



2023:DHC:9018



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Pronounced on: 15th December, 2023**

+ W.P.(C) 7695/2022 & CM APPL. 23560/2022 CM APPL.
11058/2023, CM APPL. 32699/2023 & CM APPL.37757/2023

SANJAY KUMAR Petitioner

Through: Mr. Mritunjay Kr. Singh and Mr.
Saikat Khatva, Advocates

versus

UNION OF INDIA & ORS. Respondents

Through: Ms. Monika Arora, CGSC with
Mr. Yash Tyagi and Mr.
Subhrodeep, Advocates for R-1
and R-2
Ms. Neha Gupta and Ms. Swati
Rana, Advocates for R-3 and R-4

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

“(i) Issue a writ of certiorari and/or any other appropriate writ, order and/or directions for quashing/setting aside the impugned chargesheet dated 27.01.2022 issued by the Respondent No. 3 and all consequential proceedings emanating therefrom as illegal, unconstitutional, null and void.



- (ii) *Issue appropriate writ, order and/or directions to quash the email dated 06.05.2022 whereby the subsistence allowance of the Petitioner has been reduced to 25% and reinstate the Petitioner with all pending and consequential benefits w.e.f. 23.06.2021. Petitioner in the interest Petitioner states that he has not filed any other Petition or Application in respect charge sheet*
- (iii) *Issue a writ of certiorari and/or any other appropriate writ, order and/or directions for quashing/setting aside the order dated 23.06.2021 issued by the Respondent No.4 whereunder the Petitioner has been illegally kept under suspension.*
- (iv) *Award suitable compensation for causing mental and physical harassment to the petitioner.*
- (v) *Pass any other or further order(s) which this Hon'ble Court may deem fit and proper in the interest of justice."*

FACTUAL MATRIX

2. The petitioner in the present case was appointed as the Executive Director cum Secretary ("EDCS" hereinafter) in the respondent no. 3 council ('respondent Council' hereinafter) for an initial probation of 1 year in the year 2017 *vide* order dated 1st December, 2017. The respondent council is an arm of the respondent no. 2 ('respondent Ministry' hereinafter) and was established by the respondent no. 1 ('respondent Union' hereinafter) in the year 1982.
3. The primary objective of the respondent Council *inter alia* is to support, protect, maintain, increase and promote the exports of handmade knotted carpets, rugs, floor coverings etc and to help in Research and Development, quality assurance, and timely delivery of the finished goods across the globe.



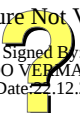
4. Since the respondent Council is registered under the relevant provisions of the Companies Act, 1956, the day-to-day businesses of the Council are regulated by its Articles of Association ('AOA' hereinafter), through the committee of Administration ('COA' hereinafter) constituting 18 members thereto.

5. Pursuant to an advisory dated 18th June, 2021 issued by the respondent Ministry, the respondent Council issued the office order for regularization of the services of the petitioner which was subsequently confirmed and ratified by the COA in their 186th meeting.

6. On 23rd June, 2021 the respondent chairman issued a show cause notice to the petitioner alleging financial malpractice and suspended the petitioner from his services.

7. Aggrieved by the same, the petitioner filed a writ petition bearing no. 6041/2021, before this Court, however preferred not to reply to the said show cause notice. In the said writ petition, the respondent council raised questions regarding the maintainability of the writ. After hearing the parties at length, the predecessor bench of this Court delivered the judgment dated 20th December, 2021 and held that the respondent Council falls under the ambit of Article 12 of the Constitution of India and therefore, the same is well within the scope and jurisdiction of the writ Courts.

8. In the said judgment, the petitioner was also directed to file a reply to the said show cause notice. Thereafter, the respondents filed a review petition, however, the same was dismissed *vide* order dated 25th January, 2022.





9. Pursuant to the judgment passed by this Court in writ petition no. 6041/2021, the petitioner submitted his reply to the said show cause notice, and requested to rejoin the respondent Council, however, the same was denied, instead a charge sheet dated 27th January, 2022 was issued to the petitioner.

10. In the meanwhile, the respondent ministry also issued a letter dated 17th February, 2022 directing the respondent Council to adhere to the provisions of the Central Civil Services (conduct), CCA Rules, 1965 ('CCS rules' hereinafter), pursuant to which the petitioner wrote multiple letters to the respondent Council requesting for the same, but to no avail.

11. In the year 2022, the petitioner wrote another set of letters to the respondent, requesting increase in the subsistence allowance, and further reiterated the obligations to adhere with the CCS rules, however, the respondent Council neither responded to such letters, nor accepted the request made by the petitioner.

12. Aggrieved by the same, the petitioner has preferred the present petition.

SUBMISSIONS

(on behalf of the petitioner)

13. The learned counsel appearing on behalf of the petitioner submitted that the impugned charge sheet is bad in law and the respondent Council and Chairman have traversed beyond law by issuing the same.

14. It is submitted that the impugned chargesheet does not include the list of witnesses, documents and statement of imputations as envisaged under Rule 14 of the CCS rules.



15. It is submitted that the respondents have failed to scrutinize the reply filed by the petitioner and had issued the chargesheet without providing him an opportunity to prove his innocence, therefore, violating the principles of natural justice.

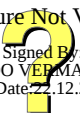
16. It is submitted that the letter dated 9th April, 2021 as issued by the respondent chairman is issued with malice where the other members of the COA are also in cahoots with the respondent chairman.

17. It is submitted that the chargesheet issued by the respondents has added another set of allegations against the petitioner, which were not there in the initial show cause notice issued to the petitioner.

18. It is submitted that the subsistence allowance of the petitioner has been reduced to 25% of his salary which is contrary to the law and the rules governing the employees at the petitioner's level.

19. It is submitted that the respondent chairman had grudges with the petitioner even before he was appointed as the chairman, and had complained about the petitioner and the previous chairman to the respondent ministry, and continued to do so when he was appointed as the chairman and therefore, had issued the show cause notice which is in contravention to the powers conferred to him.

20. It is submitted that the petitioner had earlier sought permission of the respondent Chairman to lodge FIR against one of the COA members namely Mr. Mahavir Pratap Sharma, however, the respondent chairman suspended the petitioner and appointed the same person as the presiding member of the inquiry committee constituted to look into the allegations against the petitioner.





21. It is submitted that the appointment of Mr. Mahavir Pratap Sharma to the inquiry committee has seriously prejudiced the inquiry against the petitioner, and the same was only done with the motive to harass him and the same also violated the principles of natural justice.

22. It is submitted that the appointment and removal of the petitioner from the post of ECDS is not within the scope of powers of the respondent Council and the chairman, rather the same can only be done with the prior approval from the respondent Ministry as mentioned under Article 40 of the AOA, and therefore, such suspension is bad in law.

23. It is also submitted that the respondent Ministry *vide* order dated 17th February, 2022 had directed the respondent Chairman and the Council to follow the provisions of the CCA rules and also suggested three names for constitution of the inquiry committee, however, the respondent Chairman chose to ignore the same, therefore violated the settled principles of law.

24. It is further submitted that the respondent Council issued the chargesheet without explaining the reasons for doing so and without referring to the prescribed rules i.e., Rule 17 and 18, therefore, the same is liable to be quashed.

25. Therefore, in view of the foregoing submissions, the learned counsel for the petitioner prays that the present petition be allowed, and reliefs may be granted, as prayed.

(Submissions on behalf of the respondents)

26. *Per Contra*, the learned counsel appearing for the respondent Council and the Chairman vehemently opposed the present petition



submitting to the effect that the same is not maintainable as the respondent Council is an independent body entrusted to function out of the ambit of the respondent Ministry.

27. It is submitted that the respondent Council has been granted the autonomy in administrative matters by the respondent Union and the Ministry *vide* Office Memorandum dated 10th November, 1997 & letter dated 8th September, 2011.

28. It is submitted that the employees of the respondent Council are not Government employees and the services of the said employees are governed by the bye-laws and service conditions of the respondent Council.

29. It is submitted that the judgment dated 20th December, 2021 also clarifies the above said position, however, the same was misinterpreted by the respondent Ministry which led to issuance of the letter dated 17th February, 2022, and the said mistake was corrected by issuing corrigendum dated 24th January, 2022, whereby, the protection granted to the petitioner under Articles 310 and 311 of the Constitution of India was revoked.

30. It is submitted that there is no illegality with regards to providing subsistence allowance to the petitioner as the same is done as per the service rules of the respondent Council.

31. It is submitted that the relevant rules of the respondent Council empowers it to appoint members of the COA to be a part of a committee constituted to look into the allegations against its employees, therefore, constitution of the inquiry committee to deal with the petitioner's case is



well within the scope of powers conferred to the respondent Council/COA.

32. It is submitted that the decision to issue show cause notice to the petitioner was duly considered by a majority in the COA and therefore, he was suspended from the post of EDCS.

33. It is submitted that the petitioner has been adopting dilatory tactics to delay the matter and has done so in furtherance of his motive to conceal the true facts.

34. It is submitted that the respondent Council had given multiple opportunities to the petitioner to submit his reply to the chargesheet against him, however, the same has not been done yet, instead the petitioner has approached this Court by way of filing the present petition and the same can only be categorized as a gross misuse of law.

35. It is also submitted that this Court had directed the petitioner to file his reply to the chargesheet issued against him, however, the petitioner preferred to challenge the said order dated 23rd May, 2022 which was dismissed *vide* order dated 2nd June, 2022 by the Division Bench in LPA 376/2022

36. It is further submitted that the subsistence allowance of the petitioner was earlier reduced to 25% due to the petitioner's own fault, however, the same has been increased to 50% as per the order dated 23rd May, 2022 passed by this Court.

37. Therefore, in view of the foregoing submissions, the learned counsel appearing for the respondent Council and Chairman prayed that the present petition being devoid of any merit, may be dismissed.



ANALYSIS AND FINDINGS

38. Heard the learned counsel for the parties and perused the records. While adjudicating the present petition, this Court has given its thoughtful consideration to the contentions raised by the petitioner and the rival submissions by the counsel for the respondent Council and the Chairman.

39. Before delving into the issues at hand, this Court needs to reiterate the findings of the predecessor bench in the writ petition 6041/2021, whereby the maintainability of the writ petition against the respondent Council was determined. The relevant part of the said judgment is reproduced herein:

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



53. On this submission of Mr. Garg, Mr. Kapur would submit that even assuming the respondent No.3 is amenable to the writ jurisdiction of this Court, surely the relief that is being prayed for by the petitioner does not involve and is not relatable to any public duty / function and as such the writ petition shall not be maintainable. In support of his submission, he has relied upon the Judgment of the Supreme Court in *K. K. Saxena (supra)*.

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

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

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

57. Though Mr. Garg has also relied upon the Judgments of *Ajay Hasia & Ors. (supra)* and *Pradeep Kumar Biswas &*





Ors. (supra), in view of my aforesaid conclusion, this Court is not required to refer to those Judgments. This I say so, for a decision on the objection raised by Mr. Kapur, Article 40(b)(6) is a complete answer. This plea of Mr. Kapur is rejected.

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

- 1) Rule 13 of the Service Rules does not provide the powers to extend the probation period.*
- 2) If the period of probation cannot be extended then the petitioner's appointment is deemed to be confirmed on the expiry of probation.*
- 3) The services of the petitioner have been regularised after the approval given by respondent No.2. The respondent No. 5 in its counter-affidavit has concealed the existence of the letter dated May 18, 2021 by which directives were issued to the respondent No.3 to regularise the services of the petitioner. It is only in an application filed under the RTI Act that such a communication has been disclosed.*
- 4) The impugned communication dated June 12, 2021 of respondent No. 4 on behalf of respondent No. 2 to discharge the petitioner from his post is overlooking the fact that respondent No.2 has issued directive to respondent No.3 to regularise the services of the petitioner.*
- 5) The action is mala fide as, on June 23, 2021, the petitioner had sought permission of respondent No.5, i.e., the new Chairman to initiate action against the former Chairman of respondent No. 3, as decided by COA in its meeting on June 15, 2021 and it is on the same day that the show-cause notice incorporating the suspension of the petitioner has been issued which shows the decision of the respondent No.5, was in a hasty and arbitrary manner.*



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

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

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

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

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

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

40. In the above said paragraphs of the judgment, it is clear that the Bench had determined the maintainability of the writ petition in context of the functions performed by the respondent Council and held the Council to be well within the purview of the writ court.

41. Paragraph 56 of the said judgment clearly establishes that the present writ is maintainable and the employee at the level of the EDCS in the respondent Council shall be governed by the relevant rules of the said respondent Council and are also covered under Articles 310 and 311 of the Constitution of India.



42. Therefore, the contention of the respondent regarding the non-maintainability of the present writ is rejected as the predecessor Bench of this Court had already determined the same and held the same in favor of the petitioner where it was established that the respondent Council falls under the ambit of the writ jurisdiction of this Court and this Court agrees with the said findings as rendered by the predecessor bench.

43. In view of the above discussion, the question before this Court is whether the respondent Council followed the due procedure with regards to the case of the petitioner, whereby, there are severe allegations against him. Therefore, this Court deems it appropriate to first look into whether the decision of constitution of the inquiry committee by the respondent Council suffers from any illegality or not. Subsequently, this Court shall also deal with the aspect of whether the suspension of the petitioner had to be approved by the respondent Ministry or not. At last, this Court shall adjudicate upon the issue of reduction of subsistence allowance.

44. Now, coming to the first issue at hand, the petitioner has approached this Court by filing the present writ petition primarily because of the issuance of the chargesheet dated 27th January, 2022 issued against him by the committee constituted by the respondent Council. In the pleadings, the petitioner *inter alia* has advanced allegations of biasness on the part of the committee as the presiding member named Mr. Mahavir Pratap Sharma is the same person against whom the petitioner had made a complaint and had also sought permission from the respondent Chairman to lodge an FIR as decided by the COA in their 186th meeting.

45. The element of bias is considered as the most important branch of the principles of natural justice where it is assumed that the person



adjudicating the case should not be in favor or against the party to a dispute. As per the principle of fairness, the said rule has been made applicable in almost all jurisdictions including our country. Therefore, it is imperative for the Courts situated in our country to deal with the above said issues in a rightful manner.

46. The principle of biasness is now a new principle and the same has evolved over a period of time where the Courts have interpreted the element of bias in different ways in different factual scenarios. From following a principle of fairness in decision making to inculcating a transparent procedure, wherein, decisions could actually be seen to be made by those affected by it, the evolution of the said rule has been duly adopted by the Courts in India.

47. In ***Tilak Chand Magatram Obhan v. Kamala Prasad Shukla***, **1995 Supp (1) SCC 21**, the Hon'ble Supreme Court discussed the possibility of element of bias and held that where a delinquent is asked to appear before a committee of which one member is deeply hostile towards him, the delinquent would be greatly handicapped in conducting his defense as he would be inhibited by the atmosphere prevailing in the enquiry room. The relevant paragraphs of the said judgment are reproduced herein:

“3. It must be realised that Shri Inder Raj Sudan the Principal of the school was deeply biased against the delinquent. He had given notice to the delinquent on 2-3-1976 for initiating defamation proceedings against him. Who was responsible for the bias is not relevant to us. It was alleged that his presence on the Committee had vitiated the atmosphere for a free and fair trial and his mere presence operated as an inhibition to the delinquent throughout the

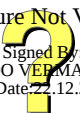


proceedings. Mr Garg contended that once it is shown that the one of the members of the Committee had a deep-rooted bias against the delinquent and was not likely to act in an objective manner he ought to have excused himself for otherwise the delinquent would have to enter the enquiry with a grave inhibition in his mind that he is not likely to get a fair deal from the Enquiry Committee. He, therefore, submitted that such a situation would not be congenial to a fair hearing to be given to the delinquent and the bias would affect the quality of the enquiry and any decision taken on the basis of record so prepared in such an environment cannot cure the ab initio voidness attached to the enquiry. We see merit in this contention.

4. Mr Bobde first invited our attention to the observation made by Lord Reid in Ridge v. Baldwin [(1963) 2 All ER 66] at p. 81 to the following effect:

“I need not consider what the result would have been if the Secretary of State had heard the case for the appellant and then had given his own independent decision that the appellant should be dismissed.”

Mr Bobde submitted that inherent in this observation is the view that the defect could have been cured if the Secretary of State had made the final decision on the basis of the record without being influenced by the decision impugned before him. We do not think that it would be permissible to draw such an inference. That cannot be said to be the ratio of the decision. The learned Judge himself says in so many words that he does not consider what would have been the result if the Secretary had given his independent decision. The decision could have gone one way or the other. Therefore, the above observation does not help Mr Bobde. If the defect is one which goes to the root of the matter and which is incurable it cannot be remedied by the higher authority taking a decision independent of the authority that rendered the initial decision. In Leary v. National Union of Vehicle Builders [(1970) 2 All ER 713 : 1971 Ch 34] it was conceded that the disciplinary authority had not followed the requirements of natural justice. The question which was

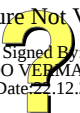




posed for consideration was : Can a deficiency of natural justice before a trial tribunal be cured by a sufficiency of natural justice before an Appellate Tribunal? Megarry, J., after stating that the sheet should be made as clean as possible; I think it should be the same sheet and not a different one, proceeded to add at p. 720 as under:

“If the rules and the law combine to give the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied with an unjust trial and a fair appeal? Even if the appeal is treated as a hearing de novo, the member is being stripped of his right to appeal to another body from the effective decision to expel him. I cannot think that natural justice is satisfied by a process whereby an unfair trial, although not resulting in a valid expulsion, will nevertheless have the effect of depriving the member of his right of appeal when a valid decision to expel him is subsequently made. Such a deprivation would be a powerful result to be achieved by what in law is a mere nullity; and it is no mere triviality that might be justified on the ground that natural justice does not mean perfect justice. As a general rule, at all events, I hold that a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in an appellate body.”

But the learned counsel pointed out that in Calvin v. Carr [(1979) 2 All ER 440, 448] the aforesaid observations from Leary were described as too generally stated. Their Lordships pointed out that it affirms a principle which may be found correct in a category of cases but to seek to apply it generally would tantamount to overlook, what in the end is a fair decision, notwithstanding some initial defect. There is, however, a distinction between a defect in the enquiry and a lapse which almost destroys the enquiry. Where the lapse is of the enquiry being conducted by an officer deeply biased against the delinquent or one of them being so biased that the entire enquiry proceedings are rendered void, the appellate authority cannot repair the damage done to the enquiry. Where one of the members of the Enquiry Committee has a strong hatred or bias against the

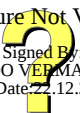




*delinquent of which the other members know not or the said member is in a position to influence the decision-making, the entire record of the enquiry will be slanted and any independent decision taken by the appellate authority on such tainted record cannot undo the damage done. Besides where a delinquent is asked to appear before a committee of which one member is deeply hostile towards him, the delinquent would be greatly handicapped in conducting his defence as he would be inhibited by the atmosphere prevailing in the enquiry room. Justice must not only be done but must also appear to be done. Would it so appear to the delinquent if one of the members of the Enquiry Committee has a strong bias against him? And we repeat the bias must be strong and hostile and not a mere allegation of bias of a superior having rebuked him in the past or the like. Such is the view taken in a recent decision of this Court in *Rattan Lal Sharma v. Managing Committee, Dr Hari Ram (Co-educational) Higher Secondary School* [(1993) 4 SCC 10 : 1993 SCC (L&S) 1106 : JT (1993) 3 SC 487]. That was a case where the enquiry was alleged to be vitiated on account of violation of the rules of natural justice due to the presence of a person who was strongly biased against the delinquent. While dealing with this contention this Court observed : (SCC p. 22, para 12)*

“The learned Single Judge, in our view, has rightly held that the bias of Shri Maru Ram, one of the members of the enquiry committee, had percolated throughout the enquiry proceedings thereby vitiating the principles of natural justice and the findings made by the enquiry committee was a product of a bias and prejudiced mind. The illegality committed in conducting the departmental proceedings has left an indelible stamp of infirmity on decision of the Managing Committee since affirmed by the Deputy Commissioner and the Commissioner.”

In this view of the matter this Court concluded that the decision of the appellate authorities could not cure the initial defect in the constitution of the Enquiry Committee and the consequences flowing from one of the members of the





Enquiry Committee being biased. In this view of the matter this Court had allowed the appeal”.

48. In ***Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant, (2001) 1 SCC 182***, the Hon’ble Supreme Court discussed the element of bias in an internal inquiry and held as under:

“23. Turning on to the issue of bias and for which the show-cause notice-cum-charge-sheet has been set out in extenso, be it noted that the same does reflect a state of mind. Sufferance of loss on interest insofar as the Nigam is concerned and resulting in reduction in working capital with total dereliction of duty has been specifically attributed to the respondent herein. The inclusion of the last charge, however, clinches the issue, the same is set out hereinbelow:

“Lastly, it is concluded that you never kept in mind the interest of the Nigam due to your personal vested interests. Due to your corrupt conduct, you had no control over your subordinates. You never submitted suggestion in the interest of the Nigam and never showed interest in the implementation of the schemes due to which the Nigam was unable to get the success as much as it should have, keeping in view the natural beauty of this place. The tourism section was suffering loss due to your activities. You always misused the Nigam's tourism section for your personal vested interests and gains. Your conduct and integrity is highly doubtful.”

24. The last paragraph of the last charge is also of some consequence as regards the bent of mind and the same is set out hereinbelow:

“Apart from the above, Nigam suffered heavy loss due to irregularities in many purchases/matters and are being considered separately. You failed to take specific action for getting the tourism section in profit. You did not run the tourism section smoothly. Therefore, you are not capable to remain in your post.”

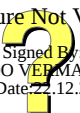


25. Upon consideration of the language in the show-cause notice-cum-charge-sheet, it has been very strongly contended that it is clear that the Officer concerned has a mindset even at the stage of framing of charges and we also do find some justification in such a submission since the chain is otherwise complete.

26. “Bias” in common English parlance means and implies — predisposition or prejudice. The Managing Director admittedly, was not well disposed of towards the respondent herein by reason wherefor, the respondent was denuded of the financial power as also the administrative management of the department. It is the selfsame Managing Director who levels thirteen charges against the respondent and is the person who appoints the enquiry officer, but affords a pretended hearing himself late in the afternoon on 26-11-1993 and communicates the order of termination consisting of eighteen pages by early evening, the chain is complete: prejudice apparent: bias as stated stands proved.

27. The concept of “bias” however has had a steady refinement with the changing structure of the society: modernisation of the society, with the passage of time, has its due impact on the concept of bias as well. Three decades ago this Court in *S. Parthasarathi v. State of A.P.* [(1974) 3 SCC 459 : 1973 SCC (L&S) 580] proceeded on the footing of real likelihood of “bias” and there was in fact a total unanimity on this score between the English and the Indian Courts.

28. Mathew, J. in *Parthasarathi* case [(1974) 3 SCC 459 : 1973 SCC (L&S) 580] observed: (SCC pp. 465-66, para 16) “16. The tests of ‘real likelihood’ and ‘reasonable suspicion’ are really inconsistent with each other. We think that the reviewing authority must make a determination on the basis of the whole evidence before it, whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The court must look at the impression which other people have. This follows from the principle that justice must not only be done but seen to be done. If right-minded persons would think that there is real likelihood of bias on



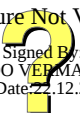


the part of an inquiring officer, he must not conduct the inquiry; nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. The court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision [see per Lord Denning, M.R. in Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon [(1968) 3 WLR 694, 707 : (1969) 1 QB 577 : (1968) 3 All ER 304 (CA)] (WLR at p. 707)]. We should not, however, be understood to deny that the court might with greater propriety apply the ‘reasonable suspicion’ test in criminal or in proceedings analogous to criminal proceedings.”

29. Lord Thankerton however in *Franklin v. Minister of Town and Country Planning* [1948 AC 87 : (1947) 2 All ER 289 (HL)] had this to state:

“... I could wish that the use of the word ‘bias’ should be confined to its proper sphere. Its proper significance, in my opinion, is to denote a departure from the standard of even-handed justice which the law requires for those who occupy judicial office, or those who are commonly regarded as holding a quasi-judicial office, such as an arbitrator. The reason for this clearly is that, having to adjudicate as between two or more parties, he must come to his adjudication with an independent mind, without any inclination or bias towards one side or other in the dispute.”

30. Recently however, the English Courts have sounded a different note, though may not be substantial but the automatic disqualification theory rule stands to some extent diluted. The affirmation of this dilution however is dependent upon the facts and circumstances of the matter in issue. The House of Lords in the case of *R. v. Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte* (No. 2) [(2000) 1 AC 119] observed:





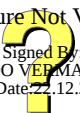
“... In civil litigation the matters in issue will normally have an economic impact; therefore a Judge is automatically disqualified if he stands to make a financial gain as a consequence of his own decision of the case. But if, as in the present case, the matter at issue does not relate to money or economic advantage but is concerned with the promotion of the cause, the rationale disqualifying a Judge applies just as much if the Judge's decision will lead to the promotion of a cause in which the Judge is involved together with one of the parties.”

31. Lord Brown-Wilkinson at p. 136 of the report stated:

“It is important not to overstate what is being decided. It was suggested in argument that a decision setting aside the order of 25-11-1998 would lead to a position where Judges would be unable to sit on cases involving charities in whose work they are involved. It is suggested that, because of such involvement, a Judge would be disqualified. That is not correct. The facts of this present case are exceptional. The critical elements are (1) that A.I. was a party to the appeal; (2) that A.I. was joined in order to argue for a particular result; (3) the Judge was a director of a charity closely allied to A.I. and sharing, in this respect, A.I.'s objects. Only in cases where a Judge is taking an active role as trustee or director of a charity which is closely allied to and acting with a party to the litigation should a Judge normally be concerned either to recuse himself or disclose the position to the parties. However, there may well be other exceptional cases in which the Judge would be well advised to disclose a possible interest.”

32. Lord Hutton also in Pinochet case [(2000) 1 AC 119] observed:

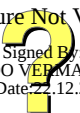
“There could be cases where the interest of the Judge in the subject-matter of the proceedings arising from his strong commitment to some cause or belief or his association with a person or body involved in the proceedings could shake public confidence in the administration of justice as much as a shareholding (which might be small) in a public company involved in the litigation.”





33. *Incidentally in Locabail [Locabail (U.K.) Ltd. v. Bayfield Properties Ltd. [2000 QB 451]] the Court of Appeal upon a detail analysis of the oft-cited decision in R. v. Gough [1993 AC 646] together with the Dimes case [3 House of Lords Cases 759] , Pinochet case [(2000) 1 AC 119] , Australian High Court's decision in the case of J.R.L., ex p C.J.L., Re [(1986) 161 CLR 342 (Aus HC)] as also the Federal Court in Ebner, Re [(1999) 161 ALR 55] and on the decision of the Constitutional Court of South Africa in President of the Republic of South Africa v. South African Rugby Football Union [(1999) 4 SA 147] stated that it would be rather dangerous and futile to attempt to define or list the factors which may or may not give rise to a real danger of bias. The Court of Appeal continued to the effect that everything will depend upon facts which may include the nature of the issue to be decided. It further observed:*

“By contrast, a real danger of bias might well be thought to arise if there were personal friendship or animosity between the Judge and any member of the public involved in the case; or if the Judge were closely acquainted with any member of the public involved in the case, particularly if the credibility of that individual could be significant in the decision of the case; or if, in a case where the credibility of any individual were an issue to be decided by the Judge, he had in a previous case rejected the evidence of that person in such outspoken terms as to throw doubt on his ability to approach such person's evidence with an open mind on any later occasion; or if on any question at issue in the proceedings before him the Judge had expressed views, particularly in the course of the hearing, in such extreme and unbalanced terms as to throw doubt on his ability to try the issue with an objective judicial mind (see Vakuta v. Kelly [(1989) 167 CLR 568]); or if, for any other reason, there were real ground for doubting the ability of the Judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the issues before him. The mere fact that a Judge, earlier in the same case or in a previous case, had commented adversely on a party-witness,





or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection. In most cases, we think, the answer, one way or the other, will be obvious. But if in any case there is real ground for doubt, that doubt should be resolved in favour of recusal. We repeat: every application must be decided on the facts and circumstances of the individual case. The greater the passage of time between the event relied on as showing a danger of bias and the case in which the objection is raised, the weaker (other things being equal) the objection will be.”

34. The Court of Appeal judgment in Locabail [2000 QB 451] though apparently as noticed above sounded a different note but in fact, in more occasions than one in the judgment itself, it has been clarified that conceptually the issue of bias ought to be decided on the facts and circumstances of the individual case — a slight shift undoubtedly from the original thinking pertaining to the concept of bias to the effect that a mere apprehension of bias could otherwise be sufficient.

35. The test, therefore, is as to whether a mere apprehension of bias or there being a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom — in the event however the conclusion is otherwise inescapable that there is existing a real danger of bias, the administrative action cannot be sustained: If on the other hand, the allegations pertaining to bias is rather fanciful and otherwise to avoid a particular court, Tribunal or authority, question of declaring them to be unsustainable would not arise. The requirement is availability of positive and cogent evidence and it is in this context that we do record our concurrence with the view expressed by the Court of Appeal in Locabail case [2000 QB 451] .

36. Having discussed the issue as above in the contextual facts, we do feel it expedient to record that the action of the Managing Director in the matter of withdrawal of authority as noticed above and subsequent introduction of charges, in particular, the last of the charges as noted above and the



further factum of issuance of an eighteen-page letter of termination on the selfsame date and within a few hours after the pretended hearing was given, cannot but be ascribed to be wholly and totally biased.”

49. On perusal of the aforesaid paragraphs of the above cited judgment, it is clear that the element of bias holds an important place in determining the fairness of an inquiry whereby the writ courts are duty bound to act whenever a member of the committee formed to adjudicate a case is ascribed to be biased in favor or against a particular party.

50. In the instant case, the petitioner has supplemented the contention regarding the alleged bias against the presiding member and has highlighted the reasons for apprehensions of such bias which can act against the petitioner. One such reason is the decision to lodge an FIR against Mr. Mahavir Pratap Sharma, as per the decision made by the COA in their 186th meeting. The relevant part the said minutes of the meeting is as under:

“2. Regarding using of Official Stationery in wrong name and misappropriation of Government funds by Sh. Mahavir Pratap Sharma, Immediate Past Chairman CEPC.

While perusal of record maintained by Carpet Export promotion Council it was found that in past some serious natures of issues were also flag off by former office bearer but no one paid attention for the same. It was found that Shri Raja Sharma, flagrantly fabricated and forged the letter head of CEPC and represented himself as 1st Vice Chairman of CEPC, whereby executed several agreements, issued orders and directions, which were binding in nature and has caused undue loss to CEPC. And whereas, Shri MP Sharma, the then 1st Vice Chairman, CEPC in connivance with other



Members of COA and Officials of CEPC has malafidely incurred expenses, made payments to various agencies upon the strength of bogus bills/invoices, thus caused monetary loss to CEPC and undue profit to others and himself. It is expedient to know such loss caused to CEPC by such acts and omissions of Shri MP Sharma, 1st Vice Chairman, CEPC in connivance with other Members of COA and Officials of CEPC, which has caused undue loss to CEPC. Present Chairman also raised the matter in several COA Meetings and subsequently requested Development Commissioner (Handicrafts) through letters but nothing happened till date.

Committee with full care gone through the documents and unanimously approved the concerns raised and advised the Chairman for instructing the Executive Director for doing the needful accordingly...”

51. Pursuant to the said decision taken unanimously in the meeting, the petitioner holding the position of ECDS in the respondent Council was liable to follow the same as decided by the COA. Therefore, he reached out to the respondent Chairman for lodging such FIR against Mr. Mahavir Pratap Sharma.

52. Thereafter, when allegations of fraud and embezzlement of funds were leveled against the petitioner, the same person was nominated as the presiding member, when the said committee was constituted to look into the allegations of fraud and misrepresentation leveled against the petitioner, it firstly issued a show cause notice dated 23rd June, 2021 and subsequently issued the chargesheet against him.

53. As per the material on record, the respondent Ministry had also suggested the constitution of committee and had provided alternative names for the members of the said committee, however, the names



recommended by the Ministry were not considered by the respondent Chairman and he continued with the names as previously nominated by himself.

54. If not anything concrete, *prima facie*, the above said chain of events hint towards possibility of bias where the presiding member named Mr. Mahavir Pratap Sharma may act in a manner which can be motivated from aggravation that happened due to the decision of the COA and subsequent events which warranted the petitioner to lodge an FIR against him.

55. It is no doubt that the integrity of any person cannot be questioned/assumed without any concrete evidence against him, however, the real question before this Court in the present petition is not whether the said person is biased, rather it is only that if the Court has *reasonable grounds* to believe that the person selected to preside the case against the petitioner can be biased or not.

56. The answer to the query posed in the preceding paragraph is in affirmative. Hence, the selection of Mr. Mahavir Pratap Sharma as a member of the committee should be termed as a conflict of interest and the same ought not to have happened in the first instance. Therefore, the constitution of the said committee can only be termed as illegal as the decision of the committee might involve bias on part of the presiding member.

57. Having dealt with the question of legality of the constitution of the inquiry committee, the next question arises before this Court is whether the COA is well within their power to constitute such a committee or is it considered as violation of the Article 40(b)(6) of the AOA. To answer the



said question, it is imperative for this Court to interpret the said Article and also look into the other factors deemed necessary for rightful interpretation. Article 40(b)(6) of the AOA is reproduced herein:

"6. To appoint and at its discretion remove or suspend employees, officers, clerks, agents, servants whether permanent, temporary or special as it may, from time to time, think fit and to determine their powers and duties and fix salaries or emoluments and to require securities in such instances and to such amount as it may deem fit, provided that the appointment or removal of Executive Directorcum-Secretary/Deputy Director or Assistant Director, or any other officer equivalent thereto shall be with the prior approval of the Central Government in the Ministry of Commerce /Textiles."

58. On perusal of the aforesaid clause, it is evident that the bye-laws of the respondent Council provides them the autonomy/discretion to remove or suspend its employees, which also includes the officers of the Council, however, the latter part of the provision also mandates the respondent Council to take prior approval from the respondent Ministry in case there is a decision regarding appointment/removal of the officers at the level of EDCS etc

59. In his submissions, the petitioner has contended that the issuance of a show cause notice and subsequent issuance of the chargesheet is clear violation of the said rule, however, this Court does not agree with the same as the literal interpretation of the said provision suggests that the respondent Council is only bound to take permission from the respondent Ministry if there is a decision regarding appointment or removal.



60. As material on record makes it clear, the petitioner has not been removed from his position rather he has been suspended from the same which is pending inquiry, therefore, in such a case, the respondent Council is well within its powers to do so, without taking prior approval from the Ministry.

61. The said view was also taken by the Division Bench of this Court in **LPA 376/2022**, filed by the petitioner. The relevant part of the order dated 2nd June, 2022 is reproduced herein:

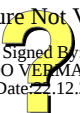
“8. That said, the core of Mr Garg's submission before us concerns competence of the COA to trigger an inquiry against the appellant.

8.1. In this context, Mr Garg has drawn our attention to Article 40(6) of Articles of Association of the Carpet Export Promotion Council (CEPC). For the sake of convenience, the said provision is extracted hereafter:

"6. To appoint and at its discretion remove or suspend employees, officers, clerks, agents, servants whether permanent, temporary or special as it may, from time to time, think fit and to determine their powers and duties and fix salaries or emoluments and to require securities in such instances and to such amount as it may deem fit, provided that the appointment or removal of Executive Directorcum- SecretarylDeputy Director or Assistant Director, or any other officer equivalent thereto shall be with the prior approval of the Central Government in the Ministry of Commerce /Textiles."

[Emphasis is ours.]

8.2. It is Mr Garg's submission that even for triggering an inquiry against the appellant, who was, at the relevant time, working as the Executive Directorcum-Secretary [in short 'EDCS'], the approval of the





Central Government i.e., the Ministry of Commerce/Textiles ought to have been taken.

8.3. In other words, Mr. Garg says that since no approval was taken, the inquiry could not have been triggered against the appellant.

8.4. To our minds, this submission is misconceived, apart from the fact that it does not seem to have been articulated before the Learned "Single Judge in the manner in which it is put forth before us.

8.5. Be that as it may, Article 40 concerns the powers of the COA. There are several powers conferred on the COA and amongst such array" of powers, power to appoint, remove or suspend employees are also conferred on the COA, as would be evident upon a perusal of Article 40(6), extracted above.

8.6. However, insofar as EDCS/Deputy Director, Assistant Director or any other officer equivalent thereto is concerned, the appointment or removal of such officers cannot be effected by the COA without the prior approval of the Central Government i.e., the Ministry of Commerce/Textiles.

9. As is evident from the record, the stage for removal of the appellant has not been reached in the matter, as yet.

9.1. Therefore, to our minds, while the COA was empowered to trigger an inquiry against the appellant, if, however, a decision is to be taken to remove the appellant, who, at the relevant time, as indicated above, was working at the post of EDCS, in terms of Article 40(6), the prior approval of the Central Government, that is, the Ministry of Commerce and Textiles will have to be taken.

9.2. Whether this stage [i.e., of removal] will be reached or not, is a matter which will get revealed only after the inquiry is concluded.

9.3. Ms. Neha Gupta, who appears on behalf of respondent nos.3 and 4 does not dispute this position. Ms. Monika Arora, who appears for respondent nos. 1 and 2 submits likewise."





62. The above reproduced paragraphs of the order makes it clear that the Division Bench was also of the same view, and the petitioner's contention regarding the violation of the said provision was rejected there as well.

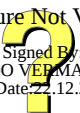
63. Therefore, this Court is also of the view that the suspension and issuance of the show cause against the petitioner does not anyhow violate Article 40(6) of the AOA and the respondent Council is well within its power to initiate inquiry against the petitioner, however, the decision to remove him permanently from the services can only be taken after due approval from the respondent Ministry.

64. Now, coming to the question of reduction of subsistence allowance of the petitioner. In the pleadings, the petitioner has contended that his subsistence allowance was reduced to 25% which is contrary to the settled position of law and he is entitled to an enhanced allowance till the time inquiry is completed against him.

65. Till now, it is amply clear that the services of the petitioner are governed by the rules of the respondent Council. In their counter affidavit, the respondent Council has referred to the relevant provisions regarding the subsistence allowance to supplement the contention that they are well within their powers to reduce the same. The relevant Rule i.e. Rule 19 of the Service Rule of the respondent Council is reproduced herein:

“ENTITLEMENTS DURING SUSPENSION:

1. An employee of the Council under suspension or deemed to have been placed under suspension by an order of the





appointing authority shall be entitled to the following payments:

(a) A subsistence allowance at an amount equal to the leave salary which the employee would have drawn if he had been on leave on half average pay or on half pay and in addition, dearness allowance, if admissible on the basis of such leave salary; Provided that where the period of suspension exceeds three months, the Authority which made or is deemed to have made the order of suspension shall be Competent to vary the amount of subsistence allowance for any period subsequent to the period of the first three months as follows :-

- i. the amount of subsistence allowance may be increased by a suitable amount, not exceeding 50% of the subsistence allowance admissible during the period of the first three months, if, in the opinion of the said Authority, the period of suspension has been prolonged for reasons, to be recorded in writing not directly attributable to the employee of the Council;*
- ii. the amount of subsistence allowance may be reduced by a suitable amount, not exceeding 50% of the subsistence allowance admissible during the period of first three months, if in the opinion of the said authority, the period of suspension has been prolonged due to reasons, to be recorded in writing, directly attributable to the employee of the Council;*
- iii. the rate of dearness allowance will be based on the increased or, as the case may be the decreased amount of subsistence allowance admissible under sub-clause (i) and (ii) above.*

(b) Any other compensatory allowances admissible from time to time on the basis of pay of which the employee of the Council was in receipt on the date of suspension subject to the fulfillment of other conditions laid down for the drawal of such allowances.

2. No payment under sub-rule (i) shall be made unless the employee of the Council furnishes a certificate that he is not



engaged in any other employment, business, profession or vocation.”

66. The perusal of the above cited rule makes it crystal clear that the respondent Council is empowered to decide the subsistence allowance of their employees, and the same rule is also applicable on the petitioner as well.

67. While this Court understands the independence of the authorities and no way ascribes to the idea of judicial overreach by entering into the domain of the executive, however, the material on record suggests that the counsel for the respondents had earlier assured the Division Bench of this Court to increase the subsistence allowance of the petitioner to 50%.

68. Therefore, at this stage, it is imperative for this Court to again refer to the order of the e Division Bench in LPA no. 376/2022, where the bench had reproduced the findings of the single bench recording the submissions made by the counsel for the respondent Council assuring that the subsistence allowance shall be increased to 50%. The relevant paragraphs of the order dated 2nd June, 2022 is reproduced herein:

“5. It is not in dispute that the Learned Single Judge has, in fact, taken on record the statement made on behalf of respondent nos.3 and 4 by their counsel that they will enhance the subsistence allowance of the petitioner to 50 percent. This and other aspects concerning statement of imputations of misconduct, list of witnesses and documents have been noticed by the Learned Single Judge in paragraphs 9 and 10 of the impugned order.

5.1. For the sake of convenience, the said paragraph is extracted below:

“...9. She further submits that the petitioner has finally submitted only a preliminary reply on 20.05.2022,



wherein no such plea has been taken that the annexures mentioned in the charge sheet were not served on him. She, however, concedes that no list of witnesses appears to have been annexed to the chargesheet and therefore submits that since the formal inquiry in terms of the chargesheet will commence only after the petitioner submits his reply, a list of witnesses along with imputation of charges, if not already supplied, will be served on him before commencement of the inquiry. She further submits that the petitioner's plea that before initiation of the inquiry against him, approval from respondent no.2 was mandatory, is also misplaced as the respondent no.2 has already issued a communication clearly informing respondent no.3 that no such approval would be required for holding of inquiries in disciplinary matters. She is, however, not in a position to dispute that the subsistence allowance has been reduced from 50% to 25% even before a formal inquiry has commenced and, therefore, submits on instructions that the subsistence allowance of the petitioner will be immediately restored to 50%. 10. I have considered the submissions of the parties and perused the record. In so far as the petitioner's grievance regarding the reduction in subsistence allowance being paid to him is concerned, in view of the stand taken by respondent no.3 and 4, no orders in this regard are required to be passed and the statement made by the learned counsel for the respondent nos.3 & 4 that the petitioner's subsistence allowance will be forthwith restored to 50% w.e.f. 18.04.2022, is taken on record. This will, however, not preclude the respondents from taking any action in this regard on a later stage, if the need so arises....”

69. On perusal of the aforesaid paragraphs of the order dated 2nd June, 2022 as passed by the Hon'ble Division Bench in LPA 376/2022, it is clear that the respondent Council had instructed their counsel about the



decision of increase in the subsistence allowance of the petitioner, however, the petitioner has again approached this Court by filing the present petition raising the same grievance.

70. In the rival submissions, the learned counsel appearing for the respondents has submitted that the subsistence allowance of the petitioner has already been increased to 50% as directed by the Division Bench of this Court *vide* order dated 2nd June, 2022. Therefore, in light of the same, the said issue, no longer persists.

CONCLUSION

71. The aspect of bias is one of the fundamental principles needed to be adhered to by the administration where the adjudicating body constituted to look into allegations against a person should be free from any bias towards that person.

72. In the present case, the petitioner while discharging his duties had proceeded towards filing of an FIR against the person who was subsequently appointed to preside over the inquiry committee constituted to look into the allegations of fraud against the petitioner. Therefore, it is fair to say that any findings of such a committee cannot be bias free.

73. In light of the same, the constitution of said inquiry committee is thereby termed illegal due to conflict of interest and therefore, the respondent Council is directed to constitute the new committee to inquire the allegations leveled against the petitioner.

74. The material on record, i.e. the charge sheet issued by the said committee has described serious allegations against the petitioner. Without getting into merits of the same, the respondent Council is



directed to look into the same by reconstituting the inquiry committee which shall act expeditiously and render a decision preferably within 8 weeks. The petitioner is also directed to co-operate with the inquiry committee and make himself available as and when summoned by the said committee for questioning.

75. Till the time such inquiry is completed, the respondent Council is directed to pay the petitioner 50% subsistence allowance, as reiterated by the Division Bench of this Court in the LPA no. 376/2022.

76. It is also made clear that this judgment in no way renders the petitioner innocent, rather the reliefs as provided to the petitioner is merely on the procedural lapses on the part of the respondent Council.

77. In view of the foregoing paragraphs, this Court deems it appropriate to issue the writ of certiorari in the present petition and therefore, the same is allowed *qua* the quashing of charge sheet dated 27th January, 2022 as issued by the inquiry committee.

78. Accordingly, the instant petition stands disposed of along with the pending applications, if any.

79. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

DECEMBER 15, 2023
gs/av/ryp