



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

<u>WRIT PETITION NO.3420/2019</u>	
<u>PETITIONERS</u> (Ori. Res. No.1)	1. Shri Vilasrao Deshmukh Shikshan Prasarak Va Bahuuddeshiya Sanstha, Buldhana, through its President C/o Head Master, Rajiv Gandhi Military School & Junior College (Science) Kolwad, Tq. & Dist. Buldhana.
(Ori. Res. No.2)	2. Head Master, Rajiv Gandhi Military School & Junior College (Science) Kolwad, Tq. & Dist. Buldhana.
<u>...Versus...</u>	
<u>RESPONDENTS</u> (Ori. Appellant)	1. Santosh Jaising Shele, Occ. (Asstt. Teacher) Aged about 37 years, Rajiv Gandhi Military School & Junior College (Science) Kolwad, Tq. & Dist. Buldhana, Postal Add. Near Church, Mayashoda Nagar, Agrawal Layout, Buldhana, Tq. & Dist. Buldhana.
(Ori. Res. No.3)	2. The Education Officer (Secondary), Z.P., Buldhana, District : Buldhana.
Mr. M.G. Bhangde Senior Advocate a/b Mr. P.B. Patil, Advocate for petitioners Mr. F.T. Mirza, Advocate for respondent no.1 Mrs. M.A. Barabde, AGP for respondent no.2	

WITH

WRIT PETITION NO.3414/2019

<u>PETITIONERS</u> (Ori.Res. No.1) (Ori. Res. No.2)	1. Shri Vilasrao Deshmukh Shikshan Prasarak Va Bahuuddeshiya Sanstha, Buldhana, through its President C/o Head Master, Rajiv Gandhi Military School & Junior College (Science) Kolwad, Tq. & Dist. Buldhana. 2. Head Master, Rajiv Gandhi Military School & Junior College (Science) Kolwad, Tq. & Dist. Buldhana.
<u>...Versus...</u>	
<u>RESPONDENTS</u> (Ori. Appellant) (Ori.Res. No.3)	1. Umesh Ramesh Waghmare (Asst. Teacher) Aged about 33 years, Rajiv Gandhi Military School & Junior College (Science) Kolwad, Tq. & Dist. Buldhana. Postal Add :- Near Jain Mandir, Mahavir Nagar Buldhana, Tq. & Dist. Buldhana. 2. The Education Officer (Secondary), Z.P., Buldhana, District : Buldhana.
Mr. M.G. Bhangde Senior Advocate a/b Mr. P.B. Patil, Advocate for petitioners Mr. F.T. Mirza, Advocate for respondent no.1 Mrs. M.A. Barabde, AGP for respondent no.2	

WITH

WRIT PETITION NO.3418/2019

<u>PETITIONERS</u> (Ori.Res. No.1)	1. Shri Vilasrao Deshmukh Shikshan Prasarak Va Bahuuddeshiya Sanstha, Buldhana, through its President C/o Head Master, Rajiv Gandhi Military School & Junior College (Science) Kolwad, Tq. & Dist. Buldhana.
(Ori. Res. No.2)	2. Head Master, Rajiv Gandhi Military School & Junior College (Science) Kolwad, Tq. & Dist. Buldhana.
<u>...Versus...</u>	
<u>RESPONDENTS</u> (Ori. Appellant)	1. Vijay Prakash Pawar (Asst. Teacher) Aged about 34 years, Rajiv Gandhi Military School & Junior College (Science) Kolwad, Tq. & Dist. Buldhana. <u>Postal Add.</u> C/o Shri Ravindra Chandrakant Mukwane Saraswati Nagar, Circular Road, Tq. & Dist. Buldhana.
(Ori.Res. No.3)	2. The Education Officer (Secondary), Z.P., Buldhana, District : Buldhana.
Mr. M.G. Bhangde Senior Advocate a/b Mr. P.B. Patil, Advocate for petitioners Mr. F.T. Mirza, Advocate for respondent no.1 Mrs. M.A. Barabde, AGP for respondent no.2	

WITH**WRIT PETITION NO.7698/2019**

<u>PETITIONER</u> [ORI APPELLANT]	Umesh s/o Ramesh Waghmare Aged about 37 years, Occu. : At Present Nil R/o Mahavir Nagar, Near Jain Mandir Buldana Tq. And Dist. Buldana.
<u>...Versus...</u>	

<u>RESPONDENTS</u> [ORI RESPONDENT]	1. Shri Vilasrao Deshmukh Shikshan Prasarak Va Bahuddeshiya Sanstha, Buldhana, Through its President R/o C/o Head Master, Rajiv Gandhi Military School & Junior College (Science), Kolwad, Tq. And Distt. Buldhana. 2. Rajiv Gandhi Military School & Junior College (Science), Through its Head Master, Kolwad, Tq. And Distt. Buldhana. 3. The Education Officer (Secondary), Zilla Parishad, Buldhana.
Mr. F.T. Mirza, Advocate for petitioner Mr. M.G. Bhangde Senior Advocate a/b Mr. P.B. Patil, Advocate for respondent nos.1 & 2 Mr. M.A. Barabde, AGP for respondent no.3	

WITH**WRIT PETITION NO.7700/2019**

<u>PETITIONER</u> [ORI APPELLANT]	Vijay S/o Prakash Pawar Aged about 36 years, Occu. At Present Nil, C/op Ravindra Chandrakant Mukwane, Saraswati Nagar Circular Road, Buldana, Tq. & Dist. Buldhana.
<u>...Versus...</u>	

<u>RESPONDENTS</u> [ORI RESPONDENT]	1. Shri Vilasrao Deshmukh Shikshan Prasarak Va Bahuuddeshiya Sanstha, Buldhana, Through its President R/o C/o Head Master, Rajiv Gandhi Military School & Junior College (Science) Kolwad, Tq. & Dist. Buldhana. 2. Rajiv Gandhi Military School & Junior College (Science) Through its Head Master Kolwad, Tq. & Distt. Buldhana. 3. The Education Officer (Secondary), Zilla Parishad, Buldhana.
Mr. F.T. Mirza, Advocate for petitioners Mr. M.G. Bhangde Senior Advocate a/b Mr. P.B. Patil, Advocate for respondent nos.1 & 2 Mrs. M.A. Barabde, AGP for respondent no.3	

WITH**WRIT PETITION NO.7699/2019**

<u>PETITIONER</u> (ORI APPELLANT)	Santosh S/o Jaising Shele, Aged about 40 years, Occu :- At present Nil R/o near Church, Maa Yashoda Nagar, Agrawal Layout, Tq. & Distt. Buldhana.
<u>...Versus...</u>	

<u>RESPONDENTS</u> (ORI RESPONDENT)	1. Shri Vilasrao Deshmukh Shikshan Prasarak Va Bahuuddeshiya Sanstha, Buldhana, through its President R/o C/o Head Master, Rajiv Gandhi Military School & Junior College (Science) Kolwad, Tq. & Dist. Buldhana. 2. Rajiv Gandhi Military School & Junior College (Science) Through its Head Master Kolwad, Tq. & Dist. Buldhana. 3. The Education Officer (Secondary), Zilla Parishad, Buldhana.
Mr. F.T. Mirza, Advocate for petitioners Mr. M.G. Bhangde Senior Advocate a/b Mr. P.B. Patil, Advocate for respondent nos.1 & 2 Mrs. M.A. Barabde, AGP for respondent no.3	

CORAM : AVINASH G. GHAROTE, J.

Date of reserving the judgment : 27/07/2023

Date of pronouncing the judgment : 30/08/2023

1. Writ Petition Nos.3420/2019; 3414/2019 and 3418/2019 are by the Management against the impugned judgment of the learned School Tribunal dated 16/03/2019 which has set aside the order of termination dated 06/01/2016 and has granted liberty to the Management to conduct de novo enquiry from the stage of Rule 36 (2) of the Maharashtra Employees of Private Schools

(Conditions of Service) Rules, 1981 (for short, “MEPS Rules”, hereinafter).

2. Writ Petition Nos.7698/2019; 7700/2019 and 7699/2019 are by the employees questioning the judgment of the learned School Tribunal insofar as it grants liberty to the management to conduct enquiry from the stage of Rule 36(2) of the MEPS Rules.

3. Mr. Bhangde, learned senior counsel along with Mr. Patil Advocate appears for the Management and Advocate Mr. Firdos Mirza appears for the employees. Mrs. Barabdhe learned AGP appears for the Education Officer (secondary). Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsels for the rival parties.

4. Mr. Bhangde, learned Senior Counsel for the petitioner submits, the basic pleas in all the petitions, except for some dates, are the same and they can be decided by a common judgment. According to learned Senior Counsel the controversy is on a narrow fulcrum inasmuch as the learned School Tribunal, has set aside the order of termination and remanded the matter back on an incorrect premise that the convener under Rule 36(5) of the MEPS Rules and

the representative of the management of the Enquiry Committee under Rule 36 (2) (a) (i) of the MEPS Rules, cannot be the same person. It is contended, that there is no statutory prohibition or bar for the same person to act in a dual capacity, and therefore, the finding rendered in that regard is incorrect.

5. It is also contended, that while acting as a member of the Enquiry Committee the person acts in an adjudicatory capacity and while in his role as a convener, the same person performs secretarial function, and therefore, there is no conflict between the two roles. It is further contended, that no objection was ever raised by the respondent/employee to the functioning of the representative of the management in the Enquiry Committee in a dual capacity on account of which relying upon ***Padmini Singha Vs. State of Assam And Others (2018) 10 SCC 561*** (para 13), it is submitted, that since the provision has been made for the benefit of the employee, by participating in the enquiry without protest the same stands waived by him and he cannot now be heard to raise that objection for the first time in appeal before the Tribunal. ***Padmini Singha*** (supra), has been relied on in ***Rukhmina Rajesh Dange Vs. Kailash Natthuji***

Pawar and others., Writ Petition No.2047/2019, decided on 05/04/2019 (para 8/pg.37).

6. The participation without protest, according to him, is demonstrated by the communication dated 12/08/2015 (pg.18), whereby Vishwanath Yeduji Mali was appointed as a representative of the management on the Enquiry Committee as well as the convener, to which the objection raised by the respondent/employee by his communication dated 19/08/2015 (pg.19), according to him was only to the effect that based upon his conduct in an earlier enquiry he was apprehensive that the said Vishwanath Yeduji Mali would be biased against the employee. No objection regarding the dual role of Shri Vishwanath Yeduji Mali has been taken. This objection regarding bias as raised by the employee was rejected by the Managing Committee which is communicated to the respondent/employee by the communication dated 05/09/2015 (page 20) after which the respondent/employee has participated in the enquiry without any demur or protest, and therefore, was estopped from raising this plea now.

7. Reliance is also placed on *Municipal Commissioner, Calcutta and others Vs. Salil Kumar Banerjee and Others (2000) 4*

SCC 108, to contend that once a person submits, to the jurisdiction of an authority, after participation he cannot raise an objection regarding the incapacity of the authority. It is further contended, that judgment in ***Nandkumar Mahadeo Dengane Vs. Bhavika Vidya Prasarak Mandal and others 2008 (5) Mh.L.J. 598***, does not lay down a proposition that the representative of the management in an Enquiry Committee cannot act in a dual capacity, also that of a convener under Rule 36 (5) of the Rules framed under the MEPS Act. ***Nandkumar Mahadeo Dengane*** (supra) according to the learned Senior Counsel was decided on an incorrect factual position inasmuch as the committee constituted by the communication dated 17/06/2006 originally contained one Mrs. Devangana Bhagwan Keni as the management representative. She however, was replaced by a communication dated 20/06/2006 by one Prabhakar Jadhav, as the management representative/convener. This fact of replacement of Mrs. Devangana Bhagwan Keni by Prabhakar Jadhav has been lost sight of inasmuch as, the learned Court holds that the enquiry report ought to have been signed by Mrs. Devangana Bhagwan Keni ignoring the fact that she had been replaced by Prabhakar Jadhav as the representative of the management.

8. Letters Patent Appeal No.403/2008 carried forward against this before the learned Division Bench also proceeds on the same incorrect factual position, apart from which, it proceeds on a presumption that representative of the management and the convener are different persons. It is therefore contended, that ***Nandkumar Mahadeo Dengane*** (supra) and the judgment of the learned Division Bench in appeal does not lay down the correct position, in light of the factual incorrect position considered.

9. It is therefore submitted, that the finding by the learned School Tribunal when it holds that the representative of the management on the Enquiry Committee cannot act in a dual capacity also as that of a convener under Rule 36 (5) of the MEPS Rules, does not have any sanction of law on account of which it stands vitiated, and therefore, setting aside of the termination and the de novo enquiry granting liberty to conduct is not justifiable in law.

10. Mr. F.T. Mirza, learned counsel for the respondent/employee, submits that this is the second time where the matter has been remanded for a de novo enquiry, all of which according to him is at the behest of Mr. Mali who was then the

president. The earlier order of termination dated 12/05/2014 was challenged before the School Tribunal, which was set aside by the judgment, dated 21/02/2015, challenge to which was raised before this Court in Writ Petition Nos. 2459/2015; 2460/2016 and 2461/2016, which came to be allowed on 24/02/2015 directing conducting of de novo enquiry after the judgment of School Tribunal dated 21/02/2015 was set aside. It is contended that thereafter again the enquiry took place resulting in the termination of the petitioners on 06/01/2016 against which appeals by the employees before the learned School Tribunal came to be allowed on 16/03/2019 by the impugned judgment (pg.168). It is contended that the judgment of this Court in ***Nandkumar Mahadeo Dengane*** by the learned Single Judge (supra) and the appeal carried to the learned Division Bench by way of Letters Patent was a law laid down and therefore could not be ignored as is being sought to be contended. Reliance for which is placed upon ***State of Bihar Vs. Kalika Kuer Alias Kalika Singh and others (2003) 5 SCC 448*** (paras 4, 6, 10). It is also contended that the doctrine of *stare decises* also prevents such a course of action for which ***Trimurthi Fragrances (P) Ltd. through its Director Shri Pradeep Kumar Agrawal Vs.***

Government of N.C.T. of Delhi through its Principal Secretary (Finance) and others 2022 SCC OnLine 1247 is relied upon (para 18).

11. It is further contended that the plea that no objection was raised to the appointment of Shri Mali as a convener as well as representative of the management on the Enquiry Committee is incorrect, as the communication dated 19/08/2015 (pg.19) specifically indicates that the participation of Shri Mali in the enquiry committee could not be permitted, which would indicate that even the inclusion of the said person was objected to. He also contends that the pleas which are raised before the enquiry committee in absence of legal representation being permitted, ought to be viewed in a liberal manner. He therefore contends that Shri Mali could not act in a dual capacity, both as a convener as well as the representative of the management in the enquiry committee and such participation is indicated from all the documents of the enquiry, as Shri Mali has signed all documents as convener and so also the enquiry report as a member of the enquiry committee. It is also contended that the charges against the petitioners are not that serious pointing out to page 25, the charge-sheet and therefore the remand by the learned School Tribunal for de novo enquiry,

according to him, is not tenable and would result in the same consequence as had happened on the earlier occasions, for which he places reliance upon ***Shri Gajanan Dnayan Prakash Sanstha, Andura, Through the Secretary and another Vs. Ramdas Shaligram Kale and others, Writ Petition No.394/2020, decided on 22/09/2021*** (para 15 & 16). It is therefore submitted that the petitions filed by the employees need to be allowed and those filed by the petitioner management need to be dismissed.

12. Mr. Bhangde, learned senior counsel in rebuttal submits that the consideration of judgments of the learned Single Judge in ***Nandkumar Mahadeo Dengane*** and the one in appeal are not being objected on the ground of they being *per incurium* but on the ground that a relevant fact was missed by the Court and therefore have been decided on an incorrect factual premise. Inviting my attention to the judgment of the School Tribunal, specifically paras 14 to 18 (pages 160-162), it is contended that the plea of bias as raised by the employees has been rejected by the learned School Tribunal and therefore, it is no longer permissible for the employees to contend otherwise, regarding the inclusion of Mr. Mali in the committee. It is also contended that had the objection regarding

inclusion of Shri Mali in the Enquiry Committee been taken at an appropriate time, the same could have been considered by the management by taking corrective measures and since that opportunity has been lost, the same is not permissible to be raised now. Since the plea of bias has been rejected, there is no ground available for objecting to the de novo enquiry. The enquiry was as per law and the matter could be sent back to the learned School Tribunal regarding the punishment to be imposed. It is also contended that unless and until there is a finding that a de novo enquiry would be a facade, there is no reason why it should not be ordered. Even if the enquiry is defective, then also de novo enquiry is required to be directed. It is therefore contended that the petition filed by the management needs to be allowed and that by the employees need to be dismissed.

13. Facts are taken from Writ Petition No.3414/2019.

14. Rules 36 and 37 of the MEPS Rules read as under :

“36. Inquiry Committee. - (1) If an employee is allegedly found to be guilty on [any of the grounds specified in sub-rule (5) of rule 28] and the Management decides to hold an inquiry, it shall do so through a properly constituted Inquiry Committee. Such a committee shall conduct an inquiry only in such cases where major penalties are to be inflicted. The Chief Executive Officer authorised by the Management in this behalf (and in the case of an inquiry against the Head who is also the Chief Executive Officer, the President of the Management) shall

communicate to the employee or the Head concerned by registered post acknowledgement due the allegations and demand from him a written explanation within seven days from the date of receipt of the statement of allegations.

[(2) If the Chief Executive Officer or the President, as the case may be, finds that the explanation submitted by the employee or the Head referred to in sub-rule (1) is not satisfactory, he shall place it before the Management within fifteen days from the date of receipt of the explanation. The Management shall in turn decide within fifteen days whether an inquiry be conducted against the employee and if it decides to conduct the inquiry, the inquiry shall be conducted by an Inquiry Committee constituted in the following manner, that is to say -

(a) in the case of an employee -

(i) one member from amongst the members of the Management to be nominated by the Management, or by the President of the Management if so authorised by the Management, whose name shall be communicated to the Chief Executive Officer within 15 days from the date of the decision of the Management;

(ii) one member to be nominated by the employee from amongst the employees of any private school;

(iii) one member chosen by the Chief Executive Officer from the panel of teachers on whom State/National Award has been conferred;

(b) in the case of the Head referred to in sub-rule (1) -

(i).....

(ii).....

(iii).....

(3)

(4)

(5) The Convener of the respective Inquiry Committee shall be the nominee of the President, or as the case may be, the President who shall initiate action pertaining to the conduct of the Inquiry Committee and shall maintain all the relevant record of the inquiry.

(6)

37. Procedure of Inquiry :-

(1) The Management shall prepare a charge sheet containing specific charges and shall hand over the same together with the statement of allegations and the explanation of the employee or

the Head, as the case may be, to the Convener of the Inquiry Committee and also forward copies thereof to the employee or the Head concerned by registered post acknowledgment due, within 7 days from the date on which the Inquiry Committee is deemed to have been constituted.

(2) (a) Within 10 days of the receipt of the copies of charge sheet and the statement of allegations by the employee or the Head, as the case may be-

(i) If the employee or the Head, as the case may be, desires to tender any written explanation to the charge-sheet, he shall submit the same to the Convener of the Inquiry Committee in person or send it to him by registered post acknowledgement due.

(ii) If the Management and the employee or the Head, as the case may be, desire to examine any witnesses they shall communicate in writing to the Convener of the Inquiry Committee the names of witnesses whom they propose to so examine, and

(iii) If the Management desires to tender any documents by way of evidence before the Inquiry Committee, it shall supply true copies of all such documents to the employee or the Head, as the case may be. If the documents relied upon by the Management is a register or record of the school it shall permit the employee or the Head, as the case may be, to take out relevant extracts from such register or record. The employee or the Head, as the case may be, shall supply to the Management true copies of all the documents to be produced by him in evidence.

(b) Within 3 days after the expiry of the period of 10 days specified in clause (a), the Inquiry Committee shall meet to proceed with the inquiry and give 10 days notice by registered post acknowledgment due to the Management and the employee or the Head, as the case may be, to appear for producing evidence, examining witnesses etc., if any.

(c) The Inquiry Committee shall see that every reasonable opportunity is extended to the employee for defending his case.

(d) (i) The Management shall have the right to lead evidence and the right to cross-examine the witnesses examined on behalf of the employee. (ii) The employee shall have the right to be heard in person and lead evidence. He shall also have the

right to cross-examine the witnesses examined on behalf of the Management. (iii) Sufficient opportunities shall be given to examine all witnesses notified by both the parties.

(e) All the proceedings of the Inquiry Committee shall be recorded and the same together with the statement of witnesses shall be endorsed by the both the parties in token of authenticity thereof. The refusal to endorse the same by either of the parties shall be recorded by the Convener.

(f) The inquiry shall ordinarily be completed within a period of 120 days from the date of first meeting of Inquiry Committee, or from the date of suspension of the employee, whichever is earlier, unless the Inquiry Committee has, in the special circumstances of the case under inquiry, extended the period of completion of the inquiry with the prior approval of the Deputy Director. In case the inquiry is not completed within the period of 120 days or within the extended period, if any, the employee shall cease to be under suspension and shall be deemed to have rejoined duties, without prejudice to continuance of the inquiry.

(3) The Management and the employee or the Head, as the case may be, shall be responsible to see that their nominees and the witnesses, if any, are present during the inquiry. However if the Inquiry Committee is convinced about the absence of either of the parties to the disputes or any of the members of the Inquiry Committee on any valid ground, the Inquiry Committee shall adjourn that particular meeting of the Committee. The meetings so adjourned shall be conducted even in the absence of person concerned if he fails to remain present for the said adjourned meeting.

(4) The Convener of the Inquiry Committee shall forward to the employee or the Head, as the case may be, summary of the proceedings and copies of statements of witnesses, if any, by registered post acknowledgment due within four days of completion of the above steps and allow him a time of seven days to offer his further explanation, if any.

(5) The employee or the Head, as the case may be, shall submit his further explanation to the Convener of the Inquiry Committee within a period of seven days from the date of receipt of the summary of proceeding etc. either personally or by registered post acknowledgment due.

(6) On receipt of such further explanation or if no explanation is offered within the aforesaid time, the Inquiry Committee shall complete the inquiry and communicate its findings on the charges against the employee and its decision on the basis of these findings to the Management for specific action to be taken against the employee or the Head, as the case may be, within ten days after the date fixed for receipt of further explanation. It shall also forward a copy of the same by registered post acknowledgment due to the employee or the Head, as the case may be. A copy of the findings and decision shall also be endorsed to the Education Officer or the Deputy Director, as the case may be, by registered post acknowledgment due. Thereafter, the decision of the Inquiry Committee shall be implemented by the Management which shall issue necessary orders within seven days from the date of receipt of decision of the Inquiry Committee, by registered post acknowledgment due. The Management shall also endorse a copy of the order to the Education Officer or the Deputy Director, as the case may be."

14.1. Though the role of the convener is not adjudicatory in nature, however, the role has equal importance in the matter of conducting an enquiry. This is evident from a perusal of rule 37 of the MEPS Rules, whereunder by virtue of Rule 37 (1) the charge-sheet; statement of allegations; explanation submitted by the delinquent employee have to be handed over to the convener. Under Rule 37 (2)(a)(i). Under Rule 37 (2) (a),(ii), the explanation by the employee to the charge-sheet has to be submitted to the convener. Under Rule 37 (2) (e) refusal to endorse proceedings in the statement of witnesses has to be recorded by the convener. Under

Rule 37 (4), summary of proceedings and copies of statement of witnesses, if any, have to be forwarded to the employee by RPAD by the convener. Under Rule 37 (5), the employee has to submit his explanation to the convener.

14.2. Thus the convener is entrusted with the task of ensuring the compliance's with the above Rules in the matter of conduct of the enquiry. The above Rules ensure an equal opportunity being afforded to the employee in the matter of conduct of an enquiry and any violation thereof may result in the entire enquiry being vitiated. Thus the role of the convener cannot be underplayed, for it is upon his ensuring compliance with the above Rules that the enquiry when tested on the touchstone of fairness may stand or fail. The member of the Enquiry Committee on the other hand is not concerned with the above compliances.

14.3. It is thus apparent that the control of all the records of the enquiry proceedings is with the convener who is to not only write the record of the proceedings, but also to ensure that the provisions of the above rules are duly complied with. In such cases in order to ensure fairness of the proceedings, it is always necessary to ensure that the person to be appointed as Convener be a person,

other than a member of the Enquiry Committee. Doing so would ensure that all allegations regarding bias or mischief in the matter of writing the order sheets, compliance with the above Rules stand obviated and the fairness of the enquiry is ensured.

14.4. The test of bias as held in the contextual background of Rule 36(5) of the MEPS Rules in *Shri Gurukul Shikshan Prasarak Mandal through its Secretary/Chairman and another Vs. Sharda Ashok Suryagandh and another, Writ Petition No.1999/2011 with connected petition, decided on 17/10/2019*, is not whether in fact bias has affected the judgment, but the test always is whether a litigant could reasonably apprehend that a bias attributable to a member might have operated against him, in the final decision of the Committee.

14.5. The question of actual bias has to be looked at with the perspective of the employee. The representative of the management on the Enquiry Committee is always invariably a person who is either a part of the management or a person who is close or in control of the management. When the enquiry is against the Head Master the representative is the President, who by the very nature of the post which he holds in the management is bound to lean in

favour of the management. By this very fact an element of bias naturally seeps in, which is invariably tilted in favour of the management. As against this the representative of the employee, most of the times, is a person who is unknown to the employee and has to be searched for and found by the employee with a request to be his representative in the Enquiry Committee. Thus when the management has readily available, several persons who would be willing to act as its representative, the position is converse for the employee who has to search for a person suitable for and willing , in this regard. Had it been a position that the management would also have been required to appoint as its representative a person who was not a part of the management or the institutions run by it, but a totally independent and unconnected person, the situation would have been different, for then, the scales would have been evenly balanced. That however is not the case.

14.6. Over and above it, the Convener then under Rule 36(5) of the MEPS Rules again has to be a person appointed by the management. When the convener is also the representative of the management in the inquiry, the perception of bias stands compounded, for as indicated above, the role of the convener is of

great importance in the enquiry and though he may not be a part of the decision making process, several of the functions assigned to him, under Rule 37 of the MEPS Rules, as indicated above could be crucial in decision making. This is more so in a case where the employee is proceeded exparte when the role of the convener in maintaining and recording of the proceedings and ensuring compliance with the requirements of the provisions as contained in Rule 37, become crucial for ensuring the impartiality and fairness of the enquiry. The finding therefore that there was no actual bias, on the facts, in the present matter, when the representative of the management on the Enquiry Committee was also the convener cannot be sustained, more so when the appointment of the representative of the management on the enquiry committee as well as his appointment as a Convener was objected to by the respondent employee as indicated above.

14.7. In so far as Rule 36 of the MEPS Rules are concerned Rule 36(5) thereof does not make it mandatory for the President to be the Convener. This may be indicated by use of the expression *“The Convener of the respective Inquiry Committee shall be the nominee of the President,--”* occurring therein. Though the President

can himself be the Convener, but considering that fairness of the enquiry has to be maintained throughout, it would always be necessary that in case the President is the Member of the Enquiry Committee, then he nominates someone else to be the Convener.

15. ***Nandkumar Mahadeo Dengane*** (supra) in respect of the role of the convener holds as under :

“9.

Sub-Rule (5) of Rule 36 states that the convener of the respective enquiry committee shall be the nominee of the President, or as the case may be, the President who shall initiate action pertaining to the conduct of the enquiry committee and shall maintain all the relevant record of the enquiry. It is thus clear that the convener is not a member of the enquiry committee but is associated with the enquiry committee with a limited role and it is his duty to initiate action pertaining to the conduct of the enquiry and to maintain all the relevant record of the enquiry. If the enquiry is adjourned from time to time it is the duty of the convener to intimate the next date of the enquiry sittings but he does not participate in the enquiry proceedings as a member of the enquiry committee. He assists the enquiry committee in the secretarial role.”

Though it is correct that in ***Nandkumar Mahadeo Dengane*** (supra) the nominee of the management upon the enquiry committee was changed from Smt. Devangana Keni to Shri Prabhakar Jadhav and therefore the enquiry report signed by Shri Prabhakar Jadhav, could not have been held to have been infirm, however that does not deter

from what has been said about the role of Convener appointed under Rule 36(5) of the MEPS Rules in para 15 as quoted above, as that is a proposition which the Court has culled out from the provision and the factuality of the matter does not have any bearing upon it. That apart, the above incorrect factual position has been stated in reference to vitiating of the enquiry in the context of Rule 37(6) of the MEPS Rules and not otherwise. The contention therefore that ***Nandkumar Mahadeo Dengane*** (supra) ought not to be considered cannot be accepted in view of the above position.

16. ***Nandkumar Mahadeo Dengane*** (supra) was challenged in appeal before the learned Division Bench in ***Letters Patent Appeal No.403/2008 (Bhavika Vidyaprasarak Mandal Vs. Mrs. Rekha Hemant Khairnar)*** which came to be decided vide judgment dated 27/02/2009 along with connected petitions. The following is what has been said by the learned Division Bench in respect of Rule 36(5) of the MEPS Rules and the dual role of the convener as the member of the Enquiry Committee :

“14. The learned Single Judge has rightly held that there is one other facet which vitiates the inquiry proceedings i.e. there is breach of Rule 36(5). Sub-Rule (5) of Rule 36 deals with the role of the convener of the inquiry committee. On plain reading of sub-rule (5) of Rule 36, it is clear that the convener cannot participate in the inquiry proceedings as member of the inquiry committee and his role is to assist the committee by playing a

secretarial role. This is further clear from sub-rules (4), (5) and (6) of Rule 37. In the present case, it is seen that convener presided over the inquiry and has participated in the inquiry proceedings as a member and the convener has also signed the report of the inquiry committee. Thus, there is clear contravention of mandatory requirement of Rules 37(3) to (6) of the MEPS Rules. -----."

Thus the learned Division Bench of this Court has affirmed the view that the Convener cannot act as a member of the Enquiry Committee.

17. In ***Ravindra Shikshan Prasarak Mandal through its Secretary Vs. Madhukar Atmaram Koche and others 2014 SCC OnLine Bom 1747*** it has been held as under :

"17. Though there is no prohibition for the President to act as member of the Enquiry Committee as per the Rules, the fact in the present case is that the President was convener of the Departmental Enquiry who had issued show cause notice to respondent No. 1, the list of documents and as such the President could not have acted in dual capacity as convener of the enquiry as well as the member of the Enquiry Committee."

18. In ***Rayat Shikshan Sanstha, Satara Through its Secretary and Another Vs. Appa Bhimrao Pol and Another 2016 SCC OnLine Bom 6533***, the role of the Convener under Rule 36(5) of the MEPS Rules was held to be as under :

"36. In so far as the view taken by the school tribunal that the Convenor of the enquiry committee appointed by the management only has a secretarial role in conducting an enquiry and does not participate in the enquiry proceedings is concerned, this view of the school tribunal is totally contrary to Rule 36(2)(a)(i) and also Rules 37(1) and 37(2)(a) of the MEPS Rules. In my view, the Convenor of the enquiry

committee has to participate along with the other members of the enquiry committee and his role is not limited to the Secretary or only of an administrative nature. The impugned order passed by the school tribunal shows clear perversity and deserves to be set aside.”

19. The role of the Convener also came up for consideration in ***Gurukul Shikshan Prasarak Mandal and another Vs. Sharda Ashok Suryaganadh and another 2019 SCC OnLine Bom. 5856***, wherein in para 41 (f) it has been held as under :

“41 (f) Member of the managing committee acting as convener of enquiry and also part of the management in taking the decision vitiates the enquiry process and is in breach of Rule 36 (2) (b) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. For incurring disqualification, it is not necessary that bias must actually be proved. It would be enough, under law that there is reasonable likelihood of bias. The act of presiding officer who having his own testimony recorded in the case indubitably would evidence a state of mind which would disclose a considerable bias against the delinquent. The test is not whether in fact, bias has affected the judgment. The test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member might have operated against him in the final decision of the Tribunal.”

20. What has been said in ***Nandkumar Mahadeo Dengane*** regarding the role of the Convener under Rule 36 (5) of the MEPS Rules, has been agreed to by this Court in ***Bhagwan Pratisthan Vs. Bandu Dhrupatrao Dhakne AIR OnLine 2020 Bom. 661***.

21. The proposition would be equally applicable where the convener is also the nominee of the management on the enquiry

committee, for as a member of the Enquiry Committee, he equally takes part in the decision making process, regarding the guilt of the employee vis-a-vis the charges for which the enquiry is being conducted. The contention therefore that the Convener and the representative of the management on the Enquiry Committee in the facts of the present case could be the same person, cannot be sustained as has to be rejected.

22. So also though the learned Tribunal has held that there is no bias on this count, that however, would not deter from the fact, that the even the perception of bias, has to be avoided for the fairness of the enquiry and the finding rendered in this regard in view of the discussion above cannot be sustained.

23. The further contention that no objection was taken by the employee to the appointment of Shri Mali both as a member of the Enquiry Committee as well as the convener, based upon the communication dated 19/08/2015 (pg.19) has to be looked into in light of the language of the communication, in view of the submission that the objection is not to the appointment of Shri Mali in a dual capacity, but for his appointment itself. For the sake of

ready reference, the communication dated 19/08/2015 (pg.19) is quoted as under :

“प्रति,

मा. सचिव तथा मुख्य कार्यकारी अधिकारी,

श्री विलासराव देशमुख शिक्षण प्रसारक

व बहुउद्देशीय संस्था, बुलडाणा.

अर्जदार :- संतोष जयसिंग शेले (स.शि.)

राजीव गांधी मिलीटरी स्कूल व उच्च माध्यमिक

विद्यालय, कोलवड, ता.जि. बुलडाणा.

विषय :- चौकशी समितीवरील निवड झालेल्या सदस्य/निमंत्रकसंस्थेचे

कोषाध्यक्ष श्री विश्वनाथ येडूजी माळी यांचे चौकशी

समितीमधील जाणीवपूर्वक सहभागाबाबत.

संदर्भ :- १) मा. उच्च न्यायालय, मुंबई खंडपीठ नागपुर तसेच

मा. पिठासीन अधिकारी, अमरावती यांचे

आदेशान्वयेनियमबाह्य ठरवलेली चौकशी समिती.

२) आपण दिनांक 12-08-015 रोजी पत्र रांगांमि/चौ.सं.

/813/2015 द्वारे पुरविलेले चौकशी समितीमधील माझे

प्रतिनीधीबाबत पत्र प्राप्त दि. 13-08-015 अन्वये.

महोदय,

आपणासमोर विनंतीपूर्वक अर्ज सादर करण्यात येतो

तो येणेप्रमाणे,

संदर्भाकीत पत्र क्र.२ द्वारे आपण मला संस्थेच्या कार्यकारी मंडळाने ठरविलेल्या चौकशी समितीमधील व्यवस्थापक मंडळाचे सदस्य/निमंत्रक संस्थेचे कोषाध्यक्ष श्री विश्वनाथ येडूजी माळी (माजी अध्यक्ष तसेच संदर्भाकीत क्र.१ चौकशीचे निमंत्रक) यांची निवड करण्यात आलेली आहे. परंतु सदर पदस्थ (श्री विश्वनाथ येडूजी माळी) हे माझ्याबद्दल बरेच काळापासून आकस व सुड भावना ठेवून आहेत. याचा सर्वात मोठा अनुभव मला संदर्भाकीत चौकशी क्र.१ मध्ये आला आहे. त्यामुळे स्वतः चौकशी समितीत परत सहभाग घेवून सेवेतून काढून टाकण्याचा मानस आहे. करीता श्री विश्वनाथ येडूजी माळी यांना चौकशी समितीमधे सहभाग वा पद घेण्यास प्रतिबंध करण्यात यावे ही विनंती जेणेकरून चौकशी समितीचे कामकाज निपक्षपातीपणे होईल.

कृपया माझ्या विनंतीचा सहानुभुतीपूर्वक विचार व्हावा.

दि. 19-08-2015

टीकाण. बुलढाणा.

आपला विश्वासु,

स्वाक्षरी

संतोष जयसिंग शेले

(स.शि.)”

24. The language of the communication would indicate the very appointment of Shri Vishwanath Mali as a member of the Enquiry Committee, as well as convener (चौकशीचे निमंत्रक) was objected to by the respondent no.1 and therefore, the contention that the objection was only to the nomination of the said Vishwanath Mali as a member of the Enquiry Committee and not to his appointment as a convener, is clearly misplaced. The contention therefore that in absence of a challenge to the appointment of the said Vishwanath Mali as a convener, it has to be held that he has waived the objection, cannot be accepted. The very fact that an objections stood raised to the appointment of the said Vishwanath Mali, both as a member of the enquiry committee as well as the convener as is indicated from the language of the objection dated 19/8/2015 (pg.19), would indicate that what was required by law, the raising of an objection, was duly done by the respondent no.1 and merely because the objection was rejected by the management by its communication dated 5/9/2015 (pg.20) would not preclude

the plea being raised by the petitioner. ***Salil Kumar Banerjee*** (supra), therefore, on facts, would not be attracted for as soon as the name of the nominee of the Management and the convener became known to the respondent no.1 an objection in that regard was duly raised as is indicated from the communication dated 19/08/2015 (pg.19).

25. It is therefore not a case as if the participation by the respondent no.1 in the enquiry was without any objection and therefore participation of the respondent no.1 in the enquiry could be construed as a waiver of the objection, in the sense, it has been held in ***Padmini Singha*** (supra). For the said reason also ***Rukhmina Rajesh Dange*** (supra) would have no applicability.

26. The findings thus rendered by the learned School Tribunal in this regard (paras 20 to 24) therefore do not call for any interference. Writ Petition Nos.3420/2019; 3414/2019 and 3418/2019 by the Management are therefore without any merits and are thus dismissed.

27. It is not in dispute that on an earlier occasion, after holding a departmental enquiry the services of the petitioner were terminated on 12/05/2014. A challenge to the said termination before the learned School Tribunal, succeeded by the termination being set aside by the judgment dated 21/02/2015, a further

challenge to which before this Court in Writ Petition No.2461/2015, resulting in direction by the order dated 28/04/2015, to the management to conduct an enquiry afresh. A fresh enquiry was conducted resulting in termination of the petitioners on 09/01/2016 w.e.f. 11/01/2016, again challenge to which before the learned School Tribunal succeeded by the impugned judgment dated 16/03/2019, which has set aside the termination and directed conduct of de novo enquiry from the stage from which it was vitiated. Thus, twice earlier enquiry has already been held and though opportunity was granted the management has failed to demonstrate fairness in the conduct of the enquiry and adherence to the Rules governing it. The impugned order now directs holding the enquiry a third time.

28. The charges are absenteeism; negligence in awarding marks; absence as an invigilator in NDT examination; defamation of the society on account of making direct communication with higher authorities; declining to increase efficiency in teaching.

29. The management in spite of two opportunities having been availed in this regard, as indicated above, has failed to ensure that the entire procedure as prescribed in the matter of constitution

of the Enquiry Committee would stand the test of the relevant Statutory provisions as applicable thereto.

30. In *Head Master, Vivek Vardhini Madhyamik Vidyalaya, Malizap Vs. Alka Namdeo Khalekar and others 2017 (1) 105* regarding repeated enquiries it has been said that after the first opportunity for conducting a fresh enquiry is granted to an employer, it would not mean that a fresh enquiry needs to be permitted on every occasion when the enquiry is vitiated as this would lead to an unending process and while the managements would reap the benefits of conducting de novo enquiry on umpteen occasions, the employee would have to suffer the rigours of litigation, accompanied by unemployment, poverty and ignominy and therefore there cannot be repeated chances. Similar view has been taken by me in *Shri Gajanan Dnayan Prakash Sanstha and others Vs. Ramdas Shaligram Kale and others MANU/MH/2771/2021* by holding that the very fact that a request was again made for conducting an enquiry against the employees, the same would indicate that the intention of the management was to get rid of the employees by any means.

31. The purpose of an enquiry is to establish the guilt of the delinquent employee, vis-a-vis the charges framed against the employee. The procedure established under Rules 36 and 37 of the

MEPS Rules provides an ample opportunity to the management to do so. While doing so, the principles of fairness and natural justice as built in have to be scrupulously adhered to. In the instant matter, in spite of having been afforded opportunity twice earlier, as indicated above, the management has failed to adhere to the principles of fairness and the provisions of the Rules as applicable in the constitution of the Enquiry Committee and its conduct. Two opportunities afforded to the management, in my considered opinion, would be more than enough. If in spite of having availed opportunity twice by conducting the enquiry, the management has failed the test of fairness and equal opportunity, there is no reason why a third opportunity should be granted as that would merely be a facade of the management to get rid of the employee. The agony of the employees in facing the enquiry and the stigma which goes with it, also is a factor which has to be borne in mind, while directing de novo enquiry from any stage, as doing so, would continue the same, which would be in the teeth of the fact that in spite of availing opportunity twice earlier, the management has failed in its attempts to bring home the charges, tested on the anvil of fairness of the enquiry on the parameters of the rules which governs it. The

opportunity afforded to the management earlier by permitting conducting of fresh enquiry, was an opportunity which should have been availed of by the management by strictly adhering to the rules and the principles of fairness. That having not been done, the management cannot be granted repeated opportunities to again conduct enquiry, from whatever stage, since the purpose of conducting a fresh enquiry, from whatever stage cannot be for the reason of pre-decided intention to terminate an employee, which can be inferred from the very request made for a fresh enquiry from the stage of Rule 36 (2) of the MEPS Rules. The management in this case, as indicated above, twice had the opportunity, however, they have failed to make proper utilization of the same, in view of which, in the facts and circumstances of the present case, whatever charges are framed, they cannot come to the aid of the management for the purpose of seeking an enquiry afresh, from whatever stage.

32. The direction in the impugned judgments for conduct of the enquiry from the stage of constitution of the Enquiry Committee as per Rule 36(2) of the MEPS Rules therefore cannot be sustained and is hereby quashed and set-aside. Writ Petition Nos.7698/2019; 7700/2019 and 7699/2019 by the employees are therefore partly allowed. The employees/petitioners in these petitions are directed to

be reinstated in services, with continuity of services. Insofar as back wages are concerned, since the management has failed to prove the charges levelled against the employees, in spite of two opportunities, the termination will have to be held as illegal and therefore in view of what has been held in *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others (2013) 10 SCC 324* considered in *Gowramma C. (Dead) By Legal Representatives Vs. Manager (Personnel), Hindustan Aeronautical Limited and another (2022) 11 SCC 794* and the fact that the employees in their memo of appeal before the learned School Tribunal have specifically averred that they were not gainfully employed and such an averment also finds place in their petitions, would be entitled to back wages. However, considering that for the above duration they have not rendered services, the scales will have to be balanced and the back wages payable to the employees would thus be 50%.

33. Rule is made absolute in the above terms. Considering the circumstances, there shall be no order as to costs.

(AVINASH G. GHAROTE, J.)