations, compliance with at least minimum requirements of natural justice rules, is a condition precedent to taking any action which effects adverse civil consequences, such as, loss of livelihood, post decisional hearing not sufficient in such cases.

9. In **H.L. Trehan** (supra), the apex Court held that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a government servant without complying with the rules of natural justice by giving the government servant concerned an opportunity of being heard. Any arbitrary or whimsical exercise of power prejudicially affecting the existing conditions of service of a government servant will offend against the provision of Article 14. It is further held that the post-decisional opportunity of hearing does not subserve the rules of natural justice. Once a decision has been taken, there is a tendency to uphold it and a representation may not yield any fruitful purpose. The authority, who embarks upon a post-decisional hearing, will naturally proceed with a closed mind and there is hardly

any chance of getting a proper consideration of the representation at such a post-decisional opportunity. Even if any hearing was given to the employees, that would not be in compliance with the rules of natural justice or avoid the mischief of arbitrariness as contemplated by Article 14 of the Constitution. Such a decision has been taken, taking into account the judgment rendered by the apex Court in the case of **K.I. Shephard** (supra).

The same view has also been taken by the apex Court in the case of **V.C. Banaras Hindu University v. Shrikant**, (2006) 11 SCC 42.

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28. In **Board of Secondary Education of Assam v. Mohd. Sarifulz Zaman**, (2003) 12 SCC 408, the apex Court held that if a mistake is to be rectified, the same should be done as expeditiously as possible.

In view of such position, the petitioners, having been allowed to serve for more than 10 years, the so called erroneous action of the authority cannot be rectified by a post-decisional hearing by issuing notice of show cause under Annexures-13 and 14, which amounts to gross violation of principles of natural justice.

29. In **Shri Jagannath Temple Managing Committee** (supra), this Court, while considering the case of sudden withdrawal of exemption for payment of income tax under Section 10 (23BBA) of the Income Tax Act, which the petitioner therein was enjoying from 1962, wherein apart from withdrawing exemption, various other notices were issued under Section 142 of the Income Tax Act and letters to the Bankers and others were issued under Sections 201 and 201 (1A) of the Act and notices under Section 221 (1) of the Act, held in paragraphs-16, 17, 18, 19 and 20 as follows:-

“16. Now, the question is whether such an order withdrawing exemption can be passed without giving the petitioner an opportunity of hearing. Admittedly, the

said order was passed changing the petitioner's status relating to grant of exemption from payment of Income Tax which the petitioner's status which the petitioner was enjoying since 1962. Therefore, the same order definitely visits the petitioner with civil consequences and affects the petitioner's right in so far as its income is concerned. The principles of natural justice is, therefore, attracted in the situation. Admittedly, the said order has been passed without giving the petitioner an opportunity of hearing.

17. However, an attempt was made by the Revenue to give the petitioner an opportunity of post-decisional hearing. Such order was passed on 8-12-2006. The question, is whether such post-decisional hearing complies with the requirement of natural justice. In the facts of the instant case, this court is inclined to hold that such post-decisional hearing is nothing but an empty ritual. In the instant case, order dated 12-10-2006 was passed with immediate effect and the authorities did not merely stop by passing the said order, but in order to implement the same, passed several other directions. Therefore, the authorities have virtually taken a final decision to implementing its order. In the affidavit, which has been filed in this proceeding, the authorities have showed the same attitude of enforcing its decision which was passed on 12-10-2006 by which exemption granted to the petitioner was sought to be withdrawn.

18. In such a situation, Hon'ble Supreme Court has held that the grant of a post-decisional hearing does not serve any effective purpose. Reference in this connection be made to the decision of the Supreme Court in the case of *K.I. Shephard v. Union of India* reported in

MANU/SC/6643/1987: (1988) ILLJ162SC. And para 16 of the report Hon'ble Supreme Court held that once a decision is taken, it is the common experience that there is a tendency to uphold it and representation does not yield any fruitful purpose.

19. Similar principles have been reiterated in the case of Siemens Ltd. V State of Maharastra reported in MANU/SC/8259/2008:(2006) 12 SCC 33: AIR 2006 SCW 6380 and in paragraph 9, learned Judges after noting the decision in the case of K.I.Shephard V. Union of India MANU/SC/0643/1987: (1988) ILLJ162SC and also the decision of the supreme court in the case of V.C. Banaras Hindu University v, Shrikant reported in MANU/SC/8170/2006 : AIR 2006SC2304 held that a post-decisional hearing in a situation where authorities have made up their mind is illusory, Similar principles have been reiterated in the case of Shekar Ghosh v. Union of India reported in MANU/SC/8616/2006: (2007) 1SCC331.

20. In the instant case, this Court finds that the post-decisional hearing which has been sought to be given by the Revenue is more or less in the form of an idle ceremony, since the authorities had already issued the impugned order withdrawing exemption, coupled with any attempt to implement the same immediately. This makes it very clear that they determined to implement the order of withdrawing the exemption. Therefore, the impugned order having been passed without giving the petitioner an opportunity of hearing, is violative of the basic tenets of natural justice and cannot be sustained and the same is liable to be quashed."

30. *In view of the principles of law laid down by the apex Court as well as this Court, as referred to above, after passing of the order dated 13.01.2000 in Annexure-15, issuance of consequential notices to show cause by the Director on 27.01.2000 under Annexures-13 and 14 for post decisional hearing, are in gross violation of principles of natural justice and, therefore, the same cannot sustain in the eye of law."*

Therefore, relying on the aforementioned judgment and the law laid down by the apex Court, which has been followed by this Court, by referring to the order sheet, as discussed above, this Court arrives at a conclusion that the order impugned dated 26.07.2018 terminating the service of the petitioner suffers from post decisional hearing and thereby issue no.4 is answered in favour of the petitioner.

11. **Issue No. 5.**

In ***Managing Director, ECIL*** (supra), the apex Court observed in Paragraph 26 of the judgment as follows:-

"26. The reason why the right to receive the report of the Inquiry Officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the Inquiry Officer

form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is the negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the Inquiry Officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the Inquiry Officer along with the evidence on record. In the circumstances, the findings of the Inquiry Officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the Inquiry Officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the Inquiry Officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary, authority while arriving at its conclusion. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary, authority comes to its own

conclusions, the delinquent employee should have an opportunity to reply to the Inquiry Officer's findings. The disciplinary authority is then required to consider the evidence, the report of the Inquiry Officer and the representation of the employee against it."

In view of the law laid down by the apex Court, as discussed above, it is made clear that when opposite party no.2 submitted the inquiry report, copy of the same was not supplied to the petitioner and, as such, he was denied of fair opportunity, as the findings of the inquiring officer do constitute an important material, which is likely to influence its conclusions, but when the inquiring officer goes further and records his findings, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by him while arriving at its conclusion. Thereby, reasonable opportunity was to be given in compliance of the principle of natural justice. The same having not been done in the instance case, the order impugned cannot

sustain in the eye of law. Accordingly issue no.5 is answered in favour of the petitioner.

12. Considering the facts and circumstances as well as the law, as discussed above, this Court is of the view that the notification dated 26.07.2018 under Annexure-5 terminating the petitioner with immediate effect on the ground of allegation cannot sustain in the eye of law and the same is liable to be quashed and is hereby quashed.

13. By virtue of the notification dated 23.06.2017 under Annexure-1 since the petitioner was appointed as Additional Public Prosecutor under the Odisha Law Officers' Rules, 1971 until further orders in the station mentioned against his name, meaning thereby, in the Court of ACJM, Bhubaneswar, and his fees and other allowances were regulated under the said rules as amended from time to time, he is to be reinstated in service immediately. Needless to say, for the period, i.e. from 26.07.2018 till his reinstatement, the petitioner

may not be entitled to get his fees and other allowances under the Odisha Law Officers' Rules, 1971, as he has not discharged his duty during that period, but from the date of reinstatement till his continuance in service, he shall be entitled to get such benefits in terms of the notification dated 23.06.2017 under Annexure-1.

14. In the result, the writ petition is allowed.
However, there shall be no order as to costs.

(DR. B.R. SARANGI)
JUDGE

B.P. SATAPATHY. I agree.

(B.P. SATAPATHY)
JUDGE

Orissa High Court, Cuttack
The 18th November, 2022, Arun/GDS